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INSURANCE AGAINST LOSS BY BURGLARY OR ROBBERY—
PREPAID SALES TAX RECEIPTS—POSSESSION OR CUSTODY
OF COUNTY TREASURER—COUNTY COMMISSIONERS DO
NOT HAVE AUTHORITY TO PROCURE SUCH INSURANCE
AND PAY COST FROM COUNTY TREASURY—NO AUTHOR-
ITY GRANTED BY SECTION 2288-1c G. C.

SYLLABUS:

County commissioners do not have the authority either under Section 2288-1c or any other section of the General Code to procure insurance against loss by burglary or robbery of prepaid sales tax receipts in the possession or custody of the county treasurer and to pay the cost of such insurance from the county treasury.

Columbus, Ohio, September 13, 1943.

Hon. William A. Ambrose, Prosecuting Attorney,
Youngstown, Ohio.

Dear Sir:

Your request for my opinion reads:

“Considerable discussion has arisen in regards to carrying burglary and robbery insurance upon the sales tax stamps in the possession and control of the Mahoning County Treasurer, the amount of which runs into hundreds of thousands of dollars. The bulk of the stamps always remains in the main vault, which is large and operates on a time clock. The amount of \$16,000 to \$25,000 is kept in the stamp office in a combination fireproof safe. Both the vault and the safe are located in the Mahoning County Court House and located in the treasurer’s office after closing hours and a watchman is on duty in the building.

The question in our minds is as follows: What insurance does the Mahoning County treasurer, or Mahoning County commissioners have to carry for their own protection against any claim that the State of Ohio may have in the event there is a robbery or burglary? The purpose of the inquiry is to protect the local officials and the State of Ohio in the event a loss is incurred by reason of robbery or burglary. Will you kindly facilitate a reply to our inquiry?”

Prior to the enactment of former Section 2638-1 of the General Code (113 O. L. 11), since repealed, the Attorney General was on many occasions called upon to render opinions as to whether insurance or bonds of various kinds might be procured insuring funds and property in the custody of the county treasurer and other county officials. See Opinions of the Attorney General for 1923, page 489; Opinions of the Attorney General for 1937, page 543; Opinions of the Attorney General for 1927, page 874.

In the opinion last above cited, the Attorney General stated in the syllabus that:

“County commissioners have no authority to purchase and pay for burglary or hold-up insurance for the county treasurer or for any other county officer, nor have they authority to pay for insurance against forgery for the county treasurer.”

All of the opinions above cited are founded upon the proposition that unless authority is granted by statute to the county to expend county money for insurance it cannot purchase such insurance. The rule is stated in State, ex rel. Locher, Prosecuting Attorney v. Menning, et al., 95 O. S., 97, 99, as follows:

“The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be

clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

In Opinions of the Attorney General for 1937, at page 543, the then Attorney General we believe aptly stated the law in the syllabus of his opinion:

"County commissioners, in the absence of any statutory provision authorizing them to procure insurance against loss of public funds in the custody of the county treasurer by forgery, would have no authority to purchase such insurance and pay the premiums for same out of the county treasury."

In 113 O. L. 11, the General Assembly authorized the county commissioners "to procure insurance against loss of *public funds or securities*, in the custody of the county treasurer, by burglary or robbery". Such statute (formerly Section 2638-1, General Code) modified the authority of the county commissioners to procure insurance from that described in the Attorneys' General opinions above quoted, but in specific terms only authorized the insurance of "public funds or securities" in the custody of the treasurer against loss by burglary or robbery. Such former section of the General Code was repealed in 119 O. L. 343 which enacted Section 2288-1c of the General Code, which contains the following provision:

"Any funds or securities in the possession or custody of any county official in his official capacity or any funds or securities the possession or custody of which is charged to any county official, including funds or securities in transit to or from any bank or trust company, may be insured by the county commissioners in such amount as may be found necessary in the public interest. All costs of such insurance shall be paid by the county as provided in section 2460 of the General Code."

