

**OPINION NO. 75-069****Syllabus:**

A county treasurer may authorize a local banking institution to process monies during a tax collection, provided that adequate surety protection is afforded county funds involved, without violating the Ohio Uniform Depository Act, R.C. Chapter 135.

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**To: J. Walter Dragelevich, Trumbull County Pros. Atty., Warren, Ohio**  
**By: William J. Brown, Attorney General, September 30, 1975**

I have before me your request for my opinion which reads as follows:

"May a County Treasurer authorize a local banking institution to process monies during a tax collection?"

In order to address this question properly, it is necessary to delve more deeply into the circumstances from which this question arises. The following facts were provided by the Trumbull County Treasurer and you have previously verified their accuracy pursuant to telephone conversations had between this office and yours.

In Trumbull County, there are two heavily active periods during the year when taxes are collected. The duty of the county treasurer is to collect these moneys and forward them to the county auditor for expenditure. For over 30 years, local banks or savings and loan institutions have been used as agencies for collection of county taxes. Investigation into this matter indicates that approximately 46% of all taxes are paid through escrow accounts at financial lending institutions. It is the institution that transmits the tax payment to the treasurer at the appropriate calendar date.

It is the remaining 54% which underlies the issue raised in this opinion request. That 54% is paid to the auditor without the use of any escrow account. Approximately 3% of this 54% is paid at a window in the treasurer's office. This remaining 51% is directly involved in the issues presented here. This percentage is collected by financial institutions as "collection agents" for the treasurer. That is, the individual either goes to the bank or mails to the bank or lending institution his payment along with his tax bill.

The Trumbull County Treasurer has initiated a new system for collecting this 51% of tax receipts. Under the old system, the treasurer sent an employee to the bank one day a week to pick up these payments. After processing, the checks would be picked up at the treasurer's office and delivered back to the treasurer's bank. At that point, the bank began its collection process on

the checks which averaged approximately four days. This system involves potentially two weeks and four days of "deadtime" for the availability of funds ultimately collected.

The new system has been labeled as a "lock box" system. The change essentially consists of having the bank do the processing of tax payments which, under the old system, was done at the treasurer's office. When the bank receives the check for payment of taxes at the post office box (or "lock box"), a bank employee opens the mail and processes the checks. Then, on a daily basis, the bank tallies the payments which have been received and telephones that information to the treasurer's office. The treasurer immediately posts the amounts. At that point, the four-day collection period on the checks begins. When the bank calls with its tally to the treasurer's office on the fifth day, it provides the daily receipt information to the treasurer's office and it also advises as to the amounts which have been collected and which are therefore "available" for investment. During the same telephone conversation the treasurer then directs the bank to invest the money in whatever the treasurer deems appropriate. Using this system, then, it seems apparent that two weeks of deadtime have been eliminated - which in turn means that two weeks of time are gained wherein moneys collected are "working" in investments.

The bank does not receive a fee for these services extended to the county treasurer.

The opinion request raises two concerns on behalf of the county commissioners:

- (1) Does the above procedure comply with applicable Ohio Statutory provisions and the Uniform Depository Act?
- (2) Is there adequate protection for the county when bank employees handle and process county tax collection funds?

Section 321.04 of the Ohio Revised Code reads as follows:

"Each county treasurer may appoint one or more deputies, and he shall be liable and accountable for their proceedings and misconduct in office."

Under this section, it has been held that the county treasurer may appoint a bank as his deputy for the collection of taxes. Two Ohio federal cases have dealt with this issue, determining the propriety of establishing this relationship between the county treasurer and a private financial institution.

In Commissioners v. Strawn, 157 Fed. 49 (6th Cir. 1907), the court addressed itself to this question while hearing a collection action against a private bank. There it was held that a county treasurer may appoint a bank (or bank cashier) as his deputy for the purpose of collecting taxes, provided that these county funds are not commingled with the private financial resources of the bank.

Similarly, in Loeser v. Alexander, 176 Fed. 265 (6th Cir. 1910), a federal court held that under the corresponding General Code section dealing with the county treasurer's appointment of deputies, he could appoint deputies for the collection of taxes provided that appropriate bond security by the treasurer or his agents was present to protect the county's interests. This decision reads in pertinent part as follows at page 268:

"We have no hesitation in holding that the bond in question was a valid common-law bond; that it was not a public bond, but was given for the sole benefit of claimant, and that he is the real obligee in interest therein. The fact that it runs to claimant 'as county treasurer' is not inconsistent with such construction."

The statute providing for the appointment by the treasurer of deputies makes no provisions for the giving of a bond. Express authority is given the county treasurer to appoint one or more deputies, and it is expressly provided that the treasurer himself shall in all cases be liable and accountable for the proceedings and misconduct in office of his deputies.

