

1525.

APPROVAL, BONDS OF CITY OF OAKWOOD, MONTGOMERY COUNTY,
OHIO—\$20,000.00.

COLUMBUS, OHIO, September 8, 1933.

Industrial Commission of Ohio, Columbus, Ohio.

1526.

MOTOR VEHICLE LICENSE FEES—MAY NOT BE DEPOSITED IN BANK
BY DEPUTY COMMISSIONER OF MOTOR VEHICLES—PUBLIC
FUNDS DEPOSITED IN NATIONAL BANK, IN VIOLATION OF OHIO
LAW CONSTITUTES TRUST FUND RECOVERABLE BY STATE
FROM CONSERVATOR OR RECEIVER OF BANK.

SYLLABUS:

1. *A deputy commissioner of motor vehicles is not authorized by the law of Ohio to deposit in a bank funds collected as motor vehicle license fees and chauffeurs' license fees. Following Opinions of the Attorney General, 1933, No. 1439.*

2. *Where public funds are thus deposited in a national bank in violation of Ohio law, such deposit constitutes a trust fund, and the State may recover the amount thereof from a conservator or receiver of such bank, provided that the fund can be followed according to the principles of tracing applicable to bank preference cases.*

COLUMBUS, OHIO, September 8, 1933.

HON. J. P. BRENNAN, *Commissioner of Motor Vehicles, Columbus, Ohio.*

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

“We are submitting for your opinion and advice a proposition made by the Dennison National Bank of Dennison, Ohio.

Information in connection is as follows:

Our deputy commissioner at Dennison, Ohio, was a depositor in said bank when the bank was closed the latter part of February or early in March, 1933, at which time we had in our possession checks drawn on said bank payable to J. P. Brennan, Commissioner of Motor Vehicles, and signed by John Gardner, Deputy Commissioner, as follows:

February 24, 1933, amount.....	\$ 3.00
February 25, 1933, amount.....	3.00
February 27, 1933, amount.....	59.00
March 4, 1933, amount.....	10.00
March 6, 1933, amount.....	7.00
March 6, 1933, amount.....	4.50

Total..... \$86.50

(State Treasurer refused to accept same for deposit.)

On July 18, 1933, we received a proposition from the bank on a regular printed form requesting a waiver of 30% of the amount due the Bureau."

As stated in your letter, the reorganization plan of the Dennison National Bank, now in the hands of a conservator, provides that the depositors shall waive 30% of their deposits for the purpose of eliminating non-liquid and depreciated assets. A new national bank is to be organized under the Banking Act of 1933 to take over the acceptable assets, and, I assume 70% of the respective net claims of depositors will be subject to use without restriction. A "Creditor's Waiver Agreement" incident to effectuating the plan has been submitted for your signature by the reorganization committee.

The original checks submitted with your letter are payable to J. P. Brennan and signed "John Gardner." Under the signature of the maker is stamped "Deputy Commissioner." The bank statement attached to your request shows that the account was carried in the name of "John Gardner, Deputy Commissioner," from which I assume that the bank knew the character of this deposit of public funds. On two of the checks is stamped the word "Chauffeur", presumably to show that the checks were given in payment of chauffeurs' license fees.

In Opinion No. 1439, rendered by me August 25, 1933, in response to your request, I held that under section 6294, General Code, a deputy commissioner of motor vehicles is not authorized to deposit in a bank funds collected from motor vehicle license fees. This opinion is in accord with that of my predecessor reported in Opinions of the Attorney General for 1930, volume II, page 1301. The latter opinion is based upon the premise that public funds can be legally deposited only when authorized by statute. As was stated in the opinion, "A careful consideration of the depository statutes of Ohio reveals that there is no authority given a deputy commissioner of motor vehicles to deposit state funds in banks or other depositories." This statement is applicable alike to funds collected from motor vehicle registrations and chauffeurs' license fees. It was held that such unauthorized deposit does not create the relationship of debtor and creditor, but that it is a special deposit which under the Ohio decisions entitles the State to a preferred claim upon the liquidation of a State bank.

Since the bank referred to in your inquiry is a national bank it becomes pertinent to inquire whether the rule as to illegal public deposits is the same under the law applicable to such institutions.

In the case of *American Surety Company vs. Jackson*, 24 Fed. 2d, 768, rehearing denied, 26 Fed. 2d, 248 (C. C. A. 9th), it was held that where funds of a municipality were deposited in a national bank in violation of state law, the bank became a trustee, and a surety who had become subrogated to the city's rights, was entitled to recover the amount of the trust fund, providing it could be followed. I deem it unnecessary to discuss at length the principles governing the following of trust funds, since I feel justified in assuming that even though the funds in question were commingled with the general funds of the bank, there still remains in the possession of the bank a sum equal to the amount on deposit. See *Merchants National Bank vs. School District No. 8*, 94 Fed., 705. For a discussion on following trust funds see *Townsend, Tracing Technique in Bank Preference Cases*, 7 Cincinnati Law Review, 201 (May, 1933). It should be noted that one case therein discussed, *Gardner vs. Fulton, Superintendent of Banks*, has been reversed by the Supreme Court in *Fulton vs. Gardner*, 127 O. S. 44; Ohio Bar, August 28, 1933.

There are numerous other cases holding that a public deposit in violation of state law constitutes a trust fund entitling the public depositor to recover from the receiver of the bank the amount of such fund. *Merchants National Bank vs. School District No. 8, supra*; *Spokane Co. vs. First National Bank*, 68 Fed. 979; *Smith vs. Mottley*, 150 Fed. 266 (C. C. A. 6th); *Board of Commissioners of Crawford County vs. Strawn*, 157 Fed. 49; 15 L. R. A. (N. S.) 1100 (C. C. A. 6th); *In re: J. M. Acheson Company*, 170 Fed. 427; *Titlow vs. McCormick*, 236 Fed. 209.

The Crawford County case, *supra*, involved a deposit in a national bank of county funds illegally under the law of Ohio as it then existed.

In the light of these authorities, it is my opinion that the Dennison National Bank has never acquired title to the funds deposited by the deputy commissioner of motor vehicles but holds such funds in trust. It would therefore be improper for you to sign the Creditor's Waiver Agreement, the State of Ohio not being a creditor, but being entitled to the full amount of the deposit, including the amount of the unpaid checks in question, provided that the trust funds can be followed. If before the State is paid the amount of its special deposit all the assets of the Dennison National Bank are transferred to a new national bank, such new bank will not acquire title to the funds held in trust for the State of Ohio and will be liable for the payment of such funds.

I therefore advise you to inform the conservator in charge of the Dennison National Bank that the State of Ohio demands payment in full of the deposit of your deputy commissioner.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1527.

OFFICES COMPATIBLE—CLERK TO HEALTH COMMISSIONER OF GENERAL HEALTH DISTRICT MAY HOLD OFFICES OF VILLAGE MAYOR AND JUSTICE OF PEACE WHEN.

SYLLABUS:

A clerk to a health commissioner of a general health district who is not a member of the board of health of such district may hold the offices of village mayor and justice of the peace, if such clerk is not hired for whole time service under the provisions of section 1261-22, General Code, and it is physically possible to transact the duties of such clerkship and offices simultaneously.

COLUMBUS, OHIO, September 9, 1933.

HON. HOWARD S. LUTZ, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of recent date which reads as follows:

“Your opinion is requested as to whether there is any objection to the same man holding at the same time, the offices of Clerk to the Health Commissioner, Mayor and Justice of the Peace.”