Other than in former Section 2638-1 and present Section 2288-1c of the General Code, I find no provisions of law, other than those providing for the county treasurer's bond and the Depository Act, which afford insurance pertaining to the loss of property in the possession or custody of the county treasurer.

In order to answer your inquiry it then becomes necessary to determine whether "prepaid sales tax receipts" in the possession of the county treasurer are either "funds" or "securities" within the meaning of those terms as used in Section 2288-1c of the General Code.

There is a fundamental rule applicable to the interpretation of stat-

utes to the effect that the Legislature is presumed to have used the words which it did use in their clear, unambiguous and generally accepted meaning unless there is something in the context in which they are found clearly showing that they were used in a different sense (*Kiefer v. State*, 106 O. S. 285, 289) and that they were so used in their ordinary acceptance and significance unless such context clearly requires a different meaning (*Eastman v. State*, 131 O. S. 1).

I do not believe that the ordinary meaning of the term "funds" as used in the statute can be construed to include prepaid sales tax receipts in the custody of county treasurers. The ordinary meaning of the term "funds" is cash, money or other intangible items of property which in general commercial practice are readily acceptable as a medium of exchange, such as checks, drafts, letters of credit, etc. The term "funds" does not, in its ordinary connotation, include those types of property included within the term "securities" such as stocks, bonds, mortgages, notes, etc.

Broadway Bank of St. Louis v. McGee Creek Levee & Drainage District, 292 Ill. 560;

Enzor v. State, 27 Ill. App. 60;

Lane v. Madgeburg, 81 Wis. 344;

In Re Hines (N. M.), 82 Pac. (2nd) 786, 788;

Boulle v. Thompkins, 5 Redf. Sur. (N. Y.) 472, 477;

People v. New York Central Railroad Co., 33 Barb. (N. Y.) 123, 135

The fact that unused prepaid sales tax receipts in the possession of a county treasurer do not constitute funds within the ordinarily accepted meaning of that term will become more readily apparent from an examination of the sections of the Sales Tax Law hereinafter cited.

It would, therefore, seem that Section 2288-1c of the General Code does not authorize the county commissioners to insure against the loss of such unissued prepaid sales tax receipts unless they constitute "securities".

I am not unmindful that in Section 8624-2 of the General Code there is a definition of the term "securities" which is extremely broad in scope. However, such section, which is a part of the Ohio Securities Act, defines the term "securities" for the purpose of that act alone and does not purport to define terms or words for any other purpose than to regulate the sales of certain types of intangible and tangible property. The term "securities" as therein defined includes many things which do not come within the

ordinary connotation of that term. In fact, such definition includes "real estate not located in this state".

The term "securities" is generally defined as written assurances for the return or repayment of money or other evidences of indebtedness or ownership of intangible property which is not in the holder's possession, such as stocks, bonds, notes, debentures, etc.

Jaffe v. Goldner, 251 Ill. App. 188;

In Re New York Title & Mortgage Co., 289 N. Y. S. 771, 785;

Groby v. State, 109 O. S. 543;

Morris v. Spencer, 18 Me. 324, 327;

Bellows Falls Power Co. v. Commonwealth, 222 Mass. 51;

State v. Whitaker, 118 Ore. 656

Some courts define the term as including only those instruments which are used for the purpose of financing or promoting business enterprises and which are intended as investments of a pecuniary nature.

Equitable Trust Co. v. Marshall, 17 Atl. (2nd) (Del. Ch.) 13, 15;

In Re Waldstein, 291 N. Y. S. 697;

Boston Railroad Holding Co. v. Commonwealth, 215 Mass. 493

In the second paragraph of the syllabus of City Bank Farmers Trust Co. v. Lewis, 122 Conn. 384, we find the following statement:

"The prevailing conception of the term 'security' is in general accord with the lexicographical definition, 'an evidence of debt or other property, as a bond, stock certificate, or other instrument, etc.; a document giving the holder the right to demand and receive property not in his possession', rather than with the decisions limiting its scope to obligations secured by collateral."

