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TAXATION — PROCEEDS OF SALES OF TAX RECEIPTS, §5739.06 R.C. — COUNTY TREASURER — SUCH FUNDS ARE “PUBLIC FUNDS” WITHIN MEANING OF §135.01 R.C.—DEPOSIT AND WITHDRAWAL SUBJECT TO §§135.18, 135.19 R.C.

SYLLABUS:

Funds coming into the possession of a county treasurer derived from the sale of prepaid tax receipts under authority of Section 5739.06, Revised Code, are “public moneys” coming lawfully into the possession or custody of the county treasurer as defined in division (A) of 135.01, Revised Code; and such funds are (1) required to be deposited under the provisions of Section 135.18, Revised Code, in the public depository or depositories as designated by the board of county commissioners, and (2) are to be withdrawn from such depository or depositories as provided in Section 135.19, Revised Code.

Columbus, Ohio, March 10, 1959

Hon. Robert L. Perdue, Prosecuting Attorney
Ross County, Chillicothe, Ohio

Dear Sir:

I have your request for my opinion reading:

“Are moneys collected by a county treasurer from the sale of prepaid tax receipts public funds of the county within the meaning of the Uniform Depository Act of the State of Ohio to the extent that such funds must be deposited proportionately amongst eligible financial institutions as must other public funds of the county?”

County treasurers are authorized to sell prepaid tax receipts in the administration of the retail sales tax by virtue of the provisions of Section 5739.06, Revised Code, reading in pertinent part:

“Each county treasurer and each agent of the treasurer of state, shall pay on the first business day of each week to the treasurer of state all money arising from the sale of prepaid tax receipts by him during the preceding week, together with a report showing all sales, the names of the purchasers, and the aggregate face value purchased by each, which the treasurer of state shall include in his monthly report. But such county treasurer shall retain for the use of the general fund of the county an amount equal to one per cent of the proceeds of his sales.

“All the powers and duties hereby imposed upon the county treasurer are within the scope of his office as county treasurer for all purposes.” (Emphasis added)

Since the office of county treasurer is one created by the General Assembly, such additional duties may be placed upon the holder of such office as the General Assembly determines. By virtue of the above section the county treasurer is made an agent of the treasurer of state for the sale of prepaid tax receipts. The funds coming into the hands of the county treasurer by reason of such agency must be paid to the treasurer of state on the first business day of each week. I do not consider the funds so held by the county treasurer to be funds belonging to the county within the meaning of Chapter 135., Revised Code. The only claim upon these proceeds by the county is the one per cent of the proceeds which is paid into the general fund of the county when the balance is paid to the

treasurer of state as provided by law, this as provided in Section 5709.36, *supra*.

Section 135.01 (A), Revised Code, provides :

“(A) ‘Public moneys’ means all moneys in the treasury of the state or any subdivisions of the state, *or moneys coming lawfully into the possession or custody of the treasurer of state or of the treasurer of any subdivision*. ‘Public moneys of the state’ includes all such moneys coming lawfully into the possession of the treasurer of state ; and ‘public moneys of a subdivision’ includes all such moneys coming lawfully into the possession of the treasurer of the subdivision.” (Emphasis added)

From the above provision it is apparent that the definition of “public moneys” is broad enough to include not only funds of the county coming into the hands of the county treasurer but also “moneys coming lawfully into the possession or custody of the treasurer of * * * any subdivision.” Therefore, the funds about which you inquire are properly classified as “public moneys” as that term is defined in Section 135.01 (A), *supra*.

It is at once apparent that the requirements relating to the deposit of public moneys can have only limited effect upon the transfer of the funds in question from the county treasurer to the treasurer of state since the county treasurer must forward each week ninety-nine per cent of the funds received during the previous week to the treasurer of state as provided by Section 5739.06, *supra*.

Section 135.18, Revised Code, provides in pertinent part :

“* * * Thereafter, during the period of designation, each treasurer shall deposit all additional public moneys coming into his possession in such depository, or among such depositories, or additional depositories, within the limits specified in such sections, and, as nearly as may be, in the proportions specified.”

Section 135.19, Revised Code, provides :

“Each treasurer shall, when necessary to pay demands made on him as such treasurer, or when directed by the governing board, withdraw any part of any active public deposit by issuing his check therefore on the public depository. In case there are two or more public depositories of the active public moneys subject to withdrawal, the treasurer may draw such check on any depository and shall not be required to draw more than one check in order to meet any one demand. If, by reason of such withdrawal, the amount remaining on deposit in the depository from

which withdrawal is so made, as compared with the amount remaining on deposit in any other depository of active public moneys, is less than the proportionate share of such depository from which the withdrawal has been made, such treasurer shall equalize the difference in making subsequent deposits or withdrawals, or both, of active public deposits, and for such purpose may withdraw from any active public deposits, and redeposit in the active account in the depository whose proportional share has been so diminished.”

Although other sections of Chapter 135., Revised Code, relate to public moneys of the state, or of a subdivision, the two foregoing provisions requiring action by the county treasurer with respect to deposits and withdrawals are not so limited in their scope and application to funds of the state or of a subdivision but rather to “public moneys” coming lawfully into the possession or custody of the county treasurer.

Therefore, it is my opinion and you are accordingly advised that funds coming into the possession of a county treasurer derived from the sale of prepaid tax receipts under authority of Section 5739.06, Revised Code, are “public moneys” coming lawfully into the possession or custody of the county treasurer as defined in division (A) of 135.01, Revised Code; and such funds are (1) required to be deposited under the provisions of Section 135.18, Revised Code, in the public depository or depositories as designated by the board of county commissioners, and (2) are to be withdrawn from such depository or depositories as provided in Section 135.19, Revised Code.

Respectfully,

MARK MCELROY

Attorney General