It has become the practice and without question so far as I am informed, to allow mileage to state officials and state employes for the use of their private automobiles in the prosecution of their public duties.

I am, therefore, of the opinion, in answer to your second question, that mileage may be allowed to those members of county boards of elections who attended the meeting of those boards held at Columbus, Ohio, on May 22nd, 1930, upon call of the Secretary of State, for the use of their automobiles in attending such meeting as part of their legitimate expense in attending the said meeting. The mileage rate should be fixed in good faith and at such an amount as will be commensurate with the actual cost of operating the automobile.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2047.

BANK CONSOLIDATION—STATE TREASURER MUST WITHDRAW STATE DEPOSITS IN EXCESS OF $300,000.00.

SYLLABUS:

In the event two or more banks are consolidated by authority of Section 710-86, et seq., General Code, and by reason of such consolidation the consolidated bank has on deposit State funds in excess of the maximum permitted by Section 330-1, General Code, it becomes the duty of the State Treasurer to readjust the deposits of State funds in such a manner that no one bank will have on deposit at any one time, funds in excess of the maximum permitted by law. The same rule would apply in case of the merger of banks and when national banks are consolidated or when a State bank or trust company is consolidated into a National Banking Association by authority of the National Banking Act.

COLUMBUS, OHIO, July 1, 1930.

HON. H. ROSS AKE, *Treasurer of State, Columbus, Ohio.*

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

> "The practice of some of the banks of the State of Ohio in merging and consolidating raises the following question with reference to deposits by the State of Ohio in such banks prior to their merger or consolidation.
>
> Under Section 330-1, General Code, the maximum amount which may be deposited in any one bank is fixed at $300,000. In case of a merger or consolidation of two or more banks whose combined deposits exceed the maximum of $500,000 as fixed in Section 330-1, General Code, is the authority to hold the apparent excessive deposit retained by the merged or consolidated institution, or must the Treasurer of State, under the Section above referred to, withdraw such amount of State deposits as may be in excess of the statutory maximum of $300,000?"

The law with reference to State depositories, fixes the maximum amount of deposits which may be on deposit at any time in one depository. Section 330-1, General Code, provides with reference thereto:

"No inactive depository shall have on deposit at any time state funds and state insurance funds in excess of the amount of its paid in capital stock and in no event more than three hundred thousand dollars ($300,000.00). No active depository shall have on deposit at any time state funds and state insurance funds in excess of double the amount of its paid in capital stock."

Section 710-86, General Code, provides that a bank may consolidate with or transfer its assets and liabilities to another bank. Before such consolidation or merger becomes effective, each bank concerned in such consolidation or transfer shall file or cause to be filed with the Superintendent of Banks certified copies of all proceedings had by its directors and stockholders with reference to such consolidation or transfer, including a complete copy of the agreement made and entered into between the said banks with reference to such consolidation or transfer.

Section 710-88, General Code, provides in part, as follows:

"In case of consolidation, when the agreement of consolidation is made and a duly certified copy thereof is filed in the office of the Secretary of State, together with a certified copy of the approval of the superintendent of banks to such consolidation, the banks, parties thereto, shall be held to be one company possessed of the rights, privileges, powers and franchises of the several companies, but subject to all the provisions of law relating to the different departments of its business. * *

On filing such agreement all and singular the property and rights of every kind of the several companies, including the exclusive right in and to the corporate name of each of the banks parties to such agreement shall thereby be transferred to and vested in such new compeny, and be as fully its property as they were of the companies parties to such agreement. * * "

From the foregoing, it appears that when banks consolidate, the new company thus formed, possesses all the rights, privileges, powers and franchises, and all the property of the several banks which are parties to the consolidation. It is subject, however, to all provisions of law relating to the different departments of its business. Similar provisions are made in the National Banking Act with reference to the consolidation of national banks. (Section 34 Title 12 U. S. C. A.), also with reference to the consolidation of a state bank or trust company with a national bank, (Section 34a Title 12 U. S. C. A.) and with reference to the organizations of a state bank as a National Banking Association, (Section 35 Title 12 U. S. C. A.)

From the fact that the new company, formed by the consolidation of two or more banks, succeeds to all the rights and powers of the several constituent banks, it follows that the new bank thus formed, possesses the power to receive deposits of State funds as per the awards which had previously been made to each of the individual banks which join to form the consolidation, without the formality and necessity of a new award being made to the newly constituted bank formed by the consolidation. This right, however, is subject to whatever restrictions or limitations may exist with reference to the deposit of State funds in public depositories. One such limitation is set forth in Section 330-1, supra, and, as will be noted, places an inhibition on any one bank holding at one time inactive State deposits in excess of $300,000, and active State deposits and State insurance funds in excess of double the amount of its paid in capital stock.

Should a bank, formed by the consolidation or merger of two or more banks, have by reason thereof, deposits of State funds in excess of the amounts permitted

by Section 330-1, General Code, it is, in my opinion, the duty of the State Treasurer to readjust the State deposits in such a manner so that no one bank will have on deposit an amount in excess of the maximum fixed by law. The same rule would apply in case of the merger of banks and when national banks are consolidated by authority of the National Banking Act.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2048.

ENGINEERS—EMPLOYED BY MUNICIPALITY ON PER DIEM BASIS—WHEN SALARIES PROPERLY INCLUDED AS PART OF COST OF SPECIFIC IMPROVEMENT AND PAYABLE FROM ASSESSMENTS—REIMBURSEMENT OF GENERAL FUND FROM SPECIAL ASSESSMENTS UNAUTHORIZED.

SYLLABUS:

1. *When a municipality employs engineers on a per diem basis for the purpose of performing engineering services in connection with any improvements which have been undertaken, and such engineers' employment is dependent upon the existence of improvement projects, their daily wage may be designated as payable out of any such specific improvement fund or funds, and it constitutes a proper item of cost of such improvement or improvements, and as such is assessable.*

2. *If such engineers are paid salaries out of the general fund, there is no authority for reimbursing the general fund to the extent that a portion of such salaries may be allocated to a particular improvement, and therefore such engineering cost may not be assessed.*

COLUMBUS, OHIO, July 1, 1930.

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

GENTLEMEN:—Your letter of recent date is as follows:

> "Section 3896, G. C., in part provides that the cost of an improvement which is to be assessed, shall include the expense of the preliminary and other surveys.
>
> The syllabus of Opinion No. 2165, page 1278, year 1928, reads:—
>
> 'Where the surveying and engineering of an improvement are performed by engineers appointed for a definite period and paid regular salaries by a city from appropriations made by council from the general fund, the cost of such service, although it may be definitely and accurately ascertained, cannot be included in the cost of the improvement and assessed against property owners, thereby effecting a reimbursement of the general fund from which the salaries of such engineers are paid.'
>
> Question 1. When a municipality employs engineers on a per diem basis and definitely determines the engineering cost in connection with an improvement, the cost of which is to be assessed against benefited property, may such engineering be included as a part of the cost of such improvement?
>
> Question 2. May the compensation of such engineers be paid from the general fund of a municipal corporation, and such fund be reimbursed from the special assessment improvement fund?"