

courts without pumber that if after payment of the assessment the law under which the ditch was constructed or the assessment made was held unconstitutional the assessment cannot be recovered back unless payment was made under a proper protest? 30 Cyc., 1315.

Title to those moneys must be somewhere and in somebody. It is not in the contributors to the fund. Where else can it be than in the county or its agent, the county treasurer?"

In case of the firemen's pension fund, those who make voluntary contributions lose all dominion over the money. Until the happening of certain contingencies, these contributors have no title to or control over any portion of the fund. While the part raised by contributions as well as the portion derived from taxation are in the hands of the municipal treasurer, they are public funds.

In the light of the foregoing, it is my opinion that moneys deposited in a bank by the treasurer of a municipality which constitute the firemen's pension fund are public funds.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

1055.

DISAPPROVAL, NOTES OF PULTNEY TOWNSHIP RURAL SCHOOL DISTRICT, BELMONT COUNTY, OHIO—\$5,500.00.

COLUMBUS, OHIO, July 20, 1933.

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

GENTLEMEN:

Re: Notes of Pultney Twp. Rural School Dist.,  
Belmont County, Ohio, \$5,500.00.

I have examined the transcript relative to the above purchase of notes which have been authorized in anticipation of the August, 1933, tax settlement, under the provisions of Section 2293-4, General Code. The certificate of the budget commission issued to this school district recites that the estimated amount to be received from the August, 1933, real and public utility tax settlement, other than taxes then to be received for the payment of debt charges and other than any advances, is \$5,500.00. Section 2293-4, General Code, limits the amount which may be borrowed in anticipation of any semi-annual tax settlement to 50% of the amount so certified by the budget commission.

It is obvious that the board of education of the above school district has authorized notes in excess of the amount which may be authorized under the provisions of Section 2293-4, General Code, and it is accordingly my opinion that you should not purchase this issue.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*