

other than taxes paid in on the tax duplicate after the same has been delivered to the county treasurer. Although the practice of receiving and paying into the county treasury, tax moneys otherwise than by the payment of taxes on the duplicate in the hands of the county treasurer is not at all common, and the same has, perhaps, been discouraged by the county officers charged with the duty of assessing and collecting taxes, the provisions of the sections of the General Code, above quoted, are ample authority for the payment on the order of the county auditor of tax moneys in a case such as is here presented, before the tax duplicate is made up and delivered to the county treasurer.

Such tax moneys so paid into the county treasury on a certificate or order of the county auditor should be credited to the "undivided general tax fund"; and if the county auditor makes his semi-annual settlement with the county treasurer in the manner provided for by Section 2602, General Code, he should credit the tax moneys thus paid into the county treasury on his order to the taxing districts or subdivisions entitled thereto.

Obviously, in a case such as that here presented, the provisions of Sections 2567 and 2645, General Code, above quoted, will not meet the situation unless the tax returns for the year have been determined and the county auditor, by his certificate or pay-in order, can specify the amount of money to be paid into the county treasury as taxes for the current year on the property listed by the executor or administrator of the estate.

By way of further answer to the question presented in said communication, it is suggested that when the taxes on property listed by the executor or administrator of such estate are paid into the county treasury on a pay-in order of the county auditor before the tax duplicate is made up and delivered to the county treasurer, such taxes should be entered on the duplicate with a memorandum thereon with respect to the payment of such taxes into the county treasury on a pay-in order of the county auditor, so that the county treasurer will be charged but once with respect to said taxes, to wit: the charge made against him when said taxes are paid into the county treasury on said pay-in order, as is provided for by Section 2567, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3123.

APPROVAL, ARTICLES OF INCORPORATION OF EMPIRE MUTUAL INSURANCE ASSOCIATION.

COLUMBUS, OHIO, April 6, 1931.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I beg to acknowledge your recent communication requesting my re-examination and approval of the proposed Articles of Incorporation of Empire Mutual Insurance Association. I note that the Articles now submitted have been largely revised in accordance with my recent Opinion No. 3095, rendered you March 26, 1931. However, I note that said proposed Articles of Incorporation still contain the objectionable designation of the proposed corporation as one "not for profit". There is no authority for this designation in Title IX, Division III, Subdivision II, Chapter 2-1 ("Chapter

2-A" as stated in the proposed Articles is erroneous), under which the corporation is organized and will operate.

Section 8623-97, General Code, provides:

"A corporation not for profit may be formed hereunder for any purpose or purposes *not involving pecuniary gain or profit* for which natural persons may lawfully associate themselves, provided that where the General Code makes special provision for the filing of articles of incorporation of designated classes of corporations not for profit, such corporations shall be formed under such provisions and not hereunder." (*Italics* the writer's).

Although the statute above quoted contains a clear implication that corporations not for profit may be formed under other chapters of the General Code than that containing the General Corporation Act, it is a matter of grave doubt in my mind whether a corporation organized under the provisions of Sections 9607-1 to 9635, inclusive, General Code, for the transaction of several branches of the insurance business for the exclusive benefit of its members is of such a benevolent, philanthropic or social nature as to entitle it to be classed as a corporation not for profit within the purview of Section 8623-97, General Code, *supra*, and related sections. However, the particular provisions of the General Code under which said proposed corporation is organized being correctly cited in said proposed articles of incorporation, I am of the opinion that the designation of said proposed insurance corporation as one not for profit, and of "Chapter 2-A" as the chapter of the General Code under which the proposed corporation is organized, although erroneous, may be ignored as surplusage. See Vol. I, Opinions of the Attorney General for 1919, p. 36; also my opinion No. 2834, rendered to you January 16, 1931.

I am therefore of the opinion that said proposed Articles of Incorporation of Empire Mutual Insurance Company are consistent with the constitutions and laws of Ohio and of the United States. I herewith return the same to you with my approval endorsed thereon.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3124.

COUNTY FUNDS—DEPOSITED IN STATE BANK BY COMMISSIONERS—
NOT PREFERRED CLAIM AGAINST ASSETS WHEN SUCH BANK FAILS.

SYLLABUS:

County commissioners are not entitled to a preference in the liquidation of a legally selected active county depository bank, for county moneys rightfully deposited therein.

COLUMBUS, OHIO, April 7, 1931.

HON. JOHN W. BOLIN, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—Acknowledgment is hereby made of your request for my opinion which reads as follows:—

"Where the county commissioners have followed the procedure as laid down under Section 2715 of the General Code and entered into a contract with a State bank for the active depository of public funds, and said bank has failed does the fact that the depository is of public money give the right