N. S.) 129, 131; Opinions of the Attorney General, 1927, Vol. IV, page 2480. Obviously, these rulings are not dispositive of the question of the authority of the city of Piqua to lease the lands in question for park purposes under its authority generally to appropriate lands for this purpose. Likewise, the question remains as to whether under the provisions of sections 13 and 14 of the DeArmond Act a city may not lease abandoned canal lands for park purposes within the two-year limitation in said act whether such lands are within or without the corporate limits of the city.

As above noted, it is not necessary for me to dispose of these questions in my consideration of the present lease. I am required to disapprove the present lease for the reason that the same is for a purpose other than that authorized at the present time by the DeArmond Act; and my only purpose in mentioning the other questions is that consideration may be given to the same by the officials of this city in case they should determine to make an application for the lease of the land here in question for park purposes.

For the reasons above stated, the lease in its present form is disapproved and the same is herewith returned to you.

Respectfully,
JOHN W. BRICKER,
Attorney General.

201.

APPROVAL, BONDS OF CITY OF LIMA, ALLEN COUNTY, OHIO, $10,000.00.

COLUMBUS, OHIO, March 9, 1933.

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

202.

INSOLVENT NATIONAL BANK—RECEIVER NOT REQUIRED TO PAY STATE TAX ON SHARES OF BANK SINCE STOCK IS WORTHLESS —TAX ON DEPOSITS IS A PROVABLE CLAIM.

SYLLABUS:

1. *The receiver of an insolvent national bank in this state cannot be required to pay the taxes levied upon the shares of the stockholders of such bank under the provisions of section* 5408, *et seq., General Code, when such shares are valueless and there is no fund from which the receiver can be reimbursed for the amount of such taxes without paying them from assets of the bank which belong to the bank's creditors.*

2. *Taxes on deposits in a national bank assessed in the manner provided by section* 5411-1, *General Code, and at the rate provided in section* 5638, *General Code, are, if the same have not been paid by the bank, a provable claim against*

the receiver of such bank thereafter appointed, and are payable out of moneys in the hands of the receiver otherwise due and payable to the several depositors making the deposits subject to such taxes.

COLUMBUS, OHIO, March 10, 1933.

HON. LESTER S. REID, *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication in which you ask my opinion as to whether certain taxes in the amount of $1557.50 are a proper claim against the assets of the Ross County National Bank, which is now in the hands of a receiver for purposes of liquidation. You state that this bank closed its doors on the 11th day of July, 1932, and that, by reason of the fact that the bank has been declared to be insolvent by the Comptroller of the Currency, the receiver has refused to pay said claim for taxes.

The claim for taxes amounting to the sum of $1557.50, referred to in your communication, includes, I assume, taxes for the year 1932 on the shares of stock of the Ross County National Bank and also taxes on the deposits in this bank on November 24, 1931, the day fixed by the Tax Commission of Ohio as of which deposits in financial institutions were taxed for said year. With respect to taxes on the shares of stock of this bank as a national bank, it is to be observed that such taxes have been provided for by the laws of this state pursuant to the consent of Congress granted by section 5219 of the Revised Statutes of the United States, which section, as amended, has been carried into the United States Code as section 548 of title XII. In this connection, it is important to note that, but for such consent on the part of Congress, the state would not be authorized to tax national banks, their property, assets or shares of stock. Among the many cases in which this principle has been recognized, the following cases are noted: *Owensboro National Bank* vs. *Owensboro,* 173 U. S. 664; *Des Moines National Bank* vs. *Fairweather,* 263 U. S. 103; *First National Bank* vs. *Anderson,* 269 U. S. 341; *First National Bank* vs. *Hartford,* 273 U. S. 548. In the case of *First National Bank* vs. *Anderson. supra,* the court said:

> "National banks are not merely private moneyed institutions, but agencies of the United States created under its laws to promote its fiscal policies; and hence the banks, their property and their shares, cannot be taxed under state authority except as congress consents and then only in conformity with the restrictions attached to its consent."

