

2374.

SANITARY DISTRICT FUNDS—UNIFORM DEPOSITORY ACT  
—“PUBLIC MONEYS OF THE STATE”—TREASURER OF  
STATE—NO AUTHORITY TO SEGREGATE SECURITIES  
TO PROTECT MONEYS DEPOSITED—BOND FILED SE-  
CURES AGAINST LOSS OF FUNDS.

*SYLLABUS:*

1. *Sanitary district funds deposited with the Treasurer of State under authority of Section 6602-79, General Code, are “public moneys of the state” within the meaning of the term as used in the Uniform Depository Act.*

2. *When sanitary district funds are deposited in a public depository under the Uniform Depository Act with other “public moneys of the state”, there is no authority whereby securities hypothecated to secure such deposits may be segregated and a portion of such securities treated as hypothecated to protect the portion of the public moneys of the state so deposited represented by sanitary district funds.*

3. *The bond of the Treasurer of State required by Section 297, General Code, or any additional bonds given under authority of Section 298, General Code, secure state and sanitary districts against loss of funds of such districts held by the Treasurer of State pursuant to Section 6602-79, General Code.*

COLUMBUS, OHIO, April 22, 1938.

HON. CLARENCE H. KNISLEY, *Treasurer of State, Columbus, Ohio.*

DEAR SIR: This is to acknowledge your letter of recent date requesting my opinion upon an inquiry which you have received from the Mahoning Valley Sanitary District, which inquiry reads as follows:

“I beg to submit the following statement of facts and queries:—

The Mahoning Valley Sanitary District, Youngstown, Ohio, is a political subdivision of the State of Ohio organized and existing under the provisions of the Sanitary District Act, Sections 6602-34 to 6602-106 G. C. Bonds were issued by the District and in accordance with Section 6602-79 G. C., the principal and interest are payable at the office of the State Treasurer.

From time to time funds are delivered by the District to the Treasurer of State for the payment of maturing bonds and interest. These funds are deposited by the Treasurer of State in a Columbus bank in an account designated ‘Treasurer of State, The Mahoning Valley Sanitary District’ in the records of the

Bank and of the State Treasurer. In accordance with the conditions governing these deposits they are subject to withdrawal only by the Treasurer of State. These funds are used for the payment of District bonds and interest as provided by Section 6602-79 G. C. As maturing bonds and interest are paid, records thereof are made in the office of Treasurer of State and these records together with the cancelled bonds and interest coupons, and statements of registered interest paid, are transmitted from time to time to the District. Normally the balance of such deposits varies from a few thousand dollars to approximately \$400,000.00, but conceivably might be as high as \$650,000.00.

Since the Uniform Depository Act became effective, the deposit of these funds, considered as 'Public Monies of the State' as defined by said Act, has been made in accordance therewith, and the Treasurer of State has required the depository to pledge to and deposit with him securities as required by the Uniform Depository Act. The securities so pledged and deposited to secure the funds of this account are segregated from all other securities held by the Treasurer of State and are so held for the exclusive benefit of these funds. The Sanitary District Act, while providing for functions and duties of the Treasurer of State in registering District bonds and paying said bonds and the interest thereon, makes no provision for a surety bond of the State Treasurer to protect the State of Ohio and the Sanitary District from loss, and no such surety bond exists applying specifically or exclusively to the funds of The Mahoning Valley Sanitary District. However, pursuant to Sections 297 and 298 G. C., the Treasurer of State is bonded in the aggregate amount of \$....., such bonds naming the State of Ohio as the obligee and the condition of such bonds being the faithful discharge of the duties of his office.

1. Are the funds deposited with the Treasurer of State by The Mahoning Valley Sanitary District pursuant to Section 6602-79 G. C. 'Public Monies of the State' as defined by the Uniform Depository Act?

2. When such funds are deposited in a public depository in accordance with the Uniform Depository Act, and securities are pledged to and deposited with the Treasurer of State and segregated as security for repayment, do such securities operate for the protection and repayment of such funds specifically and exclusively, without reference to other State funds which the Treasurer of State may have on deposit in the same public depository?

