

"Obviously, when the trustees are using said funds for the purposes mentioned in said section, they are functioning in their official capacity in the performance of their duties for the township."

There is here a clear recognition of the fact the services rendered by township trustees in connection with the improvement of roads with funds derived through the provisions of Section 5541-8, General Code, are services for which Section 3294 provides compensation. The opinion further holds that the \$250.00 limitation as to annual compensation set forth in Section 3294 is applicable.

In specific answer to your inquiry, it is my opinion that township trustees may receive compensation at the rate of \$2.50 per day for their services in connection with the improvement of roads with funds arising from the provisions of Section 5541-8, General Code, so long as such compensation does not exceed the limitation of \$250.00 set forth in Section 3294, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2223.

FUNDS—DEPOSITED BY DEPUTY COMMISSIONER OF MOTOR VEHICLES IN A BANK—WHEN BANK INSOLVENT, STATE OBTAINS PREFERRED CLAIM.

SYLLABUS:

When a deputy commissioner of motor vehicles deposits funds collected by him in the sale of motor vehicle license plates, in a bank as deputy commissioner, such funds are held by the bank in trust for the state, and in the event of the liquidation of such bank, by the Superintendent of Banks, the state has a preferred claim to the extent of the balance of such deposit.

COLUMBUS, OHIO, August 11, 1930.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

"Section 6291-1, General Code, reads in part as follows:

'The Commissioner of Motor Vehicles shall designate the county auditor and one or more persons in each county to act as deputy commissioners, who shall accept applications for the annual license tax, and assign distinctive numbers in the same manner as the Commissioner of Motor Vehicles. Such deputy commissioners shall be located in such cities or villages in the county as the Commissioner sees fit.'

And then later in this same section it reads as follows:

'Each deputy commissioner shall be required to give bond the form and amount of which shall be prescribed by the Commissioner of Motor Vehicles.'

Section 6294, G. C., under paragraph five reads in part as follows:

'Each deputy commissioner other than the county auditor shall forthwith, upon receipt of any application for registration together with the license fee, transmit such fee together with a duplicate copy of the application to the county auditor of the county in which such person resides.'

By department regulations we require each deputy commissioner to open a separate banking account in his name as deputy commissioner for all monies collected in issuing license plates. We also require all deputy commissioners to make a report and settlement once each week during the months of December and January, which is the season for the heaviest sale and twice each month the balance of the year. When a report is made the copy forwarded to the county auditor is accompanied by a check for the amount of fees shown on such report, such check being written on the deputy commissioner's bank account.

During the present year there have been a number of bank failures throughout the state which involved moneys deposited on deputy commissioners' accounts. The last case called to our attention was where the deputy commissioner had issued checks on June 12th and June 18th such checks not having been returned to the bank when it closed on July 2nd. We have had numerous questions concerning these accounts so involved and therefore desire your official opinion on the following questions.

1. Since the statute provides for the appointment of deputy commissioners are funds deposited by them in an account under their name as deputy commissioners, such funds being money which belongs to the state and county for the sale of license plate fees, become preferred claims in the case of the failure of such banks.

2. In a case such as the one mentioned just above where a deputy commissioner issues checks on June 12th and 18th and such checks have not been returned by the county auditor on July 2nd who is the responsible party for the amounts covered by such checks and what is considered a reasonable length of time on such checks.

Due to having a case at hand at the present time, we would appreciate an early reply?"

A careful consideration of the depositary statutes of Ohio reveals that there is no authority given a deputy commissioner of motor vehicles to deposit state funds in banks or other depositaries. It may be assumed that both the deputy commissioner of motor vehicles in depositing the funds with the insolvent bank and the insolvent bank upon accepting the deposit had knowledge of the depositary laws of the State of Ohio, and having such knowledge there would be no authority for the deputy commissioner of motor vehicles to loan money of the state or do any act which would create the relationship of debtor and creditor between the state and the bank. Therefore, a deposit in the nature of the one set forth in your communication would undoubtedly be in the nature of a special deposit.

The Court of Appeals of Greene County in the case of *In Re Liquidation of Osborn Bank*, 1 Ohio App., 140, held, as shown by the first branch of the syllabus:

"Township or village funds deposited in a bank without attempting to comply with the provisions of the depositary act, but solely on authority of the treasurer, are special deposits and entitled to preference out of cash remaining on hand in the bank."

The court in its opinion, at page 141, said:

"The preservation of the public funds has, under the policy of our state, been the subject of special care, and to uphold a transfer of title and an investment of the public moneys a clear legislative expression and a compliance with the prescribed conditions in all of its material features is required.

Where a bank receives from the treasurer public moneys known by it to

be such, it succeeds prima facie merely to the treasurer's possessory title and as quasi trustee for the safe-keeping of such funds, and the burden is upon the bank, if it claims greater title, to show statutory authority and warrant to support its right to convert the funds to its own use."

The principle set forth in the Osborn case, *supra*, can be found in the case of *Crawford County vs. Strawn, Rec.*, 6 O. L. R. 309; 157 Fed. 49.

It follows under the foregoing authorities that, under the circumstances which you present, the relationship of debtor and creditor does not exist between the deputy commissioner and the bank. The deposit constitutes a special deposit and the bank holds such funds as trustee.

It is, accordingly, my opinion that when a deputy commissioner of motor vehicles deposits funds collected by him in the sale of motor vehicle license plates, in a bank as deputy commissioner, such funds are held by the bank in trust for the state, and in the event of the liquidation of such bank by the Superintendent of Banks, the state has a preferred claim to the extent of the balance of such deposit.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2224.

DISAPPROVAL, CONTRACT BETWEEN STATE OF OHIO AND ELECTRIC CONSTRUCTION AND MAINTENANCE COMPANY OF COLUMBUS, OHIO, FOR ELECTRICAL WORK ON PHYSICAL EDUCATION BUILDING AND EQUIPMENT, OHIO STATE UNIVERSITY, COLUMBUS, OHIO.

COLUMBUS, OHIO, August 11, 1930.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This acknowledges receipt of your communication of August 9, 1930, enclosing contract documents between the State of Ohio and Electric Construction and Maintenance Company of Columbus, Ohio, for electrical work on Physical Education Building and Equipment, on the campus of Ohio State University.

Upon careful examination of said documents, I find that the contract cannot be entered into and approved by this office. It appears that the contracting corporation above noted submitted a bid on July 9, 1930, before the time set for receiving bids, based on the following figures:

Electrical Contract.....	\$7,200 00
Alternate A—Phys:	
To add portion of building designated "Alternate A," add....	215 00
Alternate B—Phys:	
To add portion of building designated "Alternate B," add....	137 00

Making a total of.....	\$7,552 00

Now Section 2319, General Code, provides in part as follows:

"On the day and at the place named in the notice, such owner shall open the proposals, and shall publicly, with the assistance of the architect, or engi-