As above noted, Congress has granted to the states authority to tax the shares of stock of national banks, subject to certain conditions and restrictions not material in the consideration of the question here presented. Pursuant to this authority, the legislature, in the enactment of sections 5407 to 5414 and sections 5672 to 5673-1, General Code, 114 O. L. 747, et seq., has provided, among other things, for the levy and assessment of taxes on the shares of stock of financial institutions, including state and national banks. By these statutory provisions, the bank is required to pay such taxes and is authorized to reimburse itself for such payment by deducting the amount paid from dividends then due or which may thereafter become due to the shareholders on such shares, and to this end the bank is given a lien upon the shares of stock and on all funds in its possession belonging to such shareholders. In other words, the bank is made the agent of the state for the purpose of collecting the tax

from the shareholders. This the state is authorized to do. *National Bank* vs. *Commonwealth,* 9 Wall. 353, 361-363; *Merchants Bank* vs. *Pennsylvania,* 167 U. S. 461, 465, 466; *Aberdeen Bank* vs. *Chehalis County,* 166 U. S. 440; *Citizens National Bank* vs. *Kentucky,* 217 U. S. 444.

However, it appears from your communication that the bank therein referred to is insolvent and is in the hands of a receiver for the purpose of liquidation. In this situation, it is obvious that the shares of stock of this bank issued and outstanding in the hands of the shareholders are valueless, and that the bank represented by the receiver does not have possession or control of any property of the stockholders out of which the bank may be reimbursed for any taxes on the shares of stock which may now be paid by the receiver. It follows from this that any payment made by the receiver on this part of the tax claim referred to in your communication would not be the payment of taxes assessed against the shareholders, but would be a payment out of the property and assets of the bank which would otherwise go to the creditors of such bank. Touching this question, it was held by the United States Circuit Court for the District of Massachusetts in the case of *City of Boston* vs. *Beal,* 51 Fed. 306, under a statute of that state which provided that shares of stock in all banks, state and national, should be taxed to the owners thereof, which tax was to be paid in the first instance by the bank itself, which, for reimbursement should have a lien on the shares and all the rights of the shareholders in the bank property, that no suit for this tax could be maintained against the receiver of an insolvent national bank for the reason that the property represented by the shares had disappeared and there was nothing from which the receiver could be reimbursed. The court held that any payment made by the receiver of such tax would be out of the assets of the bank, which belong to its creditors, and thereby violate the rule that a state cannot tax the capital stock or property of a national bank. The court in its opinion in this case said:

> "The only question which arises in this case is whether, under the state of facts here presented, the receiver is liable. It appears that at the time this suit was brought the assets of the bank were in the hands of a receiver, and that the property representing the capital stock had been swept away. This tax, therefore, if held to be valid, is not a tax upon the shareholders, but a tax upon the assets of the bank which belongs to the creditors. If the tax is paid by the bank, it can have no lien upon the shares of stock for repayment, as provided by section 10 of the statutes above cited, because the property representing such shares has ceased to exist. Under these circumstances, I do not think that the receiver can be held liable for this tax, or that it is a provable claim against the assets in his hands."

In the case of *Baker, Receiver,* vs. *County of King,* 17 Wash. 622, the supreme court of that state, following the decision in the case of *City of Boston* vs. *Beal, supra,* held:

> "The receiver of an insolvent national bank cannot be required to pay a state tax levied upon the shares of stockholders, when the shares are valueless and there is no fund from which the receiver can be reimbursed for the amount of the tax without paying it from the assets of the bank to the detriment of the bank's creditors."

In the case of *Stapylton* vs. *Thaggard,* 91 Fed. 93, decided by the United States Circuit Court of Appeals for the Fifth Circuit, it was held that:

> "A state statute requiring banks to pay the taxes assessed against their stockholders on their shares, and giving the bank a lien thereon for the amount advanced, is based on the theory that the bank holds assets of the stockholder from which it can protect itself; and such payment cannot be enforced against the receiver of an insolvent national bank, nor against its assets in his hands."

I am of the opinion therefore, for the reasons before stated and upon the authorities above cited, that the part of the tax claim referred to in your communication, which represents taxes on the shares of stock of the Ross County National Bank, is not a valid claim against the receiver or against the assets of the bank in the hands of the receiver.