3. Do the statutory bonds of the Treasurer of State in accordance with Sections 297 and 298 G. C. operate to protect The State of Ohio and The Mahoning Valley Sanitary District against loss of funds after their delivery to the State Treasurer pursuant to Section 6602-79 G. C.?"

Your first question is answered by paragraph (a) of Section 2296-1, General Code, which defines "public moneys" of the state. Such section provides in so far as is pertinent:

"This act shall be known as 'the uniform depository act.'

As used in this act:

(a) 'Public moneys' means all moneys in the treasury of the state, or any subdivisions thereof, or coming lawfully into the possession or custody of the treasurer of state, or of the treasurer of any such subdivision. 'Public moneys of the state' includes all such moneys coming lawfully into the possession of the treasurer of state; and 'public moneys of a subdivision' includes all such moneys coming lawfully into the possession of the treasurer of the subdivision.

\* \* \* \* \*

Whatever may be said as to whether or not funds of a sanitary district which are deposited with the Treasurer of State for the purpose of meeting interest and principle requirements of the bonds of such district, are in the "custody" of the Treasurer of State, they have at least come "lawfully into the possession" of the Treasurer of State and are accordingly "public moneys" as defined in the first sentence of paragraph (a) of Section 2296-1, supra. The phrase "public moneys of the state" as used in the Uniform Depository Act is defined to include "all such moneys coming lawfully into the possession of the treasurer of state." By the use of the word "such", the General Assembly has referred to the definition of "public moneys" contained in the first sentence of this paragraph, and it is therefore clear that even regarding the Treasurer of State as the mere custodian of the funds of a sanitary district, such funds are "public moneys of the state" within the meaning of the term as used in the Uniform Depository Act.

In your second question, you present a situation whereby funds of a sanitary district are deposited by the Treasurer of State in a public depository in accordance with the Uniform Depository Act, in which public depository other state funds are on deposit. You state that it has been the practice to segregate so much of the securities hypothecated to secure the deposit of public funds in such depository as represent the portion of sanitary district funds on deposit, and inquire whether such hypothe-

cated securities so segregated may be held exclusively by you to secure the portion of the deposit represented by sanitary district funds.

It is obvious that a determination of this question involves not only a matter of the adoption of certain practices by the Treasurer of State which might be deemed expedient but also there is involved a question of the rights of the depository bank. Section 2296-15a, General Code, being one of the sections of the Uniform Depository Act, provides among other things that the Treasurer shall have authority to require additional eligible securities to be deposited to secure the deposit of public moneys to cover any depreciation which may occur in the market value of the securities theretofore deposited. It is easy to conceive that the securities segregated to protect sanitary district funds in a given deposit might depreciate in value whereas other securities deposited to secure this same deposit which includes the sanitary district moneys, might appreciate in value to counterbalance the depreciation of the securities segregated to protect the portion of the deposit represented by sanitary district funds. The question would then arise whether or not the bank could be required to hypothecate additional securities. Further questions will arise as to the authority for such segregation in the event the bank might have some claim against the state and be confronted with the question of the right of the depository bank to set off such claim against the claim of the state for the public moneys on deposit.

The question of the segregation of certain public funds held by a depository bank was before the Supreme Court in the case of *State, ex rel. Village of Warrensville Heights vs. Fulton, Supt. of Banks*, 128 O. S. 192. There was held by the depository bank moneys of the municipality representing proceeds of the motor vehicle license fund, the gasoline tax fund, the general bond retirement fund, the special assessment bond retirement fund and various construction funds. The bank was the owner of certain notes of the municipality which it sought to set off against the moneys of the municipality which it held as a public depository. The municipality contended that the principle of set-off could only be applied to the extent that the moneys held by the bank were available for use by the municipality for the payment of specific notes which the bank owned and that to allow the use of the proceeds of special assessments levied to pay special assessment bonds or notes for the purpose of retiring, for instance, general bonds as a result of such set-off would be violative of Section 5, Article XII of the Constitution, requiring the proceeds of taxes to be used for the purpose for which they were levied. The Supreme Court recognized no segregation of public funds held by a public depository, holding that the relationship of debtor and creditor existed. The first three branches of the syllabus of this case are as follows:

“1. Public funds of a municipality derived from taxation, when deposited in a general account in a bank according to law under a depository agreement, lose their identity and become a part of the general funds of the bank.

