

of the city or county treasurer in which the school district is located until another depository is provided for such moneys. Also, in case the depository of county funds ceases to act, the county commissioners may place them in some other bank as a temporary depository at the same rate of interest that they were previously drawing.

It is my opinion with reference to the questions propounded that:

1. Any bank which can comply with section 330-3, General Code, and with the terms of a depository contract, may be declared eligible by the state board of deposits to receive state funds.

2. If public funds are secured by a surety bond, the depositor should require a waiver from the individual or company giving such bond of any defense resulting from the recent banking situation. This applies to public funds in banks which are now fully open as well as those which are still operating on a restricted basis. If these deposits are secured by securities of the bank, no question arises, for under no circumstances would they be released by virtue of any changes in the depository contract, arising out of the banking situation.

3. Public funds in banks are deposited under a depository contract and draw the rate of interest stipulated for therein. This rate of interest will continue until the contract is terminated and no bank will be relieved from paying same because of any regulations imposed on them by executive order or legislative enactment.

4. When any bank is closed for liquidation, the public depositor will share pro rata with all other depositors in the assets of the bank and has no preference due to its public nature.

5. The only methods by which a public depositor can obtain a release of any part of its funds where its funds are tied up in banks are, either to take the collateral which secures the public moneys and have the bank replace it with cash, or after default sell same on the open market. If there be no collateral, then it would be necessary to declare a breach of the depository contract and proceed against the surety bond.

6. All public officers and subdivisions depositing public funds are required to obtain security for same and no deposits can be made without first acquiring some security. If no security is forthcoming from the bank which is chosen as the public depository, then another should be chosen in accordance with the statutes.

7. In cases where a bank is operating on a restricted basis, any public officer or subdivision having funds therein desiring to change depositories may do so by proceeding to rescind the depository contract and to acquire a new depository in accordance with the statutes applicable thereto.

Respectfully,

JOHN W. BRICKER,

Attorney General.

706.

TRANSFER OF FUNDS—FUNDS IN BOND RETIREMENT FUND NOT TRANSFERABLE TO GENERAL FUND UNDER SECTION 5625-13, G. C.

SYLLABUS:

Funds in the bond retirement or sinking fund of a subdivision may not be

expended for current operating expenses except pursuant to transfer to the general fund in accordance with the provisions of Section 5625-13, General Code.

COLUMBUS, OHIO, April 22, 1933.

HON. T. DONALD SHORT, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“The following question has been presented to me by the Center Twp. Board of Education, this county, and a request made that I obtain your opinion on it. In my mind there is no question as to the illegality of the proposed transaction, nor can I find any authority sustaining the proposed action. I do feel, however, that under the conditions, the proposal should be authorized, which is technically, and I fear specifically prohibited. Your opinion will settle the matter once and for all in this county.

The question is as follows: The Center Township Board of Education has incurred obligations, the payment of which should be made from their general fund. That fund, as to ready cash, is depleted, but their bond retirement fund contains sufficient money to make a substantial payment on the above obligations. Those obligations consist of teachers salaries, bus drivers salaries, and other current operating expenses. The money in the bond retirement fund will not be needed until after the next distribution of taxes, and at that time the interest and necessary payments on the bonds met.

QUERY: Is it permissible for the clerk of the Board of Education to issue warrants on the depository for the payments as above and carry on his books such payments as an overdraft of the general fund?

The transaction, in fact, would amount to a credit arrangement rather than a transfer of money from one fund to another. No one would be hurt by the proposed transaction, and the money lying idle could be put in the hands of the teachers and others eventually entitled to it, and thus utilized during the months intervening between the present and the time of making the bond payments.

Do you feel the emergency is sufficiently great to authorized such irregular proceedings?”

Section 5625-10, General Code, provides that “Money paid into any fund shall be used only for the purposes for which such fund is established.” It is obvious that money on hand in the bond retirement or sinking fund may not be used for the purpose of paying current operating expenses of the subdivision which are payable from the general fund. Transfer may only be made to the general fund from the bond retirement fund after all obligations for the payment of which the bond retirement fund and the sinking fund exist, have been paid and retired, and then only upon approval of the court of common pleas. Section 5625-13, General Code. It is evident from your communication that all obligations for the payment of which your bond retirement and/or sinking fund exist have not been paid and retired.

The statutes contain no authority for borrowing from the bond retirement fund moneys for the uses and purpose of the general fund. It is, of course, well established that public officers, boards, bureaus and commissions have only such

powers as are expressly granted by law and such as are necessary to effectuate those powers so granted.

I appreciate the fact that the method of handling the funds of the school district which you suggest would perhaps, under present economic conditions, be laudable, but in determining the power of public officers in the handling of public funds the test is, of course, whether the power is lawful rather than whether it is laudable.

It follows, in my opinion, that funds in the bond retirement or sinking fund of a subdivision may not be expended for current operating expenses except pursuant to transfer to the general fund in accordance with the provisions of Section 5625-13, General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.

707.

FEE—COUNTY RECORDER AUTHORIZED TO CHARGE FEE FOR RE-
CORDING CERTIFICATE OF RELEASE OF TAX LIEN.

SYLLABUS:

Section 5696-1 of the General Code authorizes the county recorder to charge a fee of twenty-five cents for recording a certificate of release of a tax lien created by section 5694, General Code.

COLUMBUS, OHIO, April 22, 1933.

HON. VERNON L. MARCHAL, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—I have your letter of recent date which reads as follows:

"I wish you would render me an opinion as to whether or not under Section 5694 of the General Code of Ohio, a County Recorder should or should not charge a fee for the recording of a release of a tax lien filed under this Section, — that is where the Auditor has filed with the Recorder a duplicate showing that persons are indebted to the County for taxes other than real estate, and where one of said persons pays to the County Treasurer the taxes found to be due from him, and where the County Treasurer issues his receipt and release of such lien, is the Recorder entitled to a fee for the recording of such a release? The General Code Section in the last sentence says: 'No fee shall be charged by the Recorder for the services rendered under this section.' However, it was my interpretation that that provision would only apply to the original filing and recording of the same by the Recorder, and would have nothing to do with the release."

Section 5694, General Code, provides that after each October settlement, the auditor shall make a tax list and duplicates of all taxes, other than those upon real estate specifically as such, remaining unpaid and the list of such taxes returned as delinquent at such settlement. On December first the auditor shall