

4020.

BILLS AND NOTES—INLAND CHECK OF TAXPAYER—WHERE
DISHONORED, PROTEST FEES MAY NOT BE ASSESSED
AGAINST TAXPAYERS OR PAID BY COUNTY.

SYLLABUS:

Where an inland check, given by a taxpayer to the county treasurer for taxes, is dishonored and protested, such protest fees can not be placed upon the tax duplicate against the property of such taxpayer, nor can such fees be paid from funds in the county treasury.

COLUMBUS, OHIO, February 2, 1932.

HON. JOSEPH J. LABADIE, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—Acknowledgment is made of the following letter:

"A tax payer of this county gave the County Treasurer a personal check for the amount of taxes due. Before this check cleared the depository bank, said bank was closed as a defunct bank, and the check was dishonored. Protest was made of this check, and fees accumulated in the amount of \$3.00. The check was returned to our local bank which then proceeded to demand the protest fees.

Is it fitting and proper for the Treasurer to levy the protest fees of this check or of any check which has been protested because of insufficient funds or otherwise, on the tax duplicate against the property of the tax payer? If so, out of what fund should said protest fees be paid to the bank by the Treasurer?"

For the purposes of your inquiry, I am making the natural assumption that the checks mentioned are inland bills of exchange, that is, checks which are, or on their face purport to be, both drawn and payable within Ohio. (See Sections 8234 and 8290, General Code.)

Under the heading "Costs of Protest", it is stated in 8 Corpus Juris 1103-1104:

"Whenever, either by the law merchant or by statute, protest is necessary to fix the liability of the party against whom the action is brought, the charges incident to such protest may be recovered by the holder, against the drawer and the drawee, an acceptor, or an indorser, since the notarial expenses consequent on dishonor are recoverable as special damages. *But only such expenses as are necessary are recoverable * * *. Where no protest was necessary in order to fix the liability of any party, no fees for protest can be collected; * * *.*" (Italics the writer's.) Sections 8223 and 8257, General Code, respectively, provide:

"When a negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment as the case may be; but the protest is not required except in the case of foreign bills of exchange."

"When a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and when such a bill, which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. When

a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary."

Among the numerous cases cited in support of the above quotation from Corpus Juris is *Parril vs. Wood*, 2 O. Dec. (Reprint) 381. There it was held that the holder of a note which was drawn and made payable in Ohio could not recover protest charges from the maker.

In 8 Corpus Juris 624, it is said:

"In the absence of a statute requiring it, no protest is necessary in case of inland bills of exchange, although it constitutes no wrong against the drawer, *none of the costs thereof being charged against him.*" (Italics the writer's.)

The above noted authorities make it clear that it is unnecessary to protest inland bills of exchange and that the maker can not therefore be made liable for the costs thereof. Obviously, it follows that where an inland check is given for payment of taxes and is dishonored, protest fees can not be placed upon the tax duplicate against the property of the taxpayer.

Having in mind the provision of Article X, Section 5 of the Ohio Constitution that "no money shall be drawn from any county * * * treasury, except by authority of law", I have examined the statutes, and, having failed to find any law which expressly or impliedly authorizes payment out of the county treasury for such unnecessary protest fees on an inland check, I am of the opinion that such fees can not be paid out of the county treasury.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4021.

OFFICES INCOMPATIBLE—ACTING AS PLUMBING INSPECTOR OF
GENERAL HEALTH DISTRICT WHILE ENGAGED IN PRIVATE
PLUMBING BUSINESS.

SYLLABUS:

A plumbing inspector appointed by a district board of health can not engage, while so employed, in the plumbing business.

COLUMBUS, OHIO, February 2, 1932.

HON. JOHN E. BAUKNECHT, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—This will acknowledge your letter which reads as follows:

"The Board of General Health District for Columbiana County, Ohio, on the 13th day of January, 1931, passed a resolution creating the office of a Plumbing Inspector for said General Health District, to be appointed by the Board of Health of said General Health District pursuant to provisions of Sections 4421, 4422 and 1261-42 of the General Code of Ohio. This resolution is silent on the question of whether the duties