

OPINION NO. 74-033

Syllabus:

1. Bank accounts are not "goods and chattels" within the meaning of R.C. 323.18, and a county treasurer may not distrain such accounts under the provisions of that Section to satisfy a past due and unpaid tax liability on personal property.

2. Bank accounts are debts owed to depositors and as such, may be used by a county treasurer to satisfy a past due and unpaid tax liability on personal property, pursuant to R.C. 323.24, provided the county treasurer cannot find sufficient goods and chattels to distrain to pay such tax.

To: Michael Nolan, Athens County Pros. Atty., Nelsonville, Ohio
By: William J. Brown, Attorney General, May 1, 1974

I have before me your request for my opinion, which reads, in part, as follows:

"The Treasurer of my County has requested an opinion regarding the legality of his distraining of existing bank accounts in the county as a tool to collect delinquent personal property taxes.

"The ultimate question would appear to be whether or not existing checking and savings accounts in the County are "goods and chattels" as is provided for in Section 323.18 R.C."

R.C. 323.18, which provides for the collection of past due taxes by distress, reads as follows:

"When taxes, other than those upon real estate specifically as such, are past due and unpaid, the county treasurer may distrain sufficient goods and chattels belonging to the person charged with such taxes, if such goods and chattels are found within the county, to pay the taxes remaining due and the costs that have accrued. Such treasurer shall immediately advertise in three public places

in the township where the property was taken the time and the place it will be sold. If the taxes and costs accrued on the property are not paid before the day appointed for such sale, which shall be not less than ten days after the taking of the property, the treasurer shall sell it at public vendue or so much of the property as will pay such taxes and costs.

"For making distress and sale for the payment of taxes, the treasurer shall be allowed the same fees as are allowed to constables for making levy and sale of property on execution. Traveling fees shall be computed from the county seat to the place of making the distress."

(Emphasis added.)

Thus if the phrase "goods and chattels" in R.C. 323.13 includes checking and savings accounts, a county treasurer may distrain such accounts to collect delinquent personal property taxes. Neither "goods" nor "chattels" has been defined by the General Assembly for the Revised Code as a whole or for R.C. Chapter 323, specifically. However, the word "goods" has been defined several times in the Revised Code for purposes of specific chapters. While these definitions are not specifically applicable here, they are useful to determine how the word "goods" has been used by the General Assembly. One such definition is found in R.C. 1309.01(A)(6), which reads as follows:

"'Goods' includes all things which are movable at the time the security interest attaches or which are fixtures, but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights, and other things in action. 'Goods' also include the unborn young of animals and growing crops;"

See also R.C. 1307.01 (A)(6) and 1317.01(C). The above definition includes as "goods" all things movable and tangible, but excludes money, intangibles and choses in action.

An interpretation of the word "chattels" which was made by Blackstone is reported at 44 O. Jur. 2d 247, 248, Property Section 12 (citing 2 Blackstone, Commentaries, Chap. 24, p.385), and reads as follows:

"According to Blackstone, the whole of things personal is comprehended under the general name of 'chattels,' although in some cases it seems that the term 'chattel' has been held not to include choses in action, which are, nevertheless, classified as personal property."

The court in Green v. Green, 9 Ohio Misc. 15 (1966), interpreted the word "chattels" as follows:

"In modern usage the word 'chattels' is ordinarily limited to visible, tangible, movable personal property. * * * Admittedly, it may be used in a broader sense, and whether it is used in a broad or restricted sense is to be determined as a matter of construction."

Thus it appears that the word "chattels" includes personal property which is visible and tangible, but that in its restricted sense it has been held not to include choses in action.

In the situation about which you inquire, the property involved is a bank deposit. The relationship between a bank and a general depositor is that of debtor and creditor. Speroff v. First Central Trust Co., 149 Ohio St. 415 (1948); Cincinnati, H. and D. Rd. Co. v. Metropolitan National Bank, 54 Ohio St. 60, 71 (1896). A depositor thus has a chose in action, which is a personal right not reduced to possession, but recoverable by a suit at law. The fact that a bank deposit creates a debtor-creditor relationship compels the conclusion that bank accounts do not meet the "tangible and visible" criteria required by definitions of "goods" and "chattels". Close scrutiny of R.C. 323.18 shows that the General Assembly intended the phrase "goods and chattels" to be interpreted restrictively. That Section not only authorizes a county treasurer to collect past due taxes by distress, but also sets forth the prerequisites for the sale of the property taken. From this I must conclude that R.C. 323.18 was intended to apply only to tangible and visible property which can be sold at public auction.

