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BANK LIQUIDATION PROCEEDINGS — LAWFUL OWNER, UNCLAIMED DEPOSIT OR UNCALLED FOR DIVIDEND—NO CLAIM MADE WITHIN FIVE YEARS AFTER FINAL DISTRIBUTION — MONEY PAID INTO COUNTY TREASURY WHERE PRINCIPAL OFFICE OF BANK LOCATED — OWNER MAY RECOVER PROPERTY — ESTABLISH RIGHT — FILE CLAIM WITH COUNTY COMMISSIONERS—SECTION 710-106 G. C.

SYLLABUS:

The lawful owner of an unclaimed deposit or uncalled for dividend for which no claim was made within five years after final distribution in bank liquidation proceedings has been ordered and which, under the provisions of section 710-106, General Code, has been paid into the treasury of the county in which the principal office of the bank is located, may recover the same upon establishing his right thereto in a claim filed with the county commissioners of such county.

Columbus, Ohio, April 20, 1943.

Hon. Elmer E. Welty, Prosecuting Attorney,
Bellefontaine, Ohio.

Dear Sir:

This will acknowledge receipt of your letter requesting my opinion, which reads as follows:

“In the liquidation of the P.-C. Bank, Bellefontaine, Ohio, the final order for distribution was entered by the Common Pleas Court of Logan County, Ohio, on July 6, 1937. At that time dividends held by the superintendent of banks for depositors whom they were unable to contact were deposited with the county treasurer pursuant to General Code Section 710-106. Subsequent thereto, on August 4, 1942, the superintendent of banks, division of liquidation, ordered the treasurer to transfer these unclaimed deposits to the general fund of the county.

On or about December 1, 1942, a claim was filed by one of those entitled to a dividend which had been transferred to the general fund for the payment of his claim. The question presented is whether or not there is any authority, after the dividends have been transferred to the general fund pursuant to Section 710-106, to pay claimants. An examination of the section referred to will disclose that there is no provision for the

payment of these claims after a lapse of five years and the transfer of the unclaimed deposits to the general fund.”

Section 710-106, General Code, which deals with the deposit of dividends and unclaimed deposits upon completion of bank liquidation proceedings, reads as follows:

“Dividends and unclaimed deposits remaining in the hands of the superintendent of banks for six months after the order for final distribution, unless otherwise deposited for the account and subject to the order of the persons respectively entitled thereto pursuant to an order of the court of common pleas in which the proceedings are pending, or a judge thereof, shall be by him deposited with the treasurer of the county in which the principal office of such bank is located who shall hold such funds as custodian, subject to the order of the superintendent of banks. The superintendent of banks may pay over the moneys so held by the treasurer to the persons respectively entitled thereto, upon being furnished satisfactory evidence of their right to the same. In case of doubt or conflicting claims he may apply to the common pleas court of the county in which the proceedings for the liquidation of such bank are pending, or a judge thereof, for an order authorizing and directing the payment thereof. All unclaimed deposits and uncalled for dividends for which no claim has been made within a period of five years, after the order of final distribution, shall be paid into the treasury of the county in which the principal office of such bank was located upon the warrant of the auditor of said county.”

It will be noted that the above section provides that unclaimed dividends and deposits remaining in the hands of the Superintendent of Banks for six months after final distribution has been ordered, shall be deposited with the treasurer of the county “who shall hold such funds as custodian, subject to the order of the superintendent of banks.” Therefore, such unclaimed deposits and dividends, when paid over to the county treasurer, would for the five year period that they are held by such officer subject to the order of the superintendent of banks, constitute a trust fund, to be paid to the persons entitled thereto when so ordered by the Superintendent of Banks.

It will likewise be noted that all such moneys which remain unclaimed for the five year period are to be paid into the county treasury. Upon such payment into the county treasury, at the expiration of the five year period, all jurisdiction with respect to such moneys is lost by the Superintendent of Banks and consequently no claim therefor could be maintained against him.

In this respect, the statute in question is similar to certain provisions contained in section 286 of the General Code. Said section, in so far as the same is material hereto, reads:

“The term ‘public money’ as used herein shall include all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance or order, or otherwise, and all public officials, shall be liable therefor. All money received under color of office and not otherwise paid out according to law, shall be due to the political subdivision or taxing district with which the officer is connected and shall be by him paid into the treasury thereof to the credit of a trust fund, there to be retained until claimed by the lawful owner; if not claimed within a period of five years after having been so credited to said special trust fund, such money shall revert to the general fund of the political subdivision where collected.”

