

2155—A

ATTORNEY GENERAL.—MONEYS COLLECTED BY SPECIAL COUNSEL.—PAYABLE INTO DEPOSITORY "TRUST FUND"—REQUISITION MAY BE MADE AGAINST SUCH "TRUST FUND" TO PAY SPECIAL COUNSEL FEES.

*SYLLABUS:*

*Moneys collected by special counsel, appointed by the attorney general pursuant to Section 336-1, General Code, and paid over to the attorney general are payable into the depository trust fund pursuant to Section 24-5, General Code, and thereafter withdrawal through the prescribed form of requisition may be made by the attorney general against said trust fund for payment of special counsel fees.*

COLUMBUS, OHIO, March 25, 1938.

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

DEAR SIR: This will acknowledge receipt of your communication of March 18, 1938, which reads as follows:

"Will you kindly render your formal opinion as to the correct method of procedure in the payment of fees to resident special counsel appointed by you to collect claims due the state certified to your office for collection.

Specifically, I should like to be advised as to whether or not moneys so collected by your office are payable into the depository trust fund under Section 24-5, General Code, and whether or not such attorneys' fees as are allowed may be withdrawn from such fund and the procedure to be followed in such event."

Under the provisions of Section 336-1, General Code, effective August 7, 1937, the Attorney General is authorized to appoint special counsel for the collection of claims due the state. That section reads as follows:

"If, in his opinion, the interests of the state require it, the attorney general may appoint special counsel to represent the state in connection with all claims of whatsoever nature which are certified to the attorney general for collection under any provision of law or which the attorney general is authorized to collect.

Such special counsel appointed pursuant to authority con-

ferred by this section shall be paid for their services from funds collected by them in an amount or amounts approved by the attorney general.”

It will be noted that such special counsel “shall be paid for their services from funds collected by them.” It is evident that, in the absence of any other statutory provision, the attorney general would be justified in making disbursement of fees directly from the moneys so collected by special counsel. However, the General Assembly, in 1933, enacted Section 24-5, General Code, whereby provision was made for the opening of “a separate or individual account” by the chief officer of each state office “with the depository trust fund in the state treasury.” Said Section 24-5, General Code, reads as follows:

“The financial officer or chief of each state office, institution, department, board or commission receiving contingent money shall open a separate or individual account with the depository trust fund in the state treasury in the name of his division. Withdrawals of money from the state depository trust fund shall be made by requisition on the treasurer of state as custodian of the depository fund by the authorized official of the office or department wherein the receipt originated and such requisition shall show the purpose of the withdrawal and such other information as the treasurer of state may require; \* \* \*.”

It is obvious that the foregoing statutory provision was enacted for the purpose of preserving an exact and certain check upon all state funds in the possession of the financial and chief officers of the various state departments.

It will be noted that the account established by such state officer is a separate and individual one, and is made subject to withdrawals by such state officer through requisition on the treasurer of state. The account is specifically designated as a “trust fund”, the treasurer being the trustee, and the depositing state officer the trustor with power of withdrawal through requisition. The funds so deposited are subject to any proper charge or deduction by way of withdrawal through requisition, including the “contingent fees” provided for by Section 336-1, General Code.

Therefore, in specific answer to your question, it is my opinion that moneys collected by special counsel, appointed pursuant to Section 336-1, General Code, and paid over to the attorney general by such special counsel, are payable into said depository trust fund, and should be so deposited pursuant to Section 24-5, General Code. That, thereafter,

proper withdrawal through the prescribed form of requisition, "Form No. 94 D. of F.", may be made by the attorney general against the separate or individual trust fund account for such special counsel fees or other charges pursuant to said section, whereupon the remainder of the amount collected should be forthwith paid into the state treasury.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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2156.

APPROVAL—BONDS CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO, \$2,000.00, PART OF ISSUE DATED FEBRUARY 1, 1921.

COLUMBUS, OHIO, March 26, 1938.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*  
GENTLEMEN:

RE: Bonds of City of Cleveland, Cuyahoga County,  
Ohio, \$2,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated February 1, 1921. The transcript relative to this issue was approved by this office in an opinion rendered to your board under date of August 1, 1935, being Opinion No. 4486.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*