2. The ordinary relationship of debtor and creditor is thereby created between the bank and the municipality, and the rights of the municipality are no greater and no different from those of an individual depositor.

3. Where the municipality is indebted to the bank on a past due obligation, the bank may properly apply such deposit against such indebtedness, upon the principle of set-off.”

It is my judgment that the principles upon which the foregoing case was decided by the Supreme Court are pertinent to a determination of the question here under consideration. I know of no authority in the Uniform Depository Act or elsewhere whereby public depositories of state funds are required to segregate or look to the exact nature of those funds lawfully in the possession of or in the custody of the Treasurer of State, and it is my judgment that securities hypothecated under the Uniform Depository Act may not be segregated for the purpose of protecting portions of such moneys deposited, whether such moneys represent funds of a sanitary district, proceeds of gasoline tax or any other of the numerous funds held by the Treasurer of State.

Your third question as to the liability of the Treasurer of State on his bond under Sections 297 and 298, General Code, is predicated upon the fact that the Sanitary District Act contains no specific requirement that an additional bond be furnished to protect the sanitary district funds in the custody of such Treasurer.

Sections 297 and 298, General Code, were enacted in their present form in 1860, 57 O. L. 29. They read as follows:

Sec. 297.

“Before entering upon the discharge of the duties of his office, the treasurer of state shall give a bond to the state in the sum of six hundred thousand dollars with twelve or more sureties approved by the governor, conditioned for the faithful discharge of the duties of his office. Such bond, with the approval of the governor and the oath of office indorsed thereon, shall be deposited with the secretary of state and kept in his office.”

Sec. 298.

“The treasurer of state may be required at any time by the general assembly or the governor to give such additional bond as either the general assembly or governor deems necessary. If

the demand is not complied with within ten days to the satisfaction of the general assembly or the governor, the office of treasurer of state shall be held to be vacant, and the governor shall appoint a treasurer of state to fill the vacancy. The person so appointed shall give and file a bond and take the oath of office as required by law, and shall have the powers, perform the duties and be subject to the liabilities, of a duly elected and qualified treasurer of state."

There is little doubt in my mind but that the bond required by Section 297, conditioned "for the faithful discharge of the duties of his office", protects the State of Ohio and the sanitary districts against loss of funds after their delivery to the State Treasurer pursuant to Section 6602-79, General Code. It is obvious that the protection of such funds is one of the statutory duties imposed upon the Treasurer of State as such. Should it appear that an additional bond is necessary in view of the amount of sanitary district funds held by the Treasurer, the Governor has ample authority to require such additional bond under Section 298, General Code.

Respectfully,

HERBERT S. DUFFY,

*Attorney General*

---

FORFEITED LAND--SALE-- PROVISIONS SECTION 5751 G. C.  
 MANDATORY--DELINQUENT TAX LIST--PUBLICATION  
 MANDATORY--DISCHARGE IN BANKRUPTCY--BANK-  
 RUPT NOT DISCHARGED FROM PAYMENT OF TAXES--  
 WHITTEMORE ACTS--LAND OWNER UNDER INSTALI-  
 MENT PLAN--STATUS WHEN DELINQUENT.

*SYLLABUS:*

1. *Section 5751, G. C., providing for the publication of notice of sale of forfeited lands, is mandatory. Such notice must be given in the form prescribed by Section 5754, G. C., within the time provided in Section 5751, G. C., and the sale must be held on the date provided by such section.*

2. *Section 5704, G. C. requiring publication of the delinquent real estate tax list, is mandatory. It is so declared by such section and the prosecuting attorney has no authority to institute proceedings to foreclose the state's lien for delinquent taxes until such publication is made.*

3. *A discharge in bankruptcy does not discharge the bankrupt from the payment of his taxes, Section 35, Title II, United States Code Annotated.*