915.

COUNTY TREASURER—MAY OPEN TAX COLLECTION OFFICE IN A TOWNSHIP HAVING NO DEPOSITORY BANK.

SYLLABUS:

A county treasurer is authorized, by virtue of Section 2746, General Code, to establish an office for the collection of taxes in a township in which there is no bank of deposit.

COLUMBUS, OHIO, September 24, 1929.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

> "This office is desirous of a construction of Section 2746, General Code of Ohio, for the following reason:
>
> The treasurer of Brown County went to the expense of making collection of taxes in a remote township of Brown County, where, however, no depository bank was located. He received taxes at such office in said township and has presented a bill for expenses of same of $25.00 to the county commissioners of Brown County, which said bill was refused and submitted to me for ruling thereon.
>
> Is it the opinion of your office that before the treasurer can collect for expenses of collection of taxes in a township there must be a depository bank in the town in which collection is made? Or, does the language of said Section 2746 merely apply when there is more than one town in a township in one of which towns there may be located a depository?"

Section 2746, General Code of Ohio, to which you refer in your communication, provides as follows:

> "When, in his opinion, necessary, the county treasurer may open not to exceed one office in each township for the receiving of taxes. Such office shall be in a city or village in which is located a bank of deposit. The treasurer, his deputy or clerks, may attend at such office and receive taxes on any day or days prior to the twentieth day of June and the twentieth day of December of each year. They may remove from the county treasury to the place of collection records necessary for the receiving of taxes upon the day or days so fixed for that purpose."

A bank of deposit is defined to include savings banks and all other banks which receive money on deposit. *Dunn* vs. *State, 79* S. E. 170.

The language of Section 2746, General Code, supra, is clear in that it provides that the treasurer may open an office for the collection of taxes in a township in which there is situated a city or village having a bank of deposit, whether such a bank has been designated a county depository or not.

A much more difficult question is presented, however, where there is no bank in the township, and I am informed that in the case which you present there is no bank in the township in which the county treasurer opened his office for the collection of taxes.

The county treasurer is a ministerial officer, charged with many duties and has

no authority other than that conferred upon him by statute, either express or implied.

Section 2746, General Code, supra, constitutes an act of March 12, 1909 (100 O. L., p. 76), and it was enacted for the benefit and accommodation of taxpayers. The opening of such an office was left to the opinion of the county treasurer as to necessity. Opinion here is nothing less than discretion and no discretionary act is mandatory in any sense.

Section 2748, General Code, provides in part as follows:

> "For the purpose of transportation the county treasurer *may* deposit temporarily in any bank of deposit located at such place of collection any money received in payment of taxes."

It will be noted from the language of the statute above referred to that it is not mandatory that the treasurer shall deposit in a bank of deposit the funds collected in an office established by the provisions of Section 2746, General Code. As a matter of fact, it is apparent that the existence of a bank of deposit in the township is not necessary to carry into operation the collection of taxes at an office so established by the county treasurer.

Giving careful consideration to the section here in question, I have reached the conclusion that the intention of the Legislature was to provide a convenient place for the payment of taxes for the benefit of taxpayers.

The question might be raised as to whether or not the provision of Section 2746, General Code, here under discussion, was intended by the Legislature to afford protection of the funds collected by the treasurer in such an office. However, such protection of funds so collected is afforded in Section 2633, General Code, which provides for the bond of the county treasurer. Said section reads in part: "And conditioned for the payment according to law of all moneys which come into his hands for the state, county or township for other purposes." If any loss should be occasioned in the collection of taxes under the provisions of Section 2746, General Code, prior to the deposit of such funds in a county depository, the county treasurer would be liable for the loss of such funds on his official bond.

Those directions which are not of the essence of the thing to be done, but which are given with the view merely to the properly, orderly and prompt conduct of the business, and by which the failure to obey the rights of those interested will not be prejudiced, are not commonly to be regarded as mandatory, and if the act is performed but not in the time or in the precise mode indicated, it will still be sufficient if that which is done accomplishes the substantial purpose of the statute.

I have herein indicated my opinion as to the purpose of the section under discussion, and, therefore, in specific answer to your question, I am of the opinion that the provisions of Section 2746, General Code, are directory and that if the county treasurer establishes an office, in pursuance of said section, in a township in which there is not located a bank of deposit, the county treasurer is entitled to payment of expenses incurred in receiving of taxes as provided therein. However, if there is located in the township a village or city having a bank of deposit, then the county treasurer shall open such office in the village or city where such bank is located.

Respectfully,

GILBERT BETTMAN,

Attorney General.