649.

SHERIFF—MONEY DEPOSITED IN BANK IN HIS NAME AS SHERIFF PASSES UPON DEATH TO SUCCESSOR—ASSIGNMENT UNNECESSARY.

*SYLLABUS:*

*Money deposited by a sheriff of a county in a bank in his name as sheriff passes upon his death to his legally appointed and qualified successor.*

COLUMBUS, OHIO, April 21, 1933.

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

DEAR SIR:—This will acknowledge receipt of your letter of recent date, requesting an opinion as to the manner in which the present sheriff may transfer funds from a former sheriff's name to his own under the following set of facts:

> "Recently the duly elected sheriff of this county died in office. Certain funds were in his name in the bank as sheriff of Ross County, Ohio. These funds are county funds and not individual. The present sheriff was appointed to fill the unexpired term. The local bank desires some authority before transferring these funds."

Section 2842, General Code, reads as follows:

> "Upon retiring from office, the sheriff shall pay over to his successor in office all moneys received by him and remaining in his hands. He shall deliver to his successor all notes, mortgages, evidences of indebtedness and all books, blanks and stationery belonging to his office. Each sheriff shall demand and receive from his predecessor such books and papers."

This section provides for the turning over by the sheriff to his successor of all moneys, books and papers in his possession at the expiration of his office. In this particular instance, the sheriff is deceased and unable to deliver the moneys to his successor.

The court in *Crane Township, ex rel. Statler, Prosecuting Attorney, et al.* vs. *Secoy, et al., Township Trustees, et al.*, 103 O. S. at p. 259, said:

> "It is pretty well settled under the American system of government that a public office is a public trust and that public property and public money in the hands of or under the control of such officer or officers constitute a trust fund, for which the official as trustee should be held responsible to the same degree as the trustee of a private trust fund."

In Railway v. Bank, 54 O. S. at p. 71, the court said:

> "The relation of bank and general depositor is simply the ordinary one of debtor and creditor, not of agent and principal or trustee and cestui que trust."

Ordinarily upon the death of the depositor, the deposit passes to his personal representative and a bank having knowledge of the death and which afterward pays checks, does so at its peril.

Michie on Banks and Banking, Vol. 5, p. 142, states:

> "A deposit by a public officer as such is subject to the order of his successor without an assignment thereof. An assignment from the predecessor to his successor is not necessary to authorize the latter to sue as the amount of the deposit vested in him by virtue of his succession. The successor's remedy against the bank for refusal to pay over the money is by action at law and not by will in equity."

In Carman v. Rider, et al., 61 Md. 467, the court held:

> "Where money is deposited in bank by a board of examiners, as such—in their official relation—and they are superseded in office by the appointment of a new board, the money so deposited belongs not to the former board but to the latter, and is subject to their check."

At p. 469, the court said:

> "The deposit of money in bank, by one in his own name and in his own right, creates, no doubt, the relation of debtor and creditor—the contract on the part of a bank being to pay the checks of the depositor, so long as it has funds in its hands sufficient to do so. In this case, however, the money was not deposited by the appellants in their own names, nor in their own right, but as examiners of Edmonson Avenue. It was a deposit made in their official relation as required by the act, under which the money has been collected, and to the credit of a designated fund, in which they had no beneficial interest. When they were superseded in office by the appointment of the new board under the act of 1882, the money did not belong to them, but to their successors in office."

In *Meridian National Bank, et al.* vs. *Hauser, Treasurer,* 145 Ind. 496, it was held in the second branch of the syllabus:

> "It is not necessary for the treasurer of the board of trustees of the central hospital for the insane to make an assignment of funds deposited in bank by him as such treasurer to his successor in office, in order to authorize his successor to maintain a suit for the recovery of the amount so deposited, as such deposits vest in him by virtue of his succession to such office."

At p. 502, the court said:

> "When the treasurer of the board of trustees of the insane hospital in this state, as such treasurer, deposits money in a bank such bank is bound to know that the same is not his money and that such deposit creates no indebtedness to such treasurer as an individual, but to him in his official or fiduciary character."

At p. 504, the court said:

> "The right to receive and pay out the amount of money on deposit to the persons for whom it was received was not personal to Gapen (former treasurer) but belonged to the treasurer of the board, and when Gapen's term of office expired the same passed to his successor and became vested in him. An assignment of the same was therefore unnecessary."

The money deposited in the bank by the deceased sheriff of Ross County, in his name as sheriff, constituted a trust fund and upon the death of the former sheriff and the appointment of his successor, the fund became subject to the check of the succeeding sheriff. All that would seem to be necessary for the protection of the bank would be the presentation to the bank of the new sheriff's credentials showing him to have been legally appointed and qualified as the sheriff of Ross County, no assignment or court being necessary, the fund having passed from the deceased sheriff at his death to his successor.

Respectfully,
JOHN W. BRICKER,
*Attorney General.*

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650.

DELINQUENT TAXES—PENALTY ABATED UNDER AMENDED SENATE BILL NO. 42 WHEN—REAL ESTATE TAXES—AMBIGUITY IN BILL CITED.

*SYLLABUS:*

*If a taxpayer, before the semi-annual settlement of real estate taxes for the first half of the tax year* 1932, *pays the taxes for the first half of such tax year, together with all previous taxes and assessments, the provisions of Am. S. B. No.* 42, *enacted by the* 90th *General Assembly, would authorize an abatement of the penalty on all delinquent taxes then paid.*

COLUMBUS, OHIO, April 21, 1933.

HON. RAY B. WATTERS, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—Your recent request for opinion reads:

> "I would appreciate your giving us your opinion on the new law in reference to the abatement of penalties on delinquent taxes, as set forth in Senate Bill 42. The question, specifically, is as follows:
>
> In the event that a taxpayer pays the tax due and payable at the present collection together with all previous taxes and assessments, does the provision for the abatement of all penalties apply; it being understood that at present we are in the process of collecting the taxes for the first half of the year 1932?"

Your inquiry arises by reason of the language contained in the proviso in Section 1, of Am. S. B. 42, recently enacted. Such section reads: