such action is in the public interest, may order such bank forthwith to suspend the payment in any manner of the liabilities of such bank to depositors and other creditors except as hereinafter provided. Such order shall become effective upon receipt by such bank of notice thereof and shall continue in full force and effect until released or modified by the superintendent of banks in writing, but in no event to exceed a period of sixty days; provided that such suspension may be extended for further periods not to exceed sixty days each upon order of the superintendent of banks. Nothing herein contained shall effect the right of such bank to pay its current operating expenses and any other liability incurred during such suspension. Whenever in the judgment of the superintendent of banks the condition of such bank warrants such action, the liabilities, the payment of which have been so suspended, may be paid by such bank in whole or pro rata in part, upon such terms and conditions as the superintendent of banks shall prescribe.

From such section it is evident that the order of the Superintendent of banks restricting deposits, could have no effect on an account payable on demand, other than to suspend the time of payment for a period or periods of 60 days.

It shall be noted in Section 5324, General Code, that the term "deposits" is not limited to deposits payable on demand. The language of the statute is that the depositor "is entitled to withdraw any money, whether on demand *or not.*"

I am unable to find any language in Section 710-107a, General Code, which authorizes the conservator to pay such deposits in other than money or to give him any other authority than to suspend the present right of withdrawal to a future date.

Specifically answering your inquiry, it is my opinion that; when there are deposits in a banking institution, which has been placed in the custody of a conservator, pursuant to the authority of Section 710-88a, General Code, on the day fixed by the Tax Commission of Ohio for listing deposits, at which time such deposits were restricted by order of the Superintendent of Banks, pursuant to the authority contained in Section 710-107a, General Code, such conservator is authorized, by reason of the provisions of Section 5673-1 and 5673-2, General Code, to pay such taxes and charge or deduct from the restricted account of each such depositor an amount equal to the tax paid by him thereon.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2598.

OFFICES COMPATIBLE—MEMBER CITY BOARD OF EDUCATION AND MAYOR IN ABSENCE OF CHARTER PROVISION.

SYLLABUS:

A member of the city board of education may at the same time hold the office of mayor of the said city, in the absence of a charter provision with respect thereto.

COLUMBUS, OHIO, April 30, 1934.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion upon the following question:

> "May a Member of a City Board of Education at the same time hold the office of Mayor of the said City?"

Public offices are said to be incompatible when they are made so by statute, or when by reason of the common law rule of incompatibility they are rendered incompatible. The best definition of the common law rule of incompatibility to be found in Ohio is the one stated by the court in the case of *State, ex rel.,* vs. *Gebert,* 12 O. C. C. (N. S.) 274 at page 275, as follows:

> "Offices are considered incompatible when one is subordinate to, or in any way a check upon, the other; or when it is physically impossible for one person to discharge the duties of both."

In the rendition of this opinion, I assume that the city in question does not have a charter. It might be possible that the charter of the municipality would provide that the mayor devote his full time to the duties of his office. It is significant to point out that the general laws of Ohio do not provide that the mayor of a city or a member of a city board of education shall devote his full time to the duties of his office.

This office, in two early opinions to be found in the Annual Report of the Attorney General for the year 1913, Volume II, page 1372, and Opinions of the Attorney General for 1918, Volume I, page 924, held that one and the same person could hold the offices of village mayor and member of a village board of education for a district, which included the village of which he is mayor. In my Opinion No. 2155, rendered January 11, 1934, the holding of the two above opinions was affirmed. The syllabus of this opinion reads as follows:

> "The offices of mayor of an incorporated village and member of a rural board of education are compatible."

In this last opinion I went into the question of whether or not there was any incompatibility between these offices because of the co-called budget law (sections 5625-1, et seq., General Code). The conclusion there reached was that the budget law did not render the offices in question incompatible. The question presented by your inquiry, while never having been passed upon officially by this office, is somewhat analogous to the three opinions, supra.

You inclosed a memorandum relative to the present question, which would indicate that the holding of the two offices in question is incompatible. The basis of the memorandum is that a situation might arise which would cause the person in question to be representing inconsistent interests. By virtue of section 4507, General Code, the mayor of a city appoints four citizens of the city to serve as the trustees of the sinking fund. By virtue of section 4523, General Code, the trustees then become the tax commissioners. Section 4526, General Code, relative to the powers and duties of the tax commissioners of a city, reads as follows:

"Upon receipt of the levies made by the council, as provided by law, the board of tax commissioners shall consider them and within ten days after such receipt shall return them to the council with its approval or rejection, and, in case of rejection, giving its reasons therefor. It may approve or reject any part or parts thereof, and the parts rejected by such board shall not become valid levies unless the council of such municipality shall thereafter, by three-fourths vote of all members elected thereto, adopt such levy or part thereof. If the board of tax commissioners approve such levies, or if it neglects to return them with its approval or rejection within such ten days, they shall be valid and legal. In no case shall the board of tax commissioners have authority to increase such levy."

