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RECEIPTS EMANATING FROM STATE TREASURY—DEPOSIT OF SUCH FUNDS IN STATE DEPOSITORY TRUST FUND NOT AUTHORIZED BY LAW—CHAPT. 131. RC—RETENTION AND DEPOSIT OF ALL RECEIPTS RECEIVED BY THE STATE OFFICERS, DEPARTMENTS, BOARDS AND COMMISSIONS MUST CONFORM TO §§ 131.01 to 131.05 RC.

SYLLABUS:

1. There is no authority in law for the withdrawal of funds from the state treasury, encumbered for the payment of a particular obligation, and the segregation thereof in the state depository trust fund, established under the provisions of Chapter 131., Revised Code.

2. The retention and deposit of all receipts received by state officers, departments, boards and commissions are subject to the provisions of Sections 131.01 and 131.05, Revised Code.

Columbus, Ohio, October 30, 1957

Hon. James A. Rhodes, Auditor of State
Columbus, Ohio

Dear Sir:

Your request for my opinion presents the following questions:

1. May the Department of Highways deposit in a Depository Trust Account unpaid claims due a contractor whether the same result from the filing of liens or for any reason assigned by such department?

2. May any department of state establish Depository Trust Funds except as provided by Section 131.01, Revised Code?

Your first question seems to be confined to whether or not a department head may deposit funds in a depository trust fund when such funds emanate from the state treasury. To place this issue in the proper perspective, it is necessary to consider Sections 131.01, 131.04, and 131.05, Revised Code. Section 131.05, Revised Code, provides:

“Every state officer, state institution, department, board, commission, or college or university, receiving fees or advances of money, or which, under section 131.01 of the Revised Code, collects or receives fees, advances, or money, shall deposit all such receipts to the credit of the state depository trust fund, when such receipts may be subject to refund or return to the sender,

or when such receipts have not yet accrued to the state. Such deposits shall be made within forty-eight hours of their receipt, in case of an office, institution, department, board, or commission located at Columbus, and within six days, in case such office, institution, department, board, or commission is not located at Columbus."

You will notice that this section deals entirely with fees, advances, or money subject to refund or return to the sender or with receipts which have not yet accrued *to* the state. This section embodies within it Section 131.01, Revised Code, which reads as follows:

"On or before Monday of each week, every state officer, state institution, department, board, commission, and every college or university receiving state aid shall pay to the treasurer of state all moneys, checks, and drafts received for the state, or for the use of any such state officer, state institution, department, board, commission, or college or university receiving state aid, during the preceding week, from taxes, assessments, licenses, premiums, fees, penalties, fines, costs, sales, rentals, or otherwise, and file with the auditor of state a detailed, verified statement of such receipts. If tuitions and fees are paid to the officers of any college or university receiving state aid, said officers shall retain a sufficient amount of such tuitions and fees to enable them to make refunds of tuitions and fees incident to the administration of the tuition fund and fees. At the end of each term of any college or university receiving state aid the officers in charge of the tuition fund and fees shall make and file with the auditor of state an itemized statement of all tuitions and fees received and the disposition of them."

Thus we are led to the unmistakable conclusion that the moneys dealt with in these two sections are such as may become due *to* the state from one source or another. The purpose for which the state depository trust fund was established is set forth in Section 131.04, Revised Code, reading as follows:

"For the purpose of providing a method to properly collect, deposit, and audit contingent receipts received by various state departments, there is hereby created the 'state depository trust fund' of which the treasurer of state shall be the custodian."

It was the intention of the legislature to provide for an orderly method of handling moneys which the various state departments might receive and which have not yet accrued to the state. Words such as "taxes", "assessments", "license", "fees", *etc.*, refer to various types of collection or receipt which a state department might normally receive in the course of its deal-

ings with the public. It is important to note that the words normally embrace a situation in which moneys may accrue *to the state*.

The situation presented in your question is completely different. None of the money sought to be deposited by the department can be properly designated as contingent in the sense that word is used in Section 131.04, *supra*. There is not the slightest possibility that these funds are to accrue to the state, but rather they will be definitely paid in satisfaction of an obligation of the state, nor is there basis for an assumption that these funds will be returned to the "sender", for the "sender" in this case could be only the state treasurer. I quote again the pertinent part of Section 131.05, Revised Code:

"Every state officer * * * shall deposit all such receipts to the credit of the state depository trust fund, *when such receipts may be subject to refund or return to the sender, or when such receipts have not yet accrued to the state * * **"

(Emphasis added.)

Obviously, the specific funds here sought to be deposited do not meet the requirements of Section 131.05, *supra*, in any respect. A deposit of such funds is, therefore, not authorized by statute.

The answer to your second question is to be obtained from the answer to your first. Section 131.01, *supra*, is a general statute prescribing the procedure for depositing funds paid to the state. From the provision of that section only colleges and universities supported by state funds are exempted, this exemption being applicable to receipts from tuitions and fees. No other exemption is present. Section 131.05, *supra*, provides for the procedure for handling receipts which may be subject to refund or return to the sender or when such receipts have not yet accrued to the state. Funds collected or received described by Section 131.05, *supra*, are deposited in the state depository trust fund, being credited to the account in that fund as provided in Section 131.06, Revised Code, reading in pertinent part:

"The financial officer or chief of each state office, institution, department, board or commission *receiving contingent money* shall open a separate or individual account with the state depository trust fund in the state treasury in the name of his division.
* * *"

(Emphasis added.)

I find no provision in law which would authorize state officers, departments, boards or commissions to retain receipts contrary to the provisions of Sections 131.01 and 131.05, Revised Code.

Therefore, in specific answer to your questions, it is my opinion and you are accordingly advised that:

1. The deposit of receipts emanating from the state treasury in the state depository trust fund as provided in Chapter 131., Revised Code, is not authorized by law.

2. The retention and deposit of all receipts received by state officers, departments, boards and commissions are subject to the provisions of Section 131.01 and 131.05, Revised Code.

Respectfully,

WILLIAM SAXBE

Attorney General