

You do not ask, and I express no opinion on the question of the manner of the collection of the taxes levied on such deposits.

Specifically answering your inquiry it is my opinion that:

1. The federal statutes do not exempt postal savings deposits from taxation by the state.

2. By reason of the provisions of Section 5328-1, General Code, postal savings deposits are subject to taxation as deposits, and should be entered on the classified list and duplicate of taxable property.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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200.

DISAPPROVAL, LEASE TO MIAMI AND ERIE CANAL LANDS IN THE  
CITY OF PIQUA, MIAMI COUNTY, OHIO.

COLUMBUS, OHIO, March 9, 1933.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You recently submitted to me for my examination and for my approval or disapproval a certain canal land lease in triplicate, executed by you in your official capacity as superintendent of public works and as director of said department to the city of Piqua. By this lease instrument, there is leased and demised to the city of Piqua for the term of ninety-nine years, renewable forever, a certain tract of 37.645 acres of abandoned Miami and Erie Canal lands to the south of and contiguous to the city of Piqua, for "general municipal purposes".

Under House Bill No. 162, enacted April 11, 1925, known as the Stevens Act, that part of the Miami and Erie Canal which extends from the Maumee River at Defiance, Ohio, to a point five hundred feet north of the Middletown Dam near the north corporation line of the city of Middletown, Ohio, was abandoned for canal purposes. Section 5 of said act provided that any city, village or other political subdivision of the state desiring to lease any portion of such abandoned canal lands, including feeder lands, basins, wide waters and state lots theretofore used in connection with canal property lying within or adjacent to the boundaries of any such political subdivision, had a right to file an application for the lease of such abandoned canal lands with the superintendent of public works; and by section 9 of this act the superintendent of public works was authorized to execute a lease of such lands to such political subdivision on its application for a term of not less than fifteen years, or for any multiple of fifteen years up to and including ninety years, or for a term of ninety-nine years, renewable forever. Under this act the superintendent of public works was authorized to execute a lease of such abandoned canal lands to a city or other political subdivision without any stated limitation as to the purpose for which the lands were leased, or for which they were to be used by the city or other political subdivision taking the lease.

Amended Substitute Senate Bill No. 194, enacted April 29, 1931, which is known as the DeArmond Act, in terms provided for the abandonment of the Miami and Erie Canal from a point where said canal joins with the Maumee

River in Providence Township, Lucas County, Ohio, to a point five hundred feet north of the corporation line of the city of Middletown, Ohio. 114 O. L. 546. This act, which went into effect on the 5th day of August, 1931, and Amended Substitute Senate Bill No. 69, known as the Farnsworth Act, which was enacted April 22, 1931, and went into effect on August 5, 1931, cover the whole field with respect to the abandonment of the Miami and Erie Canal between the points noted in the DeArmond Act and with respect to the lease of such part of said canal lands as is not needed for highway purposes. In other words, the only authority that the superintendent of public works has to lease the tract or parcel of abandoned Miami and Erie Canal lands here in question is that found in the DeArmond Act which applies to abandoned Miami and Erie Canal lands between the points therein indicated and in the Farnsworth Act which applies to all abandoned canal lands in the state. Under the Farnsworth Act such lands can only be leased for public park and recreational purposes. Likewise, under the DeArmond Act the only purpose for which any city, village or other political subdivision can take a lease for abandoned canal lands covered by said act, at any time within two years of the effective date of this act, is that such lands may be used by the city or other political subdivision for park purposes. After the lapse of two years from the effective date of the DeArmond Act, such abandoned Miami and Erie Canal lands as have not been designated by the director of highways as necessary for state highway improvements or have not been leased for park purposes may be leased for other purposes whether such lease be to a political subdivision or to any other corporation or person. However, as above indicated, during the first two years of the life of this act a city or other political subdivision can take a lease on these lands for park purposes only.

As before noted, the lease here in question is for "general municipal purposes". From a communication received by me from the city manager of the city of Piqua, I am advised that the purpose of this city in obtaining a lease of this tract of abandoned canal lands is to beautify the same and to prevent such lands from coming into the possession and control of persons who may use these lands for junk yards, automobile wrecking grounds and for other purposes of an undesirable nature. I am likewise advised that the city has in contemplation the construction of a sewage disposal plant at a point about two miles south of the city limits, and that these canal lands would give the city a right of way for a sewer to the disposal plant if and when the same is constructed. I am further advised that the city may decide to use these lands for the location thereon of electric light poles and wires in connection with its municipal activities.

Assuming that the city of Piqua is authorized to take a lease on the lands here in question for park purposes, it is not clear to me that the other purposes indicated in the communication of the city manager would be necessarily inconsistent with the primary use of the lands for park purposes. However, this is a question that I am not called upon to consider at this time for the reason that the lease here in question is not one for park purposes.

Likewise, for this reason, I am not called upon at this time to consider the question whether under the provisions of this act, or otherwise, the city of Piqua is authorized to lease for park purposes canal lands located outside of the city limits. It has been held that a city may acquire lands outside of the city limits by purchase for this purpose. This conclusion follows from the fact that cities are given statutory authority to appropriate lands outside of the city limits for park purposes. See *City of Cleveland vs. Painter*, 6 O. N. P.

N. S.) 129, 131; Opinions of the Attorney General, 1927, Vol. IV, page 2480. Obviously, these rulings are not dispositive of the question of the authority of the city of Piqua to lease the lands in question for park purposes under its authority generally to appropriate lands for this purpose. Likewise, the question remains as to whether under the provisions of sections 13 and 14 of the DeArmond Act a city may not lease abandoned canal lands for park purposes within the two-year limitation in said act whether such lands are within or without the corporate limits of the city.

As above noted, it is not necessary for me to dispose of these questions in my consideration of the present lease. I am required to disapprove the present lease for the reason that the same is for a purpose other than that authorized at the present time by the DeArmond Act; and my only purpose in mentioning the other questions is that consideration may be given to the same by the officials of this city in case they should determine to make an application for the lease of the land here in question for park purposes.

For the reasons above stated, the lease in its present form is disapproved and the same is herewith returned to you.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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201.

APPROVAL, BONDS OF CITY OF LIMA, ALLEN COUNTY, OHIO,  
\$10,000.00.

COLUMBUS, OHIO, March 9, 1933.

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

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202.

INSOLVENT NATIONAL BANK—RECEIVER NOT REQUIRED TO PAY  
STATE TAX ON SHARES OF BANK SINCE STOCK IS WORTHLESS  
—TAX ON DEPOSITS IS A PROVABLE CLAIM.

**SYLLABUS:**

1. *The receiver of an insolvent national bank in this state cannot be required to pay the taxes levied upon the shares of the stockholders of such bank under the provisions of section 5408, et seq., General Code, when such shares are valueless and there is no fund from which the receiver can be reimbursed for the amount of such taxes without paying them from assets of the bank which belong to the bank's creditors.*

2. *Taxes on deposits in a national bank assessed in the manner provided by section 5411-1, General Code, and at the rate provided in section 5638, General Code, are, if the same have not been paid by the bank, a provable claim against*