

1540.

APPROVAL, BONDS OF BELMONT COUNTY, OHIO—\$98,895.00.

COLUMBUS, OHIO, January 6, 1928.

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

1541.

APPROVAL, BONDS OF LOGAN COUNTY, OHIO—\$7,200.00.

COLUMBUS, OHIO, January 6, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

1542.

INHERITANCE TAX—CASH AND BONDS DEPOSITED WITH COUNTY TREASURER UNDER SECTION 5343-2, GENERAL CODE—TO BE HELD BY TREASURER UNTIL HAPPENING OF CONTINGENCY—MAY NOT BE DEPOSITED WITH TRUST COMPANY AS TRUSTEE.

*SYLLABUS:*

*The cash and bonds deposited with the county treasurer, under the provisions of Section 5343-2, General Code, shall be held by said county treasurer to the credit of the estate until the actual happening of the contingencies or conditions by reason of which the estate was rendered assessable under Section 5343, General Code; and may not be deposited with a trust company as trustee.*

COLUMBUS, OHIO, January 7, 1928.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“Under the provisions of Section 5343-2 of the General Code, 112 Ohio Laws, 190, in case of a succession in an estate against which an inheritance tax is being assessed under the provisions of Section 5343, General Code, which provides for contingent or conditional inheritances, it is the duty of the Probate Court to determine what may be due as such tax at

the lowest possible rate and also what may be due at the highest possible rate. The executor then may pay the difference in cash to the county treasurer as a deposit or bonds may be so deposited for the amount of the difference plus ten per cent.

It is made the duty of the treasurer to collect the income from such deposited bonds and pay the same over to the depositor.

In some counties these deposits of bonds will, in the course of a few years, amount to several hundred thousand dollars, for which the treasurer or his bondsmen must be responsible, besides entailing considerable work and responsibilities which are within the province of a trust company.

A proposition is made that the treasurer deposit these bonds with a trust company who will safeguard them and attend to the collection of the income for the use of and at the expense of the parties depositing the bonds and who are entitled to the income, the securities being at all times subject to the control of the county treasurer.

Your opinion is requested as to whether this plan is permissible."

Section 5343, General Code, to which you refer, reads as follows:

"When, upon any succession, the rights, interests, or estates of the successors are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon such successions at the highest rate which, on the happening of any such contingencies or conditions, would be possible under the provisions of this subdivision of this chapter, and such taxes shall be due and payable forthwith out of the property passing, and the probate court shall enter a temporary order determining the amount of such taxes in accordance with this section; but on the happening of any contingency whereby the said property, or any part thereof, passes so that such ultimate succession would be exempt from taxation under the provisions of this subdivision of this chapter, or taxable at a rate less than that so imposed and paid, the successor shall be entitled to a refunder of the difference between the amount so paid and the amount payable on the ultimate succession under the provisions of this chapter, without interest; and the executor or trustee shall immediately upon the happening of such contingencies or conditions apply to the Probate Court of the proper county, upon a verified petition setting forth all the facts, and giving at least ten days' notice by mail to all interested parties, for an order modifying the temporary order of said Probate Court so as to provide for a final assessment and determination of the taxes in accordance with such ultimate succession. Such refunder shall be made in the manner provided by Section 5339 of the General Code."

Section 5343-2 of the General Code, 112 Ohio Laws, 190, reads as follows:

"In the case of a succession in any estate against which an inheritance tax is assessable and is being assessed under the provision of Section 5343 of the General Code, on motion of the executor or trustee the court shall compute the tax at the lowest rate which upon the happening of any such contingencies or conditions would be possible under the provisions of this subdivision of this chapter, and such executor or trustee in lieu of the payment required under Section 5343 may elect to pay the amount so found by the court to be due at the lowest possible rate and to

deposit with the treasurer of the county to whom said tax is payable cash or bonds of the estate for the purpose of securing the payment of the difference between the tax on such succession at the highest rate and the tax computed at the lowest rate. Such deposit may be in bonds of the United States, or farm loan bonds issued under the provisions of the act of congress known as the federal farm loan act, approved July 17, 1916, and any amendments thereto, or of this state or any municipality or county therein, or of any other state or any municipality or county therein, or in the first mortgage bonds of any railroad corporation that for five years last past has earned at least five per cent net on its issued and outstanding capital stock, which security and the sufficiency thereof, shall be accepted by the treasurer only upon approval of the tax commission. Such deposit shall be in a par amount equal to the difference between the tax on such succession at the lowest rate and at the highest rate, plus ten per cent. They shall be held by said treasurer to the credit of the estate until the actual happening of the contingencies or conditions by reason of which the estate was rendered assessable under Section 5343, but the income therefrom when received by such treasurer shall be paid over to the executor or trustee during the continuance of the trust estate. From time to time, the treasurer shall, with the approval of the tax commission permit withdrawals of such securities or part thereof upon deposit with him and approval of the tax commission of other securities of the kind heretofore named, so as to maintain the value of such deposits as herein provided until the final determination and payment of the tax. In case of an election to pay and deposit under this paragraph of this section, the proceeding for the determination of the tax insofar as the particular succession in the temporary order is concerned shall be deemed to be held in abeyance and no interest shall accrue upon the postponed payment. When the contingencies and conditions to which the succession is subject have happened, the court shall determine the tax in accordance with the ultimate succession, and if payment is made in cash of the amount which is found to be due in addition to the cash payment already made, or if no additional amount is found due, the court shall cause to be surrendered to such executor or trustee or to the person legally entitled thereto, the cash or bonds so deposited as security."

