

**OPINION NO. 73-111****Syllabus:**

The Uniform Depository Act, R.C. Chap. 135, does not permit two or more subdivisions to pool their interim deposits for the purpose of taking advantage of higher interest rates.

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**To:** Jerry A. Petersen, Geauga County Pros. Atty., Chardon, Ohio  
**By:** William J. Brown, Attorney General, November 9, 1973

Your request for my opinion reads in pertinent part as follows:

Investment of public funds has become a very important means of providing a little money for local governments. For those with large amounts available for investment, the returns can be quite substantial.

Bainbridge Township has recently committed a total of \$100,000.00 for investment with one of the local banks for a period of 30 days and will receive 9% interest on their investment; had this been for a lesser amount, the rate would have been 5 or 5 1/2%.

My question to you is whether townships in our county can pool their available interim funds with other townships to take advantage of this higher rate as there are few times when other townships would have this amount of money for investment. If these townships could pool these extra funds, it would result in much greater revenue.

The deposit or investment of the public moneys of the state or any of its subdivisions is governed by the Uniform Depository Act, R.C. Chap. 135. A deposit of money at interest is a loan, State v. Buttles, 3 Ohio St. 309, 315, (1854); and it is well settled that public moneys cannot, in the absence of specific statutory authority, be loaned or invested by the officers in charge thereof. State v. Buttles, supra, 3 Ohio St. at 315-319; Opinion No. 3052, Opinions of the Attorney General for 1953; cf. also Fidelity & Casualty Co. v. Savings Bank Co., 119 Ohio St. 124, 130-131 (1928); Board of Education v. Thompson, 33 Ohio St. 321, 327-328 (1877). The question is whether two or more boards of township trustees can, under the Uniform Depository Act, pool their interim moneys in order to gain a greater rate of interest on the deposit.

The term "interim moneys," is defined in the Act in the following language (R.C. 135.01):

(F) "Interim deposit" means a deposit of interim moneys. "Interim moneys" means public moneys in the treasury of the state or of any subdivision after the award of inactive deposits has been made in accordance with section 135.07 of the Revised Code, which moneys are in excess of the aggregate amount of the inactive deposits as estimated by the governing board prior to the period of designation and which the treasurer or governing board finds should not be deposited as active or inactive deposits for the reason that such moneys will not be needed for immediate use but will be needed before the end of the period of designation. (Emphasis added.)

The period of designation is that period for which an award is made by a political subdivision to a bank for the deposit of their public monies. R.C. 135.05. Such designations are made biennially. R.C. 135.12. Interim deposits shall be applied for by an institution to the governing board. R.C. 135.08 reads in part as follows:

Each eligible institution desiring to be a

public depository of interim deposits of the public moneys of the state or of the interim deposits of the public moneys of the subdivision shall, not more than thirty days prior to the date fixed by section 135.12 of the Revised Code for the designation of public depositories, make application therefor in writing to the proper governing board. Such application shall specify the maximum amount of such public moneys which the applicant desires to receive and have on deposit as interim deposits at any one time during the period covered by the designation, provided that such applicant shall not apply for more than thirty per cent of its total deposit liability as revealed by its latest report to the superintendent of banks or comptroller of the currency, and the rate of interest which the applicant will pay thereon, subject to the limitations of sections 135.01 to 135.21, inclusive, of the Revised Code. (Emphasis added.)

Certain requirements are prescribed for interim deposits in R.C. 135.04 as follows:

Any institution mentioned in section 135.03 of the Revised Code which has an office located within the territorial limits of a subdivision is eligible to become a public depository of the inactive and interim deposits of public moneys of such subdivision. In case there is no such eligible institution, or not more than one such eligible institution, or in case not more than one such eligible institution applies for designation as a public depository of the inactive or interim deposits of the public moneys of the subdivision, or in the case the aggregate amount of inactive or interim deposits applies for by such eligible institutions is less than the aggregate maximum amount of such inactive or interim deposits as estimated to be deposited pursuant to sections 135.01 to 135.21, inclusive, of the Revised Code, the governing board of the subdivision may designate as a public depository of the inactive or interim deposits of the public moneys thereof, one or more institutions of a kind mentioned in section 135.03 of the Revised Code, which are conveniently located, subject to the requirements of sections 135.01 to 135.21, inclusive, of the Revised Code. (Emphasis added.)

The emphasized language of the above sections of the Uniform Depository Act dealing with deposits of interim moneys speaks only in terms of a single political subdivision. There are no references to "more than one", or "two or more", or to the plural "subdivisions." It is true that the Act refers to a "union or joint institution or enterprise of two or more subdivisions not having a treasurer." R.C. 135.01 (D), (K) and (L). But that is an obvious reference to such bodies as joint township hospital districts which are specifically authorized by statute. R.C. 513.07. But the General Assembly did not provide for the pooling of township funds to gain interest advantages in the manner you suggest.

One of my predecessors has referred to the strict interpretation to be placed on the powers of subdivision governing boards in the placing of deposits under the Uniform Depository Act. In the third branch of the syllabus in Opinion No. 860, Opinions of the Attorney General for 1959, he said:

3. The county treasurer is required to deposit active and inactive funds in the designated depositories even though the contracted rate of interest thereon is lower than the current rate of interest being paid by such depositors.

And in the course of the opinion he made the following comment on the effect to be given R.C. 135.08:

Comparable provisions for institutions desiring to be public depositories of active funds are found in Section 135.10, Revised Code, except that references to the rate of interest which the applicant will pay are omitted. An application for inactive funds may be combined with an application for inactive funds. The foregoing provisions make it apparent that the rate of interest to be paid by depository institutions is determined solely by the bidding therefor and is in no manner controlled or determined by the current rate of interest paid to the local depositors.

I have already pointed out that the authority to deposit public moneys is to be strictly construed. Furthermore, it is well settled that a board of township trustees possesses only those powers and privileges which are delegated to or conferred upon it by statute.

The Supreme Court has said, in State, ex rel. Schramm v. Ayres, 158 Ohio St. 30, 33 (1952):

Townships are creatures of the law and have only such authority as is conferred on them by law. Therefore, the question is not whether townships are prohibited from exercising such authority. Rather it is whether townships have such authority conferred on them by law.

See also Hopple v. Brown Township, 13 Ohio St. 311 (1862); State ex rel. Locher v. Menning, 95 Ohio St. 97 (1916).

I conclude that there is no statutory provision which grants to boards of township trustees the authority to pool public funds for the purpose of securing a higher rate of interest from the depository. On the contrary, the language of the Uniform Depository Act requires the governing board to deal individually with the depository institution.

In specific answer to your question it is my opinion and you are so advised that the Uniform Depository Act, R.C. Chap. 135, does not permit two or more subdivisions to pool their interim deposits for the purpose of taking advantage of higher interest rates.