

of a pecuniary nature whatsoever from which income is or may be derived, however evidenced, excepting (1) patents and copyrights and royalties derived from each, (2) interests in land and rents and royalties derived therefrom, other than equitable interests divided into shares evidenced by transferable certificates and (3) employment and partnership contracts and salaries and wages derived therefrom.

All equitable interests, life or other limited estates and annuity interests in any investment hereinbefore described, or in any fund made up of any such investments, wherever located."

It will be noted from a consideration of the statutory provisions above quoted that United States government bonds and interests in land and rents and royalties therefrom, (other than land trust certificates) are excepted from the definition of "investments" as made by the provisions of this section.

It is further noted, with respect to the question here submitted, that by the provisions of the section of the General Code above quoted all equitable interests, life or other limited estates and annuity interests in any investment before described in said section, or in any fund made up of any such investments, are themselves defined as investments for purposes of taxation. It appears from this, however, that the only equitable interests that are defined as investments and are taxable as such are equitable interests in things theretofore in said section defined as investments, in which, as above noted, there is not included government bonds or interests in land and rents and royalties therefrom. It follows, therefore, that equitable interests in United States government bonds and in lands (other than such as are evidenced by land trust certificates) are not taxable as investments; and that a beneficiary of a mixed trust, such as that presented in the question here under consideration, is not required to list as taxable income yield that part of the income of the trust which is derived from government bonds or from real estate constituting a part of the corpus of the trust, other than income yield from equitable interests in such lands in the trust as may be represented by land trust certificates.

In view of the conclusions here reached upon construction of the statutory provisions above noted, I do not feel called upon to consider certain obvious constitutional questions which might otherwise be presented.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4090.

DEPOSITORY—COUNTY GENERAL FUND MAY NOT BE LEGALLY  
INVESTED IN GOVERNMENT BONDS.

*SYLLABUS:*

*The "general fund" of a county may not be legally invested in government bonds, even though the county is unable to obtain a legal depository therefor.*

COLUMBUS, OHIO, February 26, 1932.

HON. EDWIN S. DIEHL, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—This will acknowledge your request for my opinion in answer to the following question :

“May the county invest surplus funds over and above amount permitted in a depository in government bonds?”

I assume your question has reference only to the funds in the hands of the county treasurer arising from taxes and does not include sinking funds, the investment of which is specifically provided for by statute (Sections 2976-18 to 2976-26 General Code).

Section 2715 of the General Code, with reference to the deposits of county funds is as follows:

“The commissioners in each county shall designate in the manner hereinafter provided a bank or banks or trust companies situated in the county and duly incorporated under the laws of this state, or organized under the laws of the United States, as inactive depositories, and one or more of such banks or trust companies located in the county, at least one of which shall be located at the county seat as active depositories of the money of the county. In a county where such bank or trust company does not exist or fails to bid as provided herein, or to comply with the conditions of this chapter relating to county depositories, the commissioners shall designate a private bank or banks, located in the county as such inactive depositories, and if in such county no such private bank exists or fails to bid as provided herein, or to comply with the conditions of this chapter relating to county depositories, then the commissioners shall designate any other bank or banks incorporated under the laws of this state, or organized under the laws of the United States, as such inactive depositories. If there be no such bank or trust company incorporated under the laws of the state, or organized under the laws of the United States, located in the county, then the commissioners shall designate a private bank, if there be one located therein, as such active depository. No bank or trust company shall receive a larger deposit than one million dollars, except that in case the county commissioners shall find that there will be an excess of money in the treasury of any county which it will be impossible to deposit under the limitation of one million dollars, such bank, banks or trust companies shall be permitted to receive an amount not to exceed five million dollars.”

You will note that in the provisions of this statute there is no mention of investment of funds. It must also be borne in mind that by reason of the office and the conditions of his bond, the county treasurer is an insurer of funds coming into his hands. See 6 O. S., 608.

In the first paragraph of the syllabus of the case of *Fidelity & Casualty Company vs. Union Savings Bank*, 119 O. S., 124, it was held that:

“The legislature alone has authority to empower a public official to

make a deposit of state funds in a banking institution and to provide the terms and conditions of such deposit."

Although the court in this case had before it only the statutes concerning the powers and duties of a state treasurer, similar reasoning should lead the court to a like decision in the case of a county treasurer; for the statutes concerning a county treasurer grant no specific authority to the county treasurer to invest public funds, regardless of the type of investment. Where the legislature has specifically provided the manner of custody and deposit of the county funds, it must be presumed that such method was intended by the legislature to be exclusive.

Specifically answering your inquiry, I am of the opinion that the "general fund" of a county may not be legally invested in government bonds, even though the county is unable to obtain a legal depository therefor.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4091.

GASOLINE AND MOTOR VEHICLE LICENSE TAX—MUNICIPALITY  
MAY USE ITS PORTION TO PAY SPECIAL ASSESSMENTS LEVIED  
BY COUNTY FOR STATE ROAD IMPROVEMENT—LIMITATIONS.

*SYLLABUS:*

*The municipality's share of the motor vehicle license tax and the motor vehicle fuel tax may be used to pay special assessments levied by the county commissioners for a state road improvement against property owned by a municipality and abutting thereon, provided such improvement is included in one of the purposes contained in sections 6309-2, 5537 and 5541-8, General Code, and provided the property so assessed is not the property of a municipally owned public utility.*

COLUMBUS, OHIO, February 26, 1932.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your letter which reads as follows:

"Will you kindly furnish this Department with a written opinion on the following question:—

May the municipality's share of motor vehicle license (6309-2) and gasoline tax (5537 and 5541-8) funds be used to pay special assessments levied by the county commissioners for a state road improvement running through a municipality, against property owned by a municipality and abutting thereon?"

Section 6309-2, General Code, provides that the portion of the motor vehicle license tax distributed to municipal corporations shall constitute a fund which shall be used for the maintenance, repair, construction and repaving of public