

citations, that the power to establish and manage the same clearly exists.

Under the existing constitution and laws it would seem logical to assume that by implication a municipal corporation would be permitted to exercise similar powers relating to managing electrical plants to those exercised in the managing of waterworks. The expressed power enabling municipalities to establish and operate such plants not outlining the method of procedure, it must be assumed that such implied power will be added as is necessary to carry into effect the expressed powers granted.

It would, therefore, seem that no objection could logically be raised in the event that a municipality followed a procedure in reference to the matter of electric light plants which the statutes have outlined in reference to waterworks.

It is, therefore, the opinion of this department that what has been said herein relative to the authority of a municipal corporation to constitute a bank as its agent to collect water rents is applicable, in so far as results are concerned, in the collection of electric light bills.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

2194.

COUNTY TREASURER—CANADIAN MONEY—HAVING ACCEPTED SUCH MONEY IN HIS FISCAL TRANSACTIONS HE MUST BEAR LOSS OF ANY DEPRECIATION IN SAME.

*A county treasurer having accepted Canadian instead of United States money in his fiscal transactions must bear the loss of any depreciation in such foreign money accepted.*

COLUMBUS, OHIO, June 25, 1921.

HON. CLINTON W. FAWCETT, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for an opinion on the following statement of facts:

“During the last few years, the treasurer of Putnam county, Ohio, has received from the taxpayers and from banks, as change, the amount of \$21.80 of Canadian money. Each dollar of this money is now worth only eighty cents. The greater amount of this sum was paid to the treasurer previous to the depreciation or when each dollar of Canadian money was worth one hundred cents. As the Canadian dollar is only worth eighty cents, said amount of money has depreciated to the extent of \$4.36. The treasurer still has this money in his possession and I would be pleased to have your opinion as to whether the treasurer will be compelled to make good this depreciation or will the county be compelled to bear the loss.”

Your attention is first invited to the provisions of chapter 4, Div. II of title X of the General Code, being the chapter upon powers and duties of the county treasurer and containing sections 2632 to 2749 G. C., inclusive. In this chapter you will find that the treasurer must receipt the taxpayer for the taxes paid by the latter on the basis that such taxes are paid in cash, that is,

the money that is legal tender in the United States, and further, that he must make settlement with the county auditor at specified times of all moneys coming into his hands and this settlement is made on the basis that all the receipts given out by the county treasurer to taxpayers and to persons or officers paying in other funds are given on the basis that such funds were paid in cash.

If the county treasurer received coins of another country instead of cash in United States money, evidently this error would be discovered at the time the moneys were presented to the depository for deposit purposes. If the depository accepted such coins at their face value and gave a receipt to the county treasurer for the full amount, in such case the county treasurer would have the receipt of the depository that the full amount in legal tender had been paid in and the bank depository would be the loser rather than the treasurer.

That the transactions of the county treasurer are to be carried on in cash or its equivalent is shown by the language of section 2736 G. C., which reads as follows:

"Upon the receipt by the county treasurer of a written notice from the commissioners that a depository, or depositories, have been selected in pursuance of law, and naming the bank or banks or trust companies so selected, such treasurer shall deposit in such bank or banks or trust companies as directed by the commissioners, and designated as inactive depositories to the credit of the county all money in his possession, except such amount as is necessary to meet current demands, which shall be deposited by such treasurer in the active depository or depositories. Thereafter, before noon of each business day, he shall deposit therein the balance, if any, remaining in his hands after having paid out of the receipts of the preceding business day, in cash, warrants presented to him for payment during such day, except as herein before provided. Such money shall be payable only on the check of the treasurer."

As to when "money" is properly in the treasury appears in section 2744 G. C.:

"A county treasurer may receive checks, but such receipt shall in no manner be regarded as payment. No sum shall be considered paid until the money therefor has been received by the treasurer or a depository. \* \* \*"

It will be noted that this section says that "no sum shall be considered paid until the money therefor has been received by the treasurer or a depository." The term "money" is defined but once in the Ohio statutes and that definition will be found in Ch. I of Title I (Taxation) of the General Code, section 5326 reading as follows:

"Sec. 5326. The term 'money' or 'moneys,' as so used, includes any surplus or undivided profits held by societies for savings or banks having no capital stock, gold and silver coin, bank notes of solvent banks, in actual possession, and every deposit which the person owning, holding in trust, or having the beneficial interest therein, is entitled to withdraw in money on demand."

The words "gold and silver coin" as appearing in this section of the statutes defining what is "money" must necessarily mean the gold and silver coin of the United States and could not cover the coins of a foreign country as, for instance, Canada in this case.