Under the provisions of Section 5343, General Code, the inheritance tax is to be paid at once on the contingent or conditional succession at the highest possible rate, under a temporary order, with provision for a refunder.

Under the provisions of Section 5343-2, General Code, the probate court shall compute the tax at the lowest possible rate, and in lieu of the payment under a temporary order, the executor or trustee may elect to deposit cash or bonds of the estate to secure the payment of the difference between the tax on said succession at the highest rate and the tax computed at the lowest rate.

It is also provided in Section 5343-2, General Code, that upon said election to pay the tax due at the lowest rate and to deposit security as provided in said section for the difference between the lowest and the highest rates, the proceeding for the determination of the tax shall be held in abeyance until the ultimate succession. Upon payment of the amount then due, the bonds so deposited as security shall be surrendered to the executor or trustee.

The intent of the legislature as to said deposit is clearly expressed in said section wherein it provides that:

"Such executor \* \* \* may elect to \* \* \* deposit with the treasurer of the county \* \* \* cash or bonds of the estate for the purpose of securing the payment of the difference between the tax on such succession at the highest rate and the tax computed at the lowest rate."

The purpose of this deposit is to secure the payment of any additional inheritance tax that may be determined to be payable upon the happening of the possible contingency. Said cash and bonds, therefore, are, in the words of Section 5343-2, General Code, "cash or bonds so deposited as security."

Said section also provides that said deposit shall be made with "the treasurer of the county to whom said tax is payable," and this section clearly makes the county treasurer the custodian of the bonds and securities deposited under its provisions, and also provides that said securities "shall be held by said treasurer to the credit of the estate until the actual happenings of the contingencies or conditions by reason of which the estate was rendered assessable under 5343."

It is also provided that the income therefrom when received by such treasurer shall be paid over to the executor or trustee during the continuance of the trust estate; and that from time to time the treasurer shall, with the approval of the tax commission permit withdrawals of such securities or part thereof, upon deposit with him of other securities of the kind named.

Your question is: May the county treasurer legally deposit said bonds so placed in his custody, with a trust company? The statutes of Ohio do not expressly authorize the county treasurer to make such deposit with a trust company.

Section 2638, General Code, provides that:

"The county treasurer shall keep his office at the seat of justice of the county in a room or rooms provided for that purpose by the county commissioners, which shall constitute the county treasury. Except as otherwise specifically provided by law, all public monies and property in his possession shall be at all times kept in the county treasury."

Section 2419, General Code, provides that:

"A court house, jail, public comfort station, offices for county officers and an infirmary shall be provided by the commissioners when in their judgment they or any of them are needed. Such buildings and offices shall be of such style, dimensions and expense as the commissioners determine. They shall also provide all the equipment, stationery and postage, as the county commissioners may deem necessary for the proper and convenient conduct of such offices, and such facilities as will result in expeditious and economical administration of the said county offices. They shall provide all room, fire and burglar-proof vaults and safes and other means of security in the office of the county treasurer, necessary for the protection of public monies and property therein."

Section 2639, General Code, reads as follows:

"At the expiration of his term of office or on his resignation or removal from office, the county treasurer shall deliver to his successor all monies, books, papers and other property in his possession as treasurer,

and in case of the death or incapacity of the treasurer, they shall in like manner be delivered over by his legal representatives."

From the foregoing provisions it is clear that the county treasurer must maintain his office at the seat of justice of the county, and in a room or rooms provided for that purpose by the county commissioners, and that said room or rooms so provided shall constitute the county treasury. Unless otherwise specifically provided by law, all public monies and property in the possession of the county treasurer shall at all times be kept in the county treasury.

As before stated there are no express provisions of law authorizing the county treasurer to make a trust company the trustee of said bonds; but there is express provision in Section 5343-2, General Code, that said cash and bonds so deposited "shall be held by said treasurer to the credit of the estate."

It might be contended that there is no section of the General Code prohibiting the county treasurer from depositing bonds or other securities pledged, under the provisions of Section 5343-2, General Code, with a trust company. It is the law of this state that statutory officers have only such powers as are expressly given by statute, together with such implied powers as are necessary to carry the powers expressly given into effect. It is equally well settled that a public official can not delegate the duties which the law directs him to perform.

As stated in *Knauss vs. Columbus*, 13 O. D. (N. P.) 200, 205:

"It is fundamental that where a particular public agent or official is charged with the performance of certain duties that these duties cannot be voluntarily assumed by any other person nor delegated to any other person by him who is charged with the performance of the duty."

As above pointed out, there is no section of the General Code either directing or authorizing the county treasurer to deposit securities of the kind here involved with a trust company. On the other hand, the statute specifically directs that such securities shall be deposited "with the treasurer of the county to whom said tax is payable" and that when deposited they "shall be held by said treasurer \* \* \* until the actual happening of the contingencies or conditions," the statute further directing the county treasurer, with the approval of the tax commission, to permit the substitution of like securities and making specific provision with reference to the receipt and disposition by the county treasurer of any income, while such securities are in his hands. These securities are pledged to the public for the purpose specified in Section 5343-2, and the public has a certain property right or interest in such securities. Ample provision is made in the statutes above quoted relating to the office of the county treasurer for providing the county treasurer with a suitable place to keep such securities, in accordance with the plain terms of Section 5343-2.

I am therefore of the opinion that the cash and bonds deposited with the county treasurer, under the provisions of Section 5343-2, General Code, shall be held by said county treasurer to the credit of the estate until the actual happening of the contingencies or conditions by reason of which the estate was rendered assessable under Section 5343, General Code; and may not be deposited with a trust company as trustee.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*