

OPINION NO. 80-077

Syllabus:

The treasurer of a county has no authority to redeem a warrant which has been drawn upon a fund having a zero or insufficient balance; rather, the treasurer must refuse to redeem such a warrant and must follow the procedure for refusal set forth in R.C. 321.17.

To: Ronald L. Collins, Tuscarawas County Pros. Atty., New Philadelphia, Ohio
By: William J. Brown, Attorney General, November 18, 1980

I have before me your request for an opinion regarding the interpretation of R.C. 321.16 and 321.17, which concern the authority of a county treasurer to redeem warrants which have been drawn against funds having zero or negative balances. From telephone conversations between your office and members of my staff, it is my understanding that your basic question may be summarized as follows:

Is the treasurer of a county prohibited (by R.C. 321.16, 321.17, or any other statute) from honoring warrants drawn against funds having a zero or negative balance, and if so, must he refuse to honor such warrants?

R.C. 321.16 and 321.17 set out the procedure to be followed by the treasurer of a county upon presentation of the warrant of the county auditor. R.C. 321.16 provides that if there is money in the county treasury or depository to the credit of the fund upon which the warrant is drawn, the treasurer shall redeem such warrant upon presentation. R.C. 321.16 sets forth this duty as follows:

When a warrant drawn on him as county treasurer by the county auditor is presented for payment, if there is money in the county treasury or depository to the credit of the fund on which it is drawn, and the warrant is indorsed by the payee thereof, the treasurer shall redeem it by payment of cash or by check on the depository, and shall stamp on the face of such warrant, "Redeemed," and the date of redemption.

County officials have only such powers and duties as are expressly given them by statute, or as are naturally and necessarily implied from the language of the statute. State ex rel. Kuntz v. Zangerle, 130 Ohio St. 84, 197 N.E. 112 (1935); State ex rel. Hoel v. Goubeaux, 110 Ohio St. 287, 144 N.E. 251 (1924). Thus, the treasurer of a county has no authority to pay money from the county treasury unless such action has been expressly authorized by statute. R.C. 321.16 grants him this authority, but limits the treasurer's ability to pay to those instances in which a warrant drawn by the county auditor is presented for payment and "there is money in the county treasury or depository to the credit of the fund on which it is drawn." R.C. 321.17 sets forth the procedure to be followed by the treasurer in those instances in which he has no power to pay money from the county treasury. R.C. 321.17 reads as follows:

When a warrant is presented to the county treasurer for payment, and is not paid, for want of money belonging to the particular fund on which it is drawn, the treasurer shall indorse the warrant, "Not paid for want of funds," with the date of its presentation, and sign his name to the warrant. Such warrant shall thereafter bear interest at the rate of six per cent per annum. A memorandum of all such warrants shall be kept by the treasurer in a book for that purpose. (Emphasis added.)

See also R.C. 321.18 (providing for payment of warrants on which interest is accruing when funds become available).

It is true that the language of R.C. 321.17 does not expressly state that the treasurer must refuse to redeem a warrant if there is not sufficient money to the credit of the particular fund upon which the warrant is drawn; rather, such language evidently assumes that since the treasurer has no power to honor such a warrant, he must decline to do so. Since the treasurer of a county has no authority to pay a warrant which has been drawn on a fund having a zero or insufficient balance, he must refuse to redeem such warrant, and in so doing he must follow the procedure set forth in R.C. 321.17. The repeated use of the word "shall" clearly indicates that the procedure set forth is mandatory. Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E. 2d 834 (1971); Cleveland Ry. Co. v. Brescia, 100 Ohio St. 267, 126 N.E. 51 (1919). Since the treasurer must refuse to redeem a warrant drawn against a fund having a zero or insufficient balance, no negative balance should ever result.

For the reasons discussed above, I find that neither R.C. 321.16 nor 321.17 confers upon the treasurer of a county the power to redeem a warrant which has been drawn upon a fund that does not have sufficient money to its credit to cover the warrant. Since I am aware of no other statute which grants him this power, I conclude that the treasurer of a county must refuse to redeem such a warrant and, in so doing, follow the procedure set forth in R.C. 321.17.

Therefore, it is my opinion, and you are advised, that the treasurer of a county has no authority to redeem a warrant which has been drawn upon a fund having a zero or insufficient balance; rather, the treasurer must refuse to redeem such a warrant and must follow the procedure for refusal set forth in R.C. 321.17.