

OPINION NO. 66-130

Syllabus:

Interest earned on investment made by the County Commissioners, of undivided tax funds, under the provisions of Section 321.44, Revised Code, should be deposited in the General Fund of the County Treasury.

To: Bernard W. Freeman, Huron County Pros. Atty., Norwalk, Ohio
By: William B. Saxbe, Attorney General, July 28, 1966

Your letter requesting my opinion, after some preliminary matters, asks the following question:

"Therefore, specifically, my question is this: On investments made by the Board of County Commissioners under provisions of 321.44, Revised Code, of undivided tax funds, should the interest therefrom be deposited in the General Fund of the County Treasury?"

In the review of Attorney General's Opinions, court decisions and statutes in relation to the above question, we found several opinions, a few court decisions and some statutes, all which authorize the purchase of investments, and some provide for the deposition of interest earned on investments. In making such review, it is essential to determine that the opinion, case, or statute being considered is on the subject of interest earned on investments of undivided tax (surplus) moneys, (also known as treasury investments) and that same be distinguished from interest on deposits, bond or note sales, or special levies. The question asked by the Prosecutor concerns interest on treasury investments which is entirely different from interest earned on deposits in a public depository. To answer the question, the following is submitted. Section 135.12, Revised Code, provides in part:

"* * * Interest realized on any investments authorized by this section shall be collected by the treasurer and credited by him to the general fund of the state or subdivision."

Section 5705.10, Revised Code, reads in part:

"All revenue derived from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law shall be paid into the general fund."

In Opinion No. 4759, Opinions of the Attorney General for 1935, page 1294, the following is said:

"Interest being compensation for the

use of money, would be revenue derived from sources other than the general property tax and in my opinion should be paid into the general fund except where other provision is made therefor."

The syllabus of Opinion No. 1603, Opinions of the Attorney General for 1950 reads:

"Interest earned on surplus funds in the hands of the county treasurer invested in government securities as authorized in Section 2715-2, General Code, (now Section 321.44, Revised Code) should be paid into the general fund of the county, unless there is statutory language to the contrary."

You are therefore advised that it is my opinion that interest earned on investment made by the County Commissioners, of undivided tax funds, under the provisions of Section 321.44, Revised Code, should be deposited in the General Fund of the County Treasury.