

OPINION NO. 74-054

Syllabus:

1. If the director of the State Lottery Commission requires that lottery sales agents deposit in banks, to the credit of the state lottery fund, moneys received from the sale of lottery tickets, such banks shall be designated by the Treasurer of State, pursuant to R.C. 3770.02.

2. The Treasurer of State, in designating banks as depositories pursuant to R.C. 3770.02, is not restricted by R.C. 135.04 to banks with offices in Columbus.

To: Gertrude W. Donahey, State Treasurer, Columbus, Ohio

By: William J. Brown, Attorney General, June 21, 1974

Your request for my opinion reads as follows:

"I would like your formal opinion on the authority of the Treasurer of State designating the banking institutions with reference to the state lottery funds.

"Does the Treasurer of State designate all depository banks?

"Does Am. H.B. No. 990 conflict with the Uniform Depository Act?"

Pursuant to conversations between this office and yours it is my understanding that your questions are posed with reference to a current proposal for certain banking institutions to provide lottery record keeping, safekeeping, and lottery ticket issuance functions and services. Under the proposal various commercial banks with branch offices would receive tickets and control forms from the Lottery Commission's regional offices. These banks would in turn deliver the tickets and forms to their branches and to independent single office banks, which would issue them to lottery sales agents. Proceeds from ticket sales, as well as unsold tickets, would be returned to the local branch and single office banks to be recovered by the Lottery Commission.

Operation of the state lottery is provided for in R.C. Chapter 3770. With respect to the director of the State Lottery Commission, R.C. 3770.02 provides in pertinent part that:

* * * * *

"The director may require any lottery sales agents to deposit to the credit of the state lot-

depository of the inactive deposits and interim deposits of public moneys of the state subject to the requirements of sections 135.01 to 135.21, inclusive, of the Revised Code.

"Any such institution having an office in Columbus is eligible to become a public depository of the active deposits of public moneys of the state."

" * * * * * * * * *"
(Emphasis added.)

Moneys such as those deposited to the credit of the state lottery fund under R.C. 3770.02 would normally be characterized as active deposits. That is "a public deposit payable or withdrawable, in whole or in part, on demand." See R.C. 135.01(A). See also my discussion of active deposits in Opinion No. 71-016, Opinions of the Attorney General for 1971.

However, the Treasurer's authority under R.C. 3770.02 to designate depositories conflicts with R.C. 135.12, which directs the State Board of Deposit to make this determination. It is a well settled and now codified rule of construction, that in the case of an irreconcilable conflict between a special or local provision and a general provision, the special or local provision prevails as an exception to the general provision. R.C. 1.51. It follows that R.C. 3770.02, which is a special provision, applying only to deposits made pursuant to that Section by lottery sales agents to the credit of the state lottery fund, operates as an exception to the general provisions of the Uniform Depository Act with respect to the designation of depositories.

Furthermore, it appears clear that the Treasurer, in designating these depositories, is not limited to banks with offices in Columbus. The deposits in question will be made by numerous sales agents throughout the state. To restrict eligible depositories to banking institutions with an office in Columbus would impose a burden on many otherwise qualified sales agents. For them, compliance with such a requirement would be difficult, and the effect could seriously impair the Lottery Commission's ability to provide, pursuant to R.C. Chapter 3770., for the sale of lottery tickets. On this point I refer you to R.C. 1.47, which provides:

"In enacting a statute, it is presumed that:

"(A) Compliance with the constitutions of the state and of the United States is intended;

"(B) The entire statute is intended to be effective;

"(C) A just and reasonable result is intended;

"(D) A result feasible of execution is intended. (Emphasis added.)

I must, therefore, conclude that the Treasurer's authority under R.C. 3770.02 to designate depositories is not restricted to banks with offices in Columbus.

In specific answer to your questions it is my opinion and you are so advised that:

1. If the director of the State Lottery Commission requires that lottery sales agents deposit in banks, to the credit of the state lottery fund, moneys received from the sale of lottery tickets, such banks shall be designated by the Treasurer of State, pursuant to R.C. 3770.02.

2. The Treasurer of State, in designating banks as depositories pursuant to R.C. 3770.02, is not restricted by R.C. 135.04 to banks with offices in Columbus.