

commission of a county has no authority to modify a properly authorized levy outside of the fifteen mill limitation to meet the interest and principal requirements of bonds payable by levies outside the fifteen mill limitation, when the amount of such levy is augmented on account of previous tax delinquencies.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4780.

APPROVAL, BONDS OF NORTON TOWNSHIP RURAL SCHOOL DISTRICT, SUMMIT COUNTY, OHIO— \$1,800.00.

COLUMBUS, OHIO, December 3, 1932.

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

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4781.

COUNTY TREASURER—LIABLE WITH HIS SURETIES FOR FUNDS RECEIVED IN HIS OFFICIAL CAPACITY AND FOR DIVERSION OF TAX FUNDS TO COVER SHORTAGE OF PREVIOUS TREASURER—JUDGMENT MAY BE SECURED AGAINST EACH TREASURER BUT RECOVERY LIMITED TO ACTUAL LOSS.

**SYLLABUS:**

1. *A county treasurer and his sureties are liable for the payment according to law of all funds received by him, in his official capacity, as evidenced by his "cash stubs" other than those representing the payment of taxes by checks which have been dishonored upon presentment unless it is clearly shown that the amount of money stated in such receipt to have been received by him is erroneous.*

2. *When a shortage of funds occurs during the term of a county treasurer whether by reason of defalcation or otherwise and a subsequent county treasurer applies funds coming into his possession in payment of other tax items for the purpose of expunging such shortage such misapplication of the tax funds by the subsequent treasurer is tantamount to a payment of funds coming into his possession otherwise than in the amount required by law, and renders such treasurer and his sureties liable for the entire amount of the shortage in his accounts caused by such diversion of funds.*

3. *When a county treasurer has diverted funds coming into his possession as treasurer and such diversion is paid by a subsequent county treasurer by the application of tax funds received during a subsequent term and a third county treasurer similarly expunges the shortage in the accounts of the second county treasurer each of such county treasurers has failed to pay out the moneys coming into his possession in the manner provided by law. Since the liability of each of such*