The same conclusion does not, in my opinion, follow with respect to that part of the claim, if any, which has been assessed on deposits in this bank. By the provisions of section 5328-1, deposits of persons residing in this state and deposits of persons residing out of this state, which are withdrawals in the course of business by an officer or agent of such non-resident person who has an office in this state, are made taxable. Provisions for the assessment and payment of taxes on deposits in financial institutions in this state are made by sections 5411-1, et seq., and by other related sections of the General Code, as the same have been amended or enacted by the legislature in the enactment of the Intangible Tax Law, 114 O. L. 717, et seq. Section 5411-1, General Code, provides that on or before the fifth day of December annually, the Tax Commission of Ohio shall fix the day as of which the taxable deposits in financial institutions shall be listed and assessed. As above indicated, the day fixed by the Tax Commission as of which taxes on deposits for the year 1932 were assessed was November 24, 1931. By the sections of the General Code above indicated, it is provided that taxes on deposits in banks and other financial institutions on the day fixed by the Tax Commission and not thereafter wholly withdrawn shall be paid by the bank, or other financial institution which shall have the right to reimburse itself against the depositors out of such deposits or the interest thereon. To this end, section 5673-1, General Code, provides that taxes assessed on deposits in a financial institution in this state shall be a lien on the deposit of each person as of the day fixed by the Tax Commission of Ohio for the listing of such deposits. By section 5673-2, General Code, it is provided that a financial institution required to pay to the treasurer of the county wherein it is located the taxes assessed upon its deposit accounts, as taxable property of its depositors, may, upon receipt of notice of the day fixed for the listing of such deposits, charge the amount thereof to and deduct the same from the deposit of each depositor, or from the interest that is due or thereafter becomes due thereon. It would thus seem that as in the case of taxes on the shares of stock of a bank the bank is made the agent of the state for the collection of taxes on deposits in such bank. As to this, it may be said that, inasmuch as there is no federal law which withdraws credits of depositors in national banks from the taxing power of the state, and since a tax on such deposits does not affect the efficiency of a national bank as an agent of the federal government, such deposits are subject to taxation by the state. *Clement National Bank* vs. *State of Vermont,* 231 U. S. 120; *State* vs. *Clement National Bank,* 84 Vt. 167. Further there is nothing in the federal law or in the nature of a national bank which prevents the state

from making such bank its agent for the collection of taxes on deposits in the bank. Upon this point, the Supreme Court of the United States in the case of *Clement National Bank* vs. *Vermont, supra,* said:

> "The bank was authorized to receive deposits. Arising from these deposits were credits to the depositors, forming part of their property and subject to the taxing power of the State. It cannot be doubted that the property being taxable, the State could provide, in order to secure the collection of a valid tax upon such credits, for garnishment or trustee process against the bank or in effect constitute the bank its agent to collect the tax from the individual depositors."

It appears therefore that at the time the Ross County National Bank closed its doors and was taken over by the receiver for purposes of liquidation, this bank as the agent of the state had in its possession moneys and assets representing deposits as of November 24, 1931, upon which the state had a lien for the tax on such deposits, which taxes it was and is the duty of this bank to pay whether the bank deducted such taxes from the deposits made by the respective depositors in the manner provided for by section 5673-2, General Code, or not. The fact that the property and assets of this bank are in the hands of a receiver does not affect the situation. Touching this point, the court in its opinion in the case of *Rosenblatt* vs. *Johnston,* 104 U. S. 462, said:

> "Such property and assets, in legal contemplation, still belong to the bank, though in the hands of a receiver, to be administered under the law. The bank did not cease to exist on the appointment of the receiver. Its corporate capacity continues until its affairs are finally wound up and its assets distributed."

It follows that the receiver has the same obligation to pay these taxes on deposits as the bank had to pay the same at and prior to the time that its property and assets were taken over for liquidation. I am of the opinion therefore that so much of the claim referred to in your communication as represents taxes assessed on deposits in said bank in the manner provided by the sections of the General Code above referred to is a provable claim against the receiver, and is payable out of moneys in the hands of the receiver otherwise due and payable to the several depositors making the deposits subject to taxes.

Respectfully,
JOHN W. BRICKER,
Attorney General.

203.

CIVIL SERVICE — CITY REVERTING TO A VILLAGE — CITY CIVIL SERVICE COMMISSION AND EMPLOYES UNDER CLASSIFIED SERVICE AUTOMATICALLY LOSE THEIR STATUS.

SYLLABUS:

1. *The civil service commission of a city ceases to exist and function after a city reverts to a village form of government by operation of law.*