In Groby v. State, 109 O. S., 543, Matthias, J., in delivering the opinion of the court, said at page 546:

"* * * Lexicographers similarly define the term 'security' as:

'An evidence of debt or of property, as a bond, stock certificate or other instrument, etc.; a document giving the holder the right to demand and receive property not in his possession.'"

Let us, therefore, examine the statutes which authorize the creation of prepaid sales tax receipts and under authority of which the county treasurer obtains custody of the receipts in question.

Section 5546-2 of the General Code imposes a tax upon the sale of tangible personal property to consumers. Section 5546-3 of the General Code provides that such tax shall be collected from the consumer at the time the sale is made. Such act sets forth in detail the method of collecting the tax and the evidencing of its collection. Section 5546-4 requires the Tax Commissioner to prepare prepaid sales tax receipts, which receipts, by virtue of the authority of Section 5546-7 of the General Code, are required to be delivered to the Treasurer of State as soon as they are procured. Section 5546-9 requires each vendor of tangible personal property to procure or purchase and have on hand at all times suitable stamps so that upon making the sale he may collect from the consumer the tax at the rates levied in such act and to evidence such collection by canceling prepaid sales tax receipts equal in face amount to the tax so collected by tearing such prepaid receipts in two parts in the presence of the purchaser and delivering the appropriate half thereof to the purchaser.

In order to facilitate the placing of proper stamps in the hands of vendors, Section 5546-7 of the General Code provides that the Treasurer of State shall deliver to the county treasurer, and to the various agents appointed by him in a county, stamps in proper denominations and sufficient in quantity to enable each vendor in the particular county to conveniently obtain the necessary prepaid receipts. By virtue of such section the stamps are delivered to the county treasurer who, on the first business day of each week, must remit to the Treasurer of State all monies which he has received from the sale of prepaid sales tax receipts during the preceding week, together with a report showing all sales, the names of the purchasers of such stamps and the aggregate face value of stamps purchased by each. Such remission of funds, by virtue of other provisions of the act, is the net amount received by him after allowance of discounts allowed to wholesale purchasers and adjustments made by the Treasurer for spoiled, mutilated or otherwise unused stamps. Such act provides that the Treasurer may sell such stamps only to licensed vendors; that is, those vendors who have been licensed by the Department of Taxation as provided by the act.

I am unable to find in the act any provision which would authorize one vendor to purchase, and use in the collection of the tax prescribed by such act, prepaid sales tax receipts from another vendor. Section 5546-12a of the General Code imposes a specific tax upon each vendor in the amount of three per cent of the aggregate sales price of all amounts

received from taxable sales and permits such vendor to credit against such tax so assessed the amount of prepaid tax receipts which he has purchased from a county treasurer or treasurer's agent which he can show that he has cancelled in the manner provided by statute as above described. It is, therefore, difficult to perceive a set of circumstances under which prepaid sales tax receipts could be used as a medium of financing a transaction such as referred to in the above definitions of "securities". Such stamps are not of the nature of stocks, bonds, notes, mortgages, debentures or any other intangible items usually included within the term "securities".

It is true that under certain circumstances if a vendor can show that prepaid tax receipts purchased by him had been spoiled, mutilated or otherwise have become unusable he, upon showing that he was the purchaser of such receipts, may obtain a proportionate refund therefor from the Treasurer of State. However, I am unable to form the opinion that such fact is sufficient to bring the receipts within the ordinary connotation of the word "securities". Likewise, I am unable to find in the context of Section 2288-1c anything which would indicate that the Legislature used the terms "funds" or "securities" in any other sense than that of their ordinary connotation.

I am, therefore, impelled to answer your inquiry in the negative.

Specifically answering your inquiry, it is my opinion that the county commissioners do not have the authority either under Section 2288-1c or any other section of the General Code to procure insurance against loss by burglary or robbery of prepaid sales tax receipts in the possession or custody of the county treasurer and to pay the cost of such insurance from the county treasury.

Respectfully,

THOMAS J. HERBERT,
Attorney General.