a de facto officer and as such his official acts with other members of the board will stand.

It is therefore my opinion that his participation in proceedings before the school board would not make void any measures adopted by it.

Though your letter did not raise the question, this office has been frequently asked what should be done in certain districts where there is only one eligible bank in a district and officers of that bank happen to be members of the school board. The Uniform Depository Law does not require any bank to take public funds. It has, moreover, specifically provided for cases where there is no eligible bank or only one eligible bank in a district. (See Section 2296-6 G. C.) In such a case funds may be deposited in an eligible bank located in the county seat or in any bank conveniently located outside the district, qualified as the law provides to accept the same.

In specific answer to your inquiry it is therefore my opinion that:

1. A member of a board of education who serves as director of a bank which is depository for inactive school funds does not, in so doing, violate Section 4757, General Code, since the Uniform Depository Act provides for advertisement and competitive bidding in the making of contracts for inactive funds.

2. However, a member of a board of education who serves as director of a bank which is a depository for active school funds does violate the provisions of Section 4757, General Code, since the Uniform Depository Act does not require advertisement or competitive bidding for such contracts.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

2274.

CELEBRATION—150TH ANNIVERSARY ADOPTION OF ORDINANCE 1787 AND SETTLEMENT NORTHWEST TERRITORY—BOARD OF COUNTY COMMISSIONERS—NO AUTHORITY TO APPROPRIATE COUNTY FUNDS TO PARTICIPATE—MUNICIPAL FUNDS DISTINGUISHED.

SYLLABUS:

A board of county commissioners is without authority to appropriate county funds for the purpose of participating in the Celebration of the

150th Anniversary of the Adoption of the Ordinance of 1787 and the Settlement of the Northwest Territory.

COLUMBUS, OHIO, April 12, 1938.

HON. HUGO ALEXANDER, *Prosecuting Attorney, Steubenville, Ohio.*

DEAR SIR: This is to acknowledge receipt of your communication of recent date, in which you request my opinion as to whether or not your Board of County Commissioners may legally appropriate county funds in the sum of $500.00 toward defraying the expense of your county's participation in the celebration of the 150th Anniversary of the Ordinance of 1787 and the Settlement of the Northwest Territory.

The General Assembly has appropriated state moneys and provided for the participation of the State of Ohio in such celebration in and by Senate Bill No. 317 of the 91st General Assembly (116 O. L. 259). I do not, however, find any express legislative provision whereby the various counties of Ohio are authorized to praticipate in such celebration or expend county funds therefor.

It has long been established in Ohio that unlike municipalities since the adoption of the so-called home rule provisions of the Constitution, the powers of a county are enumerated powers and boards of county commissioners can exercise no powers not expressly conferred by the Legislature. The Supreme Court, speaking through Judge Ranney, discussed this matter in the early case of *W. C. & Z. R. R. Co.*, vs *Commissioners of Clinton County*, 1 O. S. 77, 89, as follows:

> "But what is a county? It is not imperium in imperio, in any sense. It is invested, as such, with no single attribute of sovereignty; and for reasons already stated, it cannot be. Rightly considered, it is a mere instrumentality, a means in the hands of the legislative power to accomplish its lawful purposes; and to this extent, a creature in the hands of its creator, subject to be moulded and fashioned as the ever varying exigencies of the State may require. It would seem to follow, that it may, from time to time, be clothed with such powers, and charged with such duties, of a local administrative character, not vested elsewhere by the constitution, as the General Assembly may see fit to direct. And so they have always been treated and used."

More directly in point is the later case of *State ex rel.*, vs. *Menning*, 95 O. S. 97, wherein the court said at page 99:

> "The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

There is little question in my mind but that the proposed expenditure would be for a public purpose and I held in my opinion No. 2199, rendered to the Bureau of Inspection and Supervision of Public Offices, as set forth in the syllabus:

> "A charter city, unless prevented by its charter, has plenary power to appropriate and expend a reasonable sum of money, by way of participation in the one hundred and fiftieth anniversary of the adoption of the Ordinance of 1787 and settlement of the Northwest Territory, such expenditure being for a general, public, educational purpose."

When considering the authority to expend county moneys, however, as distinguished from municipal funds, a distinction must be drawn. As illustrative of this distinction, this office held in an opinion appearing in the Opinions of the Attorney General for 1929, Volume I, page 345, that a municipality is authorized under the Uniform Bond Act to issue bonds for the purpose of paying the cost of a cadastral survey. In an opinion appearing in the Opinions of the Attorney General for 1931, Volume II, page 65, this office considered the question of whether or not a county was authorized under the Uniform Bond Act to issue bonds for such purpose and answered the question in the negative. This later opinion expressly pointed out that the powers of a board of county commissioners are in an entirely different category than those of a municipal council and drew a clear distinction between the two.

Since the rendition of the 1929 opinion, supra, it should be noted that the people of Ohio have amended Article X of the Constitution and provided for county home rule. The people did not, however, see fit to provide, as in the case of municipalities (Article XVIII, Section 3 of the Constitution), that counties shall have authority to exercise all powers of local self-government, and there is no authority to the effect that in the absence of a county charter having been

adopted pursuant to the provisions of such Article X, counties derive their powers direct from the Constitution rather than from the Legislature. Under such circumstances, the adoption of Article X of the Constitution in its present form, in November, 1933, must be held to have no effect upon the question in the absence of a county charter.

I am aware that much may be said as to the propriety, if not necessity, of county expenditures for participation in the Northwest Territory Celebration, especially in view of the fact that the Legislature has expressly provided for state participation and in view of my opinion to the Bureau holding that charter cities may so participate. But under such circumstances it must be observed that the remedy lies with the Legislature rather than with the courts.

This office has frequently been confronted with the necessity of ruling against the expenditure of county funds for a public purpose, which appeared to be laudable. In the 1931 opinion, supra, holding that a county may not issue bonds to pay the cost of a cadastral survey, it was stated on page 670:

> "In conclusion, it should be added that there is probably little doubt as to the benefit which a county may derive from such a survey as is here under consideration. Possibly a grant of such power by the legislature would be for the best interests of the counties and their citizens, but until the legislature takes some step in this direction, for the Attorney General to say that public funds may now be spent for such a purpose, would constitute, I think, an attempted usurpation of the legislative function. The laws may only be interpreted as they are in the light of rules of statutory construction which have been laid down by the courts. In the last analysis, as stated in my Opinion No. 2887, it is a lawful purpose, not a laudable purpose, which warrants an expenditure of the taxpayers' money."

It is my opinion that a board of county commissioners is without authority to appropriate county funds for the purpose of participating in the Celebration of the 150th Anniversary of the Adoption of the Ordinance of 1787 and the Settlement of the Northwest Territory.

Respectfully,

HERBERT S. DUFFY,

Attorney General.