Although not specifically in point, R.C. 1.03 sheds further light upon the meaning which the General Assembly attributed to the phrase "goods and chattels". That Section, which defines the phrase "anything of value", reads as follows:

"As used in any section of the Revised Code for the violation of which there is provided a penalty or forfeiture, unless the context otherwise requires, 'anything of value' includes:

"(A) Money, bank bills or notes, United States treasury notes, and other bills, bonds, or notes issued by lawful authority and intended to pass and circulate as money;

"(B) Goods and chattels;

"(C) Promissory notes, bills of exchange, orders, drafts, warrants, checks, or bonds given for the payment of money;

"(D) Receipts given for the payment of money or other property;

"(E) Rights in action;

"(F) Things which savor of the realty and are, at the time they are taken, a part of the freehold, whether they are of the substance or produce thereof or affixed thereto, although there may be no interval between the severing and taking away;

"(G) Every other thing of value."
(Emphasis added.)

Clearly in this Section the General Assembly is following the more restrictive, modern usage of the phrase "goods and chattels." Those things less tangible or visible than what might be included within the restrictive usage of "goods and

chattels" are specifically enumerated in R.C. 1.03, while more tangible personal property is grouped under "goods and chattels". Based upon the preceding discussion I must conclude that the phrase "goods and chattels" in R.C. 323.18 does not include bank accounts, and therefore a county treasurer may not distrain such accounts to collect delinquent personal property taxes.

However, although a county treasurer may not distrain checking and savings accounts by virtue of R.C. 323.18, such accounts are not beyond his reach. R.C. 323.24 is an alternative means of collecting personal property taxes and reads, in part, as follows:

"If a person charged with a tax has not sufficient property which the county treasurer can find to distrain to pay such tax, but has money or credit due or coming due him from any person within the state, known to the treasurer, or if such taxpayer has removed from the state or county, and has property, moneys, or credits due or coming due him in the state, known to the treasurer, in every such case, the treasurer shall collect such tax and penalty by distress, attachment, or other process."

(Emphasis added.)

As previously mentioned, the relationship between a depository and a depositor is one of debtor and creditor. Speroff v. First Central Trust Co., supra; Cincinnati, H. and D. Rd. Co. v. Metropolitan National Bank, supra. Thus the obligation on the part of the bank is a debt, and as such, falls within the purview of R.C. 323.24. R.C. 1.59 provides, in part, as follows:

"As used in any statute, unless another definition is provided in such statute or a related statute:

* * * * *

"(C) 'Person' includes an individual, corporation, business trust, estate, trust, partnership, and association."

The Ohio Supreme Court in Moss v. Standard Drug Co., 159 Ohio St. 464 (1953), examined a General Code definition similar to the definition of "person" in R.C. 1.59(C) and held as follows:

"When there is nothing in the context which shows that another sense was intended, Sec. 10213 General Code requires that the word 'person' * * * be construed as including a private corporation * * *."

The language of R.C. 323.24 does not indicate that the word "person", as used in that Section, is to have other than its normal meaning. Since I have found no other authority limiting the meaning of such word as it is used in that Section, I must conclude that, pursuant to R.C. 1.59(C), "person" includes a corporation. Therefore a bank account, characterized as a debt, may be used by a county treasurer to collect delinquent personal property taxes provided that the procedure set forth in R.C. 323.24 is followed.

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

1. Bank accounts are not "goods and chattels" within the meaning of R.C. 323.18, and a county treasurer may not distrain such accounts under the provisions of that Section to satisfy a past due and unpaid tax liability on personal property.

2. Bank accounts are debts owed to depositors and as such, may be used by a county treasurer to satisfy a past due and unpaid tax liability on personal property, pursuant to R.C. 323.24, provided the county treasurer cannot find sufficient goods and chattels to distrain to pay such tax.