

Note from the Attorney General's Office:

1965 Op. Att'y Gen. No. 65-190 was overruled in part by
1982 Op. Att'y Gen. No. 82-054.

OPINION 65-190

Syllabus:

Where the clerk of municipal court holds money which comes into his custody by virtue of Section 1901.31 (F), Revised Code, the clerk may deposit such funds in a state or national bank under the provisions of Section 1901.31 (G), Revised Code, and subject to the provisions of Sec-

tion 131.11, Revised Code. Any interest earned and paid upon such deposits should accrue to the party to whom the principal of the fund is properly payable under the provisions of Section 2919.02, Revised Code.

To: Joseph Murray, Ashland County Pros. Atty., Ashland, Ohio
By: William B. Saxbe, Attorney General, October 25, 1965

Your request for my opinion is as follows:

"May I please have your formal or informal opinion as to whether or not a clerk of a municipal court in Ohio may deposit funds of the court in an interest bearing savings account in a state or national bank.

"Section 1901.31 (G), of the Ohio Revised Code, governs the deposit of Court funds by a Clerk of a Municipal Court. That section, in part, reads as follows:

'The clerk and deputy clerks of a municipal court shall be selected, compensated, give bond, and have powers and duties as follows:

'(G) All moneys paid into a municipal court shall be noted on the record of the case in which they are paid and shall be deposited in a state or national bank selected by the clerk.'

"This section limits the type of depository to a 'state or national bank.'

"The problem is, then, can the Clerk of a Municipal Court deposit funds of the Court in an interest bearing savings account in a state or national bank, or is the Clerk limited to depositing Court funds in a non-interest bearing checking account in a state or national bank?

"If the answer to the first question is to the effect that the clerk may deposit these funds in an interest bearing savings account, the additional question is who shall be the recipient of the interest monies earned? The answers to these questions will be greatly appreciated."

It appears that the funds referred to on your letter are those which come into the custody of the Clerk of Municipal Court by virtue of Section 1901.31 (F), Revised Code, which provides in pertinent part as follows:

"(F) The clerk of a municipal court

shall receive and collect all costs, fees, fines, penalties, bail, and other moneys payable to the office or to any officer of the court and issue receipts therefor, and shall each month disburse the same to the proper persons or officers and take receipts therefor, provided that fines received for violation of municipal ordinances shall be paid into the treasury of the municipal corporation whose ordinance was violated and to the county treasury all fines collected for the violation of state laws, subject to sections 3375.50 and 3375.53 of the Revised Code. Moneys deposited as security for costs shall be retained pending the litigation.
* * *"

Aside from Section 1901.31 (G) Revised Code, partially quoted in your letter, which expressly confers on the Clerk of Municipal Court power to deposit monies received, Section 131.11, Revised Code, implies that such deposits may be made, reading in part:

"No money held or controlled by any probate court, juvenile court, clerk of the court of common pleas, sheriff, county recorder, director of a county department of welfare, clerk or bailiff of a municipal court, prosecuting attorney, resident or division deputy directors of highways, or treasurer of a university receiving state aid, in excess of that covered by federal deposit insurance as hereinafter described shall be deposited in any bank, banks, or trust company or trust companies until there is a hypothecation of securities as provided for in section 135.16 of the Revised Code, or until there is executed by the bank, banks, trust company or trust companies selected, a good and sufficient undertaking, payable to the depositor, in such sum as said depositor directs, but not less than the excess of the sum that is deposited in such depository or depositories, at any one time over and above such portion or amount of such sum as is at any time insured by the federal deposit insurance corporation created pursuant to the act of congress known as 'The Banking Act of 1933,' or by any other agency or instrumentality of the federal government, pursuant to said act or any acts of congress amendatory thereof.

"* * *

* * *

* * *"

(Emphasis added)

Also in the case of Busher, Clerk v. Fulton, Superintendent, 128 Ohio St., 485, it is stated at page 496:

"Other authorities sustain the general proposition that where public funds or other trust funds come into the hands of a public official, and the law makes no specific provision as to what shall be done with them, such official has the right to place such funds on deposit in a reputable bank. Such deposit is not illegal or wrongful, the deposit is general in the absence of any sufficient agreement making it otherwise, the relation of debtor and creditor is created between the bank and the official, and upon the insolvency of the bank the deposit is not entitled to preference. City of Sturgis v. Meade County Bank, 38 S. D., 317, 161 N.W., 327; Incorporated Town of Conway v. Conway, 190 Iowa, 563, 180 N.W., 677; 7 Corpus Juris, 634.

" * * *

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* * *"

In Opinion No. 2720, Opinions of the Attorney General for 1961, page 748, one of my predecessors had occasion to consider a question somewhat similar to the instant one. The question therein was whether the clerk of the common pleas court could invest funds in his custody in interest bearing accounts, and if so, should the interest so earned be turned into the county treasury. The syllabus of that opinion reads as follows:

"Where the clerk of the court of common pleas holds money, such as fees and trust funds, by virtue of his office, such money not belonging to the county, the clerk may deposit such funds in a bank, subject to the provisions of Section 131.11, Revised Code; and under the provisions of Section 2919.02, Revised Code, any interest earned and paid upon said deposits should be apportioned to, and become a part of, said fees or trust funds."

While that opinion dealt with the clerk of the court of common pleas, what was said there is equally applicable to the clerk of a municipal court. The duties of each clerk with regard to monies received by them is similar. Section 2303.08, Revised Code, provides in part:

"The clerk of the court of common pleas shall * * * pay over to the proper parties all money coming into his hands as clerk."

Section 1901.31 (F), supra, enumerates similar duties for the clerk of municipal court.

In view of the foregoing, I am of the opinion that the clerk of municipal court may deposit funds of the court in an interest bearing account and that such deposit is subject to the provisions of Section 2919.02, Revised Code, which reads in part:

"It is not unlawful under section 2919.01 of the Revised Code, * * * for a county auditor, county treasurer, probate judge, sheriff, clerk of the court of common pleas, or county recorder to deposit fees and trust funds coming into their custody as such officers, until such time as said officers are required to make payment of the official earnings of their offices into their respective fee funds under section 325.31 of the Revised Code, and until such time as the trust funds, held by them in their official capacities, may be paid to the person, firm, or corporation entitled to same, and any interest earned and paid upon said deposits shall be apportioned to, and become a part of, said fees or trust funds, and shall in no instance accrue to, and be received by, the official making said deposits, for his own use."

It is to be noted that this section does not specifically enumerate clerks of municipal courts. However, it would lead to a highly anomalous result if a clerk of one court could deposit funds in an interest bearing account while the clerk of another court could not. This is especially so because Section 131.11, supra, inferentially authorizes both clerks to make deposits.

Therefore, it is my opinion and you are accordingly advised that where the clerk of municipal court holds money which comes into his custody by virtue of Section 1901.31 (F), Revised Code, the clerk may deposit such funds in a state or national bank under the provisions of Section 1901.31 (G), Revised Code, and subject to the provisions of Section 131.11, Revised Code. Any interest earned and paid upon such deposits should accrue to the party to whom the principal of the fund is properly payable under the provisions of Section 2919.02, Revised Code.