Since the city board of education is the taxing authority for the city school district (sections 5625-1, et seq., General Code), the question is raised as to the possibility of a situation where the budget for the board of education might be so high, though still within legal limitations, that the balance of the tax funds available for city siking fund and operating expenses would thereby be reduced, or the converse situation might be true. In other words, as a member of the city board of education, he might favor the school district to the detriment of the city; or, as mayor, by virtue of his authority to appoint the trustees of the sinking fund together with his veto power over the acts of council (section 4234, General Code), he can effectively control the amount of the city budget. In this connection, it is to be noticed that the mayor of a village by virtue of his office is a member of the sinking fund trustees of the village. Nevertheless, the two early opinions, supra, held that a village mayor could also be a member of a village board of education, and the 1934 opinion held that a village mayor could also be a member of a rural board of education which comprised a district consisting of the entire village and part of a township.

The memorandum in question refers to an opinion to be found in the Annual Report of the Attorney General for 1910-1911 at page 1041. Suffice to say, the statutes relevant to that opinion have since been repealed. There is also a reference to an opinion to be found in Opinions of the Attorney General for 1922, Volume I, at page 615. The syllabus of this opinion reads as follows:

"Under the provisions of section 4526 G. C., setting forth the powers and duties of the board of tax commissioners in a city, the position of superintendent of city schools is incompatible with the office of member of the board of tax commissioners (4523) in such city, and the two positions may not be held by one and the same person at the same time."

The above opinion was based upon the fact that as superintendent the board of education might send him to appear before the county budget commission, or even before the board of tax commissioners in a city school district, which would affect one way or the other the budget desired by the board of education and those connected with school administration. Without passing upon the merits of this opinion, it is sufficient to say that the mayor of the city does not appear officially before the tax commissioners. He is not a member of the taxing authority of the city. To say that merely because he has authority to appoint the trustees of the sinking fund is to render the holding of the positions in question incompatible, is to stretch the common law rule of incompatibility to

an extreme degree. I have examined the statutes relative to the duties of the positions in question, and I am unable to say that one and the same person may not hold these positions.

Without further prolonging this discussion, it is my opinion in specific answer to your question, that a member of the city board of education may at the same time hold the office of mayor of the said city.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2599.

U. S. EMPLOYMENT SERVICE—AUDITOR OF STATE AUTHORIZED TO DRAW WARRANTS FOR DISBURSEMENT OF MONEY OF WHICH TREASURER OF STATE IS CUSTODIAN UNDER AMENDED SENATE BILL NO. 402 90 GENERAL ASSEMBLY.

SYLLABUS:

The Auditor of State has authority to draw warrants for the disbursement of money of which the Treasurer of State is custodian under the provisions of Amended Senate Bill No. 402 of the 90th General Assembly.

COLUMBUS, OHIO, May 1, 1934.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter in which you request my opinion as to whether or not the Auditor of State has authority to issue warrants on money for which the Treasurer of State is custodian under the provisions of Amended Senate Bill No. 402, passed by the 90th General Assembly July 1, 1933.

Amended Senate Bill No. 402, to which you refer, is an act entitled "An act to enact supplemental sections 154-45a, 154-45b and 154-45c of the General Code, relative to accepting the provisions of the act of congress providing 'for the establishment of a national employment system and for co-operation with the states in the promotion of such system, and for other purposes,' and to designate a state agency for the purpose of carrying the same into effect, and to declare an emergency." This act accepts the provisions of the act of Congress referred to in the title and designates the Department of Industrial Relations as the state agency to co-operate with the United States Employment Service in the establishment and maintenance of a co-operative federal and state system of public employment offices. Section 154-45c, as enacted, provides as follows:

> "The state treasurer is hereby designated and appointed custodian of all moneys received by the state from appropriations or apportionments made by the congress of the United States or by the director of the United States employment service, as provided for in said act of congress approved June 6, 1933, and is authorized to receive and provide for the proper custody of the same and to make disbursements therefrom in accordance with law upon the order of the director of the department of industrial relations of the state of Ohio."