Under the above section it becomes the duty of every public official to pay into the treasury of the subdivision to the credit of a trust fund all moneys received by such official under color of office, to be retained in the treasury until claimed by the lawful owner, and if not claimed within five years after having been so credited to such special trust fund, such money is to be paid into the general fund of the political division where collected.

In the case of *State, ex rel. Hudson, v. Kelley*. 55 O. App., 314, the Court of Appeals of Auglaize County, in construing section 286, General Code, held:

“Since by Section 19, Article I, of the Constitution, unclaimed money may not be taken for public use without compensation, but may be recovered by the lawful owner at any time, the proper county officials are under a duty enjoined by law to provide funds out of which payment may be made, and mandamus will lie to compel the performance of this duty.”

The court, speaking through Guernsey, J., declared (page 322):

“Considering the provisions of Section 286, General Code, that if not claimed within a period of five years after having been so credited to the special trust fund such money shall revert to the general fund of the political subdivision where collected, in the light of this constitutional provision, it is clear that the Legislature in enacting this provision did not have the power, and will therefore be presumed not to have had the legislative intent, to take for public use, without compensation, unclaimed moneys privately owned, and the effect of this provision is not to deprive an owner of his property, but to terminate the right of the auditor to issue a warrant therefor to the owner on the certificate of

the sheriff, and to determine the particular fund of the political subdivision in which it shall thenceforth be held.

Giving this effect to such provision of Section 286, the unclaimed moneys of Charles Roth, notwithstanding they have been transferred to the general fund of the county, remain property of his estate subject to administration by the relator administrator, and are held by the county in the same manner as originally held, as a continuing and subsisting trust subject to the right of his administrator to demand and receive the same, without limitation as to the time when such demand shall be made and such fund received."

In an opinion rendered by him on April 20, 1937 (Opinions of the Attorney General, 1937, page 797), the then Attorney General, in discussing the effect of the provisions of section 286, General Code, said:

"Section 286, General Code, confers no title upon the State or any political subdivision thereof to moneys belonging to natural or artificial persons as such even though such moneys may have found their way into the county treasury."

In view of the above, it seems clear that the owner of money paid into the general fund of a county, pursuant to section 286, General Code, may demand and receive the same and that his right to do so is not limited as to time. If such is the case, it is difficult to understand why the same principle should not apply to unclaimed deposits and uncalled for dividends paid into the treasury of the county after a lapse of five years in accordance with the provisions of section 710-106 of the General Code.

The reasoning set forth in the opinion in the Hudson case, supra, would certainly be pertinent to the question herein. If money paid into the general fund of a county, pursuant to section 286, General Code, may be claimed by the owner without limitation as to time, it seems to me that moneys paid into the county treasury under substantially similar provisions of law contained in section 710-106, General Code, may likewise be claimed and received by the lawful owner thereof without limitations as to time.

The question remains as to how a claim for such moneys, after the same have been paid into the county treasury, should be made. Since the Superintendent of Banks has lost all jurisdiction with respect thereto, a claim for such moneys would manifestly be against the county.

The provisions of law governing the allowance and payment of

claims against counties are contained in section 2460 of the General Code, which read as follows:

“No claims against the county shall be paid otherwise than upon the allowance of the county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law, or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the claim. No public money shall be disbursed by the county commissioners, or any of them, but shall be disbursed by the county treasurer, upon the warrant of the county auditor, specifying the name of the party entitled thereto, on what account, and upon whose allowance, if not fixed by law.”

In view of the express provisions of the above statute, it is obvious that the remedy provided for therein is exclusive.

Therefore, in specific answer to your question, you are advised that in my opinion the lawful owner of an unclaimed deposit or uncalled for dividend for which no claim was made within five years after final distribution in bank liquidation proceedings has been ordered and which, under the provisions of section 710-106, General Code, has been paid into the treasury of the county in which the principal office of the bank is located, may recover the same upon establishing his right thereto in a claim filed with the county commissioners of such county.

Respectfully,

THOMAS J. HERBERT,
Attorney General.