In State v. Meyers, 56 Ohio St. 340 (1897) at page 348, reference is made to the relationship between a county treasurer and his deputies in this language:

"The law goes no further than to authorize the treasurer, at his pleasure, to appoint one or more deputies, who hold their appointment only during the pleasure of the principal who is answerable for the proceedings and misconduct of the deputy, and may, for his own protection, take a bond with sureties for the faithful performance of the services required of the deputy; but the latter takes no oath of office, nor gives bond to any public authority, and is in no sense a public officer, but a mere agent of the treasurer."

The implication from this authority is that while no bond is expressly required by the statute, adequate surety protection is required for county funds on deposit or collected by private financial institutions. In the present case, information has been furnished by the Bank of Ohio Corporation indicating that the bank employees involved under the "lock box" system are protected by surety bonds in amounts sufficient to protect the county's interest. Section 321.02 of the Ohio Revised Code provides the statutory requirement that a county treasurer furnish a surety bond before assuming office, assuring adequate protection for county funds through his personal liability.

Additional authority for permitting the implementation of a system such as that described in the opinion request is present in Section 323.61, Ohio Revised Code. This section reads in pertinent part as follows:

"When no additional expense will be incurred, the county treasurer may open as many tax receiving offices as are necessary for the receiving of taxes. Such offices shall be in municipal corporations in which a bank of deposit is located. The treasurer or his deputies may attend at such offices and receive payment of all taxes. They may remove from the county treasury to the place of collection records necessary for the receiving of taxes upon the days fixed for that purpose."

(Emphasis added.)

Based upon the foregoing, the county treasurer has the discretion to authorize a local banking institution to process monies during a tax collection. In addition, R.C. 321.02 provides for the

existence of a personal surety bond of the county treasurer. This protects the county adequately from any misconduct on the part of the treasurer or his deputies, thus resolving a major concern of the county commissioners arising from the handling and processing of county tax collection funds by bank employees. As deputies of the county treasurer, they fall within the protection of his surety bond. As noted earlier, the private financial institution involved in this case also provides a surety bond for its employees. Both of these surety conditions serve as more than adequate protection for the county funds that would be processed during tax collection transactions, thus serving county interests satisfactorily.

Before finally resolving the request you have made, it is necessary to focus on the issue of whether this new system is consistent with the Ohio Uniform Depository Act, R.C. Chapter 135.

R.C. 135.01 defines the three categories of deposits made to financial banking institutions by the state in the following manner:

"(A) 'Active deposit' means a public deposit payable or withdrawable, in whole or in part, on demand.

". . . .

"(E) 'Inactive deposit' means a public deposit other than an interim deposit which is not payable on demand.

"(F) 'Interim deposit' means a deposit of interim moneys. 'Interim moneys' means public moneys in the treasury of the state or any subdivision after the award of inactive deposits has been made in accordance with section 135.07 of the Revised Code, which moneys are in excess of the aggregate amount of the inactive deposits as estimated by the governing board prior to the period of designation and which the treasurer or governing board finds should not be deposited as active or inactive deposits for the reason that such moneys will not be needed for immediate use but will be needed before the end of the period of designation."

In the present case, the investment of funds collected by the county treasurer's deputies falls primarily in the category of "interim" and "active" deposits.

Eligibility of private banks and financial institutions to receive deposits of public funds such as tax collections is detailed in Section 135.03, Ohio Revised Code. This section reads as follows:

"Any national bank located in this state and any bank as defined by section 1101.01 of the Revised Code, subject to inspection by the superintendent of banks, is eligible to become a public depository, subject to sections 135.01 to 135.21 of the Revised Code. No bank shall receive or have on deposit at any one time public monies in an aggregate amount in excess of thirty per cent of non-public moneys

on deposit as shown in its latest report to the superintendent of banks or comptroller of the currency.

"Any domestic building and loan association as defined in section 1151.01 of the Revised Code authorized to accept deposits is eligible to become a public depository of amounts of not less than one hundred thousand dollars of inactive deposits and interim deposits only, subject to Chapter 135, of the Revised Code. No building and loan association shall receive or have on deposit at any one time public moneys in an aggregate amount in excess of ten per cent of its total assets, as shown in its latest report to the superintendent of building and loan associations or federal home loan bank board, or one hundred thousand dollars, whichever is greater."

I note no information or other independent indication in the present case that the county treasurer has exceeded the statutory limits established by this section on the amounts of public funds deposited with private financial institutions.

Therefore, there being this adherence to the Ohio Uniform Depository Act, the new procedure does not in fact appear to violate that statutory scheme by institution of a "lock box" system and investment procedures with a private banking institution. This conclusion assumes adherence to the remaining relevant sections of the Uniform Depository Act, relative to which no issue has been raised by your request.

In specific answer to your question, it is my opinion and you are so advised that a county treasurer may authorize a local banking institution to process monies during a tax collection, provided that adequate surety protection is afforded county funds involved, without violating the Ohio Uniform Depository Act, R.C. Chapter 135.