

void. *Porter vs. Canyon County Farmers Mutual Frie Insurance Company*, 45 Idaho, 522, 263 P. 632.”

While the Idaho statute defined public moneys to exclude moneys in the hands of the clerk of the district court, our statute specifically authorizes the deposit of the funds in question. From the court's discussion, I find no depository statute of Idaho specifically covering the funds involved. We have such a statute in Sections 2288-1c to 2288-1j, General Code, and this is believed sufficient to make the Idaho decision inapplicable here. Our statute authorizes the clerk or bailiff of a municipal court to deposit “money held or controlled by” him.

In the past both the legislature and the courts of this state have recognized the public character of money in the hands of a public officer by virtue of his office, although not belonging to the political subdivision. Section 2921, General Code, authorizes civil actions for the recovery of misapplied or illegally drawn “funds of the county or public moneys in the hands of the county treasurer or belonging to the county.” In the case of *State ex rel vs. Baker*, 88 O. S. 165, it was held that said section applied to money in the custody of the county as bailee, although such funds might not fall within the provisions “funds of the county” or “belonging to the county.” The court regarded such funds as “public moneys in the hands of the county treasurer.” In enacting a depository statute requiring security, the legislature recognized the public character of the deposits in question, although they might include sums which would ultimately become payable to private litigants.

Specifically answering your question, it is my opinion that under the Act of June 25, 1930, c. 604, 46 Stat. 809 (12 U. S. C. A. Sec. 90), a national bank can legally secure deposits made under Sections 2288-1c, et seq., General Code, by the clerk or bailiff of a municipal court, although such deposits may include money received in payment of judgments and other funds which will subsequently be disbursed to private individuals or business associations.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4646.

WEEDS—DUTY OF OCCUPANT OF LAND TO CUT WEEDS—
TOWNSHIP TRUSTEES MAY ASSESS COST AGAINST
LANDOWNER WHEN.

SYLLABUS:

1. *It is the duty of the owner, lessee, agent or tenant having charge of*

land located in a township outside of a municipality to cut or have cut the weeds on the property described in Section 7150, General Code.

2. In the event such owner, lessee, agent or tenant refuses to cut the weeds within five days from the time he receives written notice from the township trustees, the trustees shall cause such weeds to be cut and the expenses shall be assessed against the landowner in accordance with Section 7153, General Code.

COLUMBUS, OHIO, September 11, 1935.

HON. NELSON CAMPBELL, *Prosecuting Attorney, Mount Gilead, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“In Canaan Township of this county formal complaints have been lodged with the Trustees against a landowner who has permitted his lands to grow up with noxious weeds.

As I find them, the sections of the Code referring to weeds are: 3374-2; 5942 et seq.; and 7146 et seq. None of these sections seems to be clear as to the extent to which Trustees can go either in the cutting of the weeds or in the taxing of the costs of such cutting against the landowner.

Section 5942 refers to a ‘strip four feet wide on his side along the line of a partition fence.’

Section 7150 refers to certain weeds ‘growing on lands in a township.’ Since this section occurs in the chapter entitled ‘Road Work’, I am wondering whether it is interpreted by itself or in connection with the rest of the chapter.

QUERY: Can the Trustees of a township, when a formal complaint has been filed, cut or have cut all the noxious weeds, mentioned in the statute, on lands in the township, or are they restricted to a strip four feet wide along a partition fence? Is there a limit to the costs which may be assessed against the landowner from whose lands noxious weeds are cut?”

As stated in your letter, Sections 5942 et seq., General Code, provide for the cutting of certain weeds along the line of a partition fence. Sections 4245-1 et seq., General Code, provide for the cutting of noxious weeds within a municipality. Your question relates generally to the cutting of noxious weeds located in a township outside of a municipality. Section 7150, General Code, reads as follows:

“Upon written information that Canada or Russian thistles,

wild parsnip, wild carrot, oxeye daisy or wild mustard are growing on lands in a township, and are about to spread or mature seeds, the trustees of the township shall cause a written notice to be served upon the owner, lessee, agent or tenant having charge of such land notifying him that said noxious weeds are growing on such lands and that they must be cut and destroyed within five days after the service of such notice."

If the request of the township trustees is refused or ignored the trustees may cause the weeds to be cut. Sections 7152 and 7153, General Code, have reference to both your first and second questions, and read as follows:

Sec. 7152.

"If the owner, lessee, agent or tenant having charge of the lands mentioned in section 7150, fails to comply with such notice, the township trustees shall cause said noxious weeds to be cut and destroyed and may employ the necessary labor to carry out the provisions of this section. All expenses incurred shall, when approved by the township trustees, be paid out of any money in the treasury of the township not otherwise appropriated."

Sec. 7153.

"The township trustees shall make a written return to the board of commissioners of their county of their action under the next three preceding sections with a statement of the charges for their services, the amount paid for the performing of such labor and the fees of the officers who made the service of the notice and return and a proper description of the premises. Such amounts, when allowed, shall be entered upon the tax duplicate and be a lien upon such lands from and after the date of the entry and be collected as other taxes and returned to the township with the general fund."

From a reading of the above quoted sections it is apparent that it is the duty of the owner of the property located in a township outside of a municipality to cut the weeds described in Section 7150, General Code, *supra*. Furthermore, if the owner refuses to have these weeds cut on written notice from the township trustees, it is the duty of the trustees to have the weeds cut and the expenses be listed as a lien on the real estate. In your letter you state that Section 7150, General Code, appears in Part II, Title IV, under Chapter 6, entitled "Road Work". However, there is nothing in the language of this section which would indicate that it has other than general application to all lands located in a township outside of a municipality. This has

been the general understanding despite the heading under which Section 7150, General Code, appears.

In an opinion to be found in *Opinions of the Attorney General for 1920*, Vol. I, page 795, 796, the following appears:

“However, no substitute appears to have been provided in either the Cass act or the White-Mulcahy act for sections 7150 to 7153. These last named sections, as has been seen, do not relate to noxious weeds on highways, but to weeds on private lands.”

It is significant to note that Section 5942, General Code, provides that the owner of land adjacent to a partition fence shall in addition to cutting noxious weeds near the fence likewise cut brush and briars. Section 7150, General Code, is limited to the cutting of certain specific noxious weeds. Apparently the legislature felt that these particular weeds were so dangerous that they should not be permitted to grow and subsequently spread even though they were a considerable distance from a partition fence.

You also inquire as to whether or not there is a limit to the amount which may be assessed against the landowner when the township trustees cut the weeds pursuant to Section 7152, General Code, *supra*. You will notice that Section 7153, General Code, specifically states that the cost of such cutting by the township trustees shall include the “amount paid for the performing of such labor and the fees of the officers who made the service of the notice and return.” It would seem to follow that the township trustees are limited to a recovery of the items specifically enumerated in Section 7153, General Code. No more than the actual cost of the cutting together with the cost of serving the notice may be assessed against the landowner.

In view of the above it is my opinion, in specific answer to your inquiry, that:

1. It is the duty of the owner, lessee, agent or tenant having charge of land located in a township outside of a municipality to cut or have cut the weeds on his property described in Section 7150, General Code.

2. In the event such owner, lessee, agent or tenant refuses to cut the weeds within five days from the time he receives written notice from the township trustees, the trustees shall cause such weeds to be cut and the expenses shall be assessed against the landowner in accordance with Section 7153, General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.