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DEPARTMENT OF MENTAL HYGIENE AND CORRECTION—
'INDUSTRIAL AND ENTERTAINMENT FUNDS'—ADMINIS-
TRATION—SOURCES 5110.13 R. C.—SUCH FUNDS ARE TRUST
FUNDS: *NOT* PUBLIC MONEYS UNDER 135. R. C.

SYLLABUS:

Industrial and Entertainment Funds held and administered by the wardens and superintendents of the various institutions under the jurisdiction of the Department of Mental Hygiene and Correction, derived from contributions, sources enumerated in Section 5119.13 Revised Code, as amended, profits resulting from commissary sales, vending machine sales and similar ventures constitute trust funds and are not public moneys within the purview of Chapter 135, Revised Code so as to require their deposit in accordance therewith.

Columbus, Ohio January 14, 1957

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have at hand your request for my opinion wherein you inquire whether or not so-called "Industrial and Entertainment Funds" administered by wardens and superintendents of various state institutions under the jurisdiction of the Department of Mental Hygiene and Correction, and derived from contributions and the profit resulting from commissary sales and vending machine sales, constitute public funds, the deposit of which is subject to the provisions of Chapter 135. Revised Code, being the Uniform Depository Act.

The provisions of the Uniform Depository Act apply only to the deposit of "public moneys." Public moneys are defined in Subdivision (A) of Section 135.01 Revised Code, as follows:

"(A) 'Public moneys' means all moneys in the treasury of the state or any subdivisions of the state, or moneys coming lawfully into the possession or custody of the treasurer of state or of the treasurer of any subdivision. 'Public moneys of the state' includes all such moneys coming lawfully into the possession of the treasurer of state; and 'public moneys of a subdivision' includes all such moneys coming lawfully into the possession of the treasurer of the subdivision."

It is apparent from the foregoing that in order for the funds in question to be considered public moneys they must be in the lawful possession or custody of the Treasurer of State or of the treasurer of a subdivision as defined in the act. Obviously, these funds are not in the possession of the Treasurer of State but are in the possession and custody of the heads of institutions which administer them. Consequently, unless the institutions can be considered a subdivision the Industrial and Entertainment Funds would not be considered public moneys within the foregoing definition.

Subdivision (B) of Section 135.01, *supra*, defines a subdivision in pertinent part as follows:

“(B) ‘Subdivision’ means any county, school district, municipal corporation * * * township, municipal or school district sinking fund, special taxing or assessment district, or other district or local authority electing or appointing a treasurer. * * *”

It requires no further analysis to conclude that an individual institution is not a subdivision within the foregoing definition; and it therefore follows that the funds in question do not constitute public moneys and the administrators of such funds are not subject to the provisions of the Uniform Depository Act.

I recently had occasion to review the status of the Industrial and Entertainment Fund in Opinion No. 4753, Opinions of the Attorney General for 1955, Page 41. In that opinion I concurred with the conclusion of my predecessors in holding such funds to be trust funds and not subject to deposit in the State Treasury but governed by the provisions of Section 1840, General Code, the statutory predecessor of the present Section 5101.13 Revised Code.

Opinion No. 4753, *supra*, dealt primarily with the authority of the superintendent of an institution to transfer unclaimed balances of trust moneys held by him for the benefit of individual inmates to the Industrial and Entertainment Fund. The conclusions which I reached in that opinion were substantially codified by the legislature in an amendment to Section 5119.13, *supra*, in the succeeding legislative session. Without detailing the text of that amendment, it is sufficient to note that the legislature specifically recognized the existence of the “Industrial and Entertainment Funds” of the various institutions under the jurisdiction of the Department of Mental Hygiene and Correction and gave no indication that previous opinions of this office or those of my predecessors in

considering such funds as trust moneys subject to disposition for the benefit of inmates generally, were in error.

Accordingly, it is my opinion and you are advised that Industrial and Entertainment Funds held and administered by the wardens and superintendents of the various institutions under the jurisdiction of the Department of Mental Hygiene and Correction, derived from contributions, sources enumerated in Section 5119.13 Revised Code, as amended, profits resulting from commissary sales, vending machine sales and similar ventures constitute trust funds and are not public moneys within the purview of Chapter 135., Revised Code, so as to require their deposit in accordance therewith.

Respectfully,

C. WILLIAM O'NEILL

Attorney General