

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of two issues of bonds dated November 1, 1936, bearing interest at the rate of $3\frac{1}{4}\%$ per annum: (1) Street widening of Columbia Avenue in the aggregate amount of \$475,000 of an authorized aggregate of \$1,000,000; (2) Street widening Cummins Street in the aggregate amount of \$250,000 of an authorized aggregate of \$950,000.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

980.

MONEYS COMING INTO HANDS OF PUBLIC OFFICERS—
DISPOSED OF, HOW.

SYLLABUS:

Until otherwise provided for by law, moneys coming into the hands of public officers as the result of forfeited recognizances should be paid into the county treasury to the credit of the general revenue fund.

COLUMBUS, OHIO, August 6, 1937.

HON. HAROLD K. BOSTWICK, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR: I have your letter of recent date in which you request my opinion on the following questions:

"A recognizance has become forfeited in a criminal case and of course the recognizance being in favor of the State of Ohio as they all are in State cases, the surety company forwarded a check to me for the full amount of the recognizance and the check was made payable to the State of Ohio.

Now, my question is, who receives this check, how will it be cashed and what is to be done with the money after it is cashed.

Section 13529-1 answered that question, but it was repealed in 113 O. L. 215. The present General Code sections in refer-

ence to Bail begin with Section 13435-1 and in Section 13435-8 it says in part, 'the officer having in charge such money or bonds shall apply the same, or the proceeds therefrom in satisfaction of any judgment that may be rendered on the recognizance or bond, but I am unable to find any further information which will help answer the above questions.

I would appreciate very much your informal opinion as to the answer of said above question as I am unable to find any section that takes the place of said Section 13529-1."

Inasmuch as the legislature made no provision for the disposition of the proceeds of forfeited recognizances in the enactment of Amended Senate Bill No. 8, 113 O. L. 149, codified as Sections 13435-1, et seq., which would take the place of repealed Section 13529-1, recourse must be had to other provisions of the General Code which may offer some guidance as to how such money should be handled after its receipt by the proper county officer.

A careful examination fails to disclose any other specific section of the General Code providing for the disposition of the proceeds of forfeited recognizances. However, the disposition of moneys coming into the hands of the Prosecuting Attorney as fines of forfeitures is treated in Section 2916, General Code, as follows:

"The prosecuting attorney shall have power to inquire into the commission of crimes within the county and except when otherwise provided by law shall prosecute on behalf of the state all complaints, suits, and controversies in which the state is a party, and such other suits, matters and controversies as he is directed by law to prosecute within or without the county, in the probate court, common pleas court and court of appeals. In conjunction with the attorney general, he shall also prosecute cases in the supreme court arising in his county. In every case of conviction, he shall forthwith cause execution to be issued for the fine and costs, or costs only, as the case may be, and faithfully urge the collection until it is effected, or found to be impracticable, *and forthwith pay to the county treasurer all moneys belonging to the state or county, which come into his possession as fines, forfeitures, costs or otherwise.*" (Italics ours.)

The disposition of fines or moneys arising from forfeited bonds in the case of arrests by the State Highway Patrol is provided for in Section 1181-5, General Code, which reads in part as follows:

"All fines collected from, or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be paid one-half into the state treasury and one-half to the treasury of the incorporated city or village where such case may be prosecuted. Provided, however, if such prosecution is in a trial court outside of an incorporated city or village such money shall be paid one-half into the county treasury. Such money so paid into the state treasury shall be credited to the 'state highway maintenance and repair fund' and such money so paid into the county, city or village treasury shall be deposited to the same fund and expended in the same manner as is the revenue received from the registration of motor vehicles. * * *"

The two foregoing statutes indicate that moneys arising from fines or forfeitures are closely related sources of revenue, and the following statute affords some further indication as to what should be done with moneys coming into the hands of public officers when there is no specific statutory guide for its disposition, as in the present case.

Section 5625-10, General Code, provides in part as follows:

"All revenues derived from the general levy for current expense within the ten mill limitation; from any general levy for current expense authorized by vote outside of the ten mill limitation; and from sources other than the general property tax, unless the law prescribes its use for a particular purpose, shall be paid into the general fund. * * *"

The foregoing statutory provision seems to be pretty definite authority for the payment of the money in question into the general revenue fund of the county.

Even though the check paid by the surety in the case of a forfeited recognizance is made payable to the State of Ohio as obligee, it seems well settled that such money is for the benefit of the county. See Bates' Pleading, Practice, Parties and Forms, 4th Edition, Section 602A1.

In specific answer therefore, to your question as to the procedure of disposing of the check now in your possession, I feel that it will be quite in order for you to deliver this check to the county treasurer who may indorse it for collection to the credit of the general revenue fund of the county.

In view of the absence of any specific statutory authority providing for the disposition of forfeited recognizances, it is my opinion that

the proceeds of a forfeited bond should be paid into the county treasury to the credit of the general revenue fund.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

981.

APPROVAL—BONDS OF NEW BAZETTA RURAL SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO, \$5,000.00 (Limited).

COLUMBUS, OHIO, August 6, 1937.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of New Bazetta Rural School Dist., Trumbull County, Ohio, \$5,000.00 (Limited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of deficiency bonds dated August 1, 1937, bearing interest at the rate of 4% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

982.

APPROVAL—BONDS OF CITY OF CAMPBELL, MAHONING COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, August 6, 1937.

The Industrial Commission of Ohio; Columbus, Ohio.

GENTLEMEN :