It appears that the county treasurer has the sum of \$21.80 in Canadian money received by him as legal tender in fiscal transactions had by him in the past few years. Evidently he has carried these payments making up that sum (and in certain transactions the whole amount), as cash, and his own legal fees might have been figured upon the basis that such \$21.80 received in foreign money was carried as cash in his settlement with the auditor or with the county depository.

Bearing upon your statement "that each dollar of this money is now worth only eighty cents" it is our understanding that the Canadian dollar is worth eighty-five cents according to the current rate of exchange used in banks near the international border. Canadian money has depreciated in the last three years from practically par value to as low as eighty per cent., fluctuating from two and one-half per cent., which was in effect about fifteen months ago, to twenty per cent. early in this year, but at the present time the value of the Canadian dollar has risen so that the rate of exchange now is about fifteen per cent. The depreciation then on this sum of \$21.80 would be but \$3.27 instead of \$4.36 as indicated by you.

In an opinion issued by the Attorney-General on June 11, 1917 (No. 360), the question of the use of a check instead of money in paying an amount due to the county treasurer was under consideration and the then Attorney-General used the following language appearing at page 969 of Vol. I, Opinions of the Attorney-General for 1917:

"\* \* \* if this check was held under the arrangement between the parties as indicated, then it appears to me that the treasurer, having reported the assessment as paid, and having remitted the state's portion of this very assessment to the auditor of state, and the other portion having been distributed according to law, is personally bound for the amount of the check.

\* \* \* this check was evidently carried as a cash item. The amount of this very check entered into the gross amount on which the treasurer's fees were figured. When settlement time came, both with the county auditor and the state auditor, this check was reported as cash, and, as stated in your letter, it is now carried as cash on the treasurer's book.

I can come to no other conclusion, under all the circumstances, and I hold that as far as the county is concerned this check is cash, to be accounted for by the treasurer and for which he is liable on his bond.  
\* \* \*

As far as the county is concerned, on the repeated solemn assurances of the treasurer, it was paid. It was no longer a check. It was cash. \* \* \*\*

In the case at hand the county treasurer has the money of a foreign country in his possession which he cannot turn into cash at par value as was the case in the opinion just quoted, except that in that case the treasurer had a check upon which he could not realize the full amount instead of the foreign money which is present in the case under consideration. The situations are apparently largely analogous and it must be held in the case under consideration that the county treasurer having accepted Canadian instead of United

States money in his fiscal transactions must bear the loss of any depreciation in such foreign money accepted.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

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2195.

COUNTY BOARD OF REVISION—WHEN ENTITLED TO REIMBURSEMENT FOR EXPENSES INCURRED IN MAKING ACTUAL VIEW OF REAL ESTATE.

*The members of the county board of revision are entitled to be reimbursed for expenses incurred by them in making an actual view of real estate, where they are dissatisfied with the character of the evidence which has been produced before them on complaints as to valuations.*

COLUMBUS, OHIO, June 25, 1921.

HON. CHARLES R. SARGENT, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—Some time ago you informed this department that you had advised the members of the board of revision of Ashtabula county that that board, or its members, would be entitled to car fare or automobile hire in making an actual view of real estate which the board might deem it expedient to make in connection with the hearing of complaints as to real estate valuations; such expenses being, in your opinion, "contingent expenses" within the meaning of section 5585 of the General Code. You also state that the tax commission has recently promulgated a rule to the contrary. In your letter you stated that you were not requesting a formal ruling, unless this office should desire to render one or had already rendered such an opinion which had not been called to your attention.

No such opinion has been rendered by this department. Upon careful consideration it is believed best to give an opinion on the question, so that all administrative officers who desire to follow that opinion may govern themselves by a uniform rule.

The question as to what constitutes "contingent expenses" within the meaning of section 5585 of the General Code and statutes similar thereto has been considered several times by this department. The first of such opinions (all of which you have seen) was that of Attorney-General Hogan, addressed to the tax commission under date of April 24, 1914, (Annual Report for that year, Vol. I, p. 514). This opinion dealt with section 35 of the so-called "Warnes law" (103 O. L., 786-795), designated as section 5614 of the General Code, providing in part that:

"The contingent expenses of the district assessor and district board of complaints, including postage and express charges, their actual and necessary traveling expenses and those of their deputies, assistants, experts, clerks or employes on official business outside of the district when required by orders issued by the tax commission of Ohio shall be allowed and paid as claims against the county."

This language, it will be observed, is identical, save for the designation