

OPINION NO. 72-016

Syllabus:

A municipality which has created its own township pursuant to Section 503.07, Revised Code, is not within the territorial limits of the original township from which it was removed, and banks within the new township no longer retain priority under Chapter 135, Revised Code, to be depositories of the public deposits of the original township.

To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio
By: William J. Brown, Attorney General, February 14, 1972

I have before me your request for my opinion, which reads as follows:

"Is a municipality, which has created its own township pursuant to §503.07, Ohio Revised Code, still within the territorial limits of the township from which it was removed for purposes of Chapter 135 [Revised Code], Uniform Depository Act?"

The right of a municipal corporation to create a new township within the limits of the municipality is provided by Section 503.07, Revised Code, which reads, in pertinent part, as follows:

"When the limits of a municipal corporation do not comprise the whole of the township in which it is situated, or if by change of the limits of such corporation include territory lying in more than one township, the legislative authority of such municipal corporation * * * may petition the board of county commissioners for a change of township lines in order to make them identical, in whole or in part, with the limits of the municipal corporation, or to erect a new township out of the portion of such township included within the limits of such municipal corporation. The board * * * shall upon the petition of a city change the boundaries of the township or erect such new township, * * *."

The deposit of public funds is controlled by the Uniform Depository Act, Chapter 135, Revised Code. Section 135.01 (A), (E) and (F), Revised Code, provides definitions of "active", "inactive", and "interim" deposits, and Section 135.03, Revised Code, specifies the types of banks which are eligible to become depositories for public funds. Section 135.04, Revised Code, provides that the banks specified in Section 135.03, *supra*, are eligible to become depositories of active, inactive and interim deposits of a subdivision, and have priority to become such depositories, if they have offices within the territorial limits of such subdivision.

That Section reads in pertinent part as follows:

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"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 case the aggregate amount of inactive or interim deposits applied 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.

"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 active deposits of public moneys of such subdivision. In case the aggregate amount of active deposits of the public moneys of the subdivision applied for by such eligible institutions is less than the aggregate maximum amount to be deposited as such, as estimated by the governing board, said board may designate as a public depository of the active deposits of the public moneys of the subdivision, one or more institutions of the 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.

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In the case presented by your letter a municipality, which had been a part of a township, removed itself therefrom and created a new township pursuant to Section 503.07, supra. The question is whether the banks within the municipality, and thus within the new township, still retain priority as depositories of the public deposits of the original township.

I think it clear that the answer must be in the negative. There is no doubt that townships are governed by the Uniform Depository Act, Chapter 135, supra, for "subdivision" is defined in Section 135.01 (K), supra, to include townships. And the provisions of Section 503.07, supra, leave no doubt that a new township formed

under its authority is a full, separate and distinct township. The conclusion is inevitable that the new township is no longer within the territorial limits of the original township from which it has been removed. And since the banks in question are within the territorial limits of the new township, they are, under the provisions of Section 135.04, supra, no longer entitled to priority as depositories of the public deposits of the original township.

In specific answer to your question it is my opinion, and you are so advised, that a municipality which has created its own township pursuant to Section 503.07, Revised Code, is not within the territorial limits of the original township from which it was removed, and banks within the new township no longer retain priority under Chapter 135, Revised Code, to be depositories of the public deposits of the original township.