

TO: ASSESSING OFFICERS
FROM: STATE TAX COMMISSION

NO. 6, April 12, 1988
INVESTMENT OF TAX
COLLECTIONS

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

MUNICIPAL TREASURER: Duty of city treasurer to invest and maximize investment income upon tax collections

TAX COLLECTION: Investment by collecting treasurer

TOWNSHIP TREASURER: Duty to invest and maximize income upon tax collections

A township or city treasurer has a ministerial duty to deposit tax collections made on behalf of other taxing authorities in banks, savings and loan associations, or credit unions as the governing body of his or her township or city designates, but the treasurer has no duty to invest tax collections or to maximize investment income on such tax collection.

Opinion No. 6506

Honorable Willis Bullard, Jr.
State Representative
The Capitol
Lansing, MI 48909

MAR 14 1988

You have requested my opinion concerning the fiduciary responsibilities of township or city treasurers with respect to tax collections made by them on behalf of taxing authorities other than the township or city.

As you correctly note, in Grand Rapids Public Schools v City of Grand Rapids, 146 Mich App 652; 381 NW2d 783 (1985), the Court of Appeals held that a city was not entitled to retain interest earned on school tax collections while in the possession of the city or its treasurer.

Specifically, you ask:

"1. Does a township or city treasurer under present law have an affirmative duty to invest tax collections until turned over to the taxing unit?

"2. If there is such a duty to invest tax collections, are there any standards under present law guiding the investment obligation and is there a duty to maximize investment income?"

Your questions will be discussed and answered jointly.

In those instances where the city or township treasurer collects taxes levied by authorities other than the city or township, the treasurer is required to regularly and periodically account for and deliver to such other taxing authorities the taxes so collected. General Property Tax Act, §§ 43(3), 43(4), 43(5), MCL 211.43(3), 211.43(4), 211.43(5); MSA 7.84(3), 7.84(4), 7.84(5).

Prior to accounting for and delivering tax collections to the appropriate taxing authorities, the treasurer is required by law to deposit the receipts in such banking or lending institutions as shall have been designated by the city council or township board. General Property Tax Act, § 43b, MCL 211.43b; MSA 7.86.

The provisions of 1932 (1st Ex Sess) PA 40, MCL 129.11

et seq; MSA 3.751 et seq,¹ are to like effect. MCL 129.11;
MSA 3.751, declares that:

"All moneys which shall come into the hands of any officer of any county, or of any township, school district, city or village . . . , pursuant to any provision of law authorizing such officer to collect or receive the same, shall be denominated public moneys within the meaning of this act."

MCL 129.12; MSA 3.752, requires governing bodies of local units of government to designate the banks, savings and loan associations or credit unions in which such public monies shall be deposited by their respective treasurers or officers.

It provides:

"The county board of commissioners or board of county auditors, in those counties in which there is a board of county auditors, the township board of a township, the district board, or board of education of a school district, or the legislative body of a city or village shall provide by resolution for the deposit of public money, including tax money, coming into the possession of the county treasurer, township treasurer, school district treasurer, city treasurer or tax collector, or village treasurer, respectively, in 1 or more banks, savings and loan associations, or credit unions having their principal office in this state, to be designated in the resolution, and in the proportion and

¹See 1935 PA 95, MCL 129.21 et seq; MSA 3.781 et seq, and 1909 PA 99, MCL 129.31 et seq; MSA 5.531 et seq, for similar provisions relative to public monies collected by county treasurers. See 1909 PA 321, MCL 129.41 et seq; MSA 5.1551 et seq, for similar provisions relative to public monies collected by a village treasurer.

manner as may be provided in the resolution. All proceedings in connection with the deposit of money shall be conducted and be governed pursuant to section 4 and applicable law not in conflict with this act. Upon designation of a depository or depositories in compliance with this act, the treasurer or tax collector shall deposit all funds coming into the treasurer's possession, including tax money in the treasurer's name as treasurer or tax collector, and in the proportion and manner as may be provided by the resolution. As to a deposit or deposits made in a designated bank, savings and loan association, or credit union in accordance with the resolution, neither the treasurer or tax collector, nor the sureties on their respective bonds, shall be liable for a loss occasioned or sustained by the failure or default of the designated depository or depositories. This exemption from liability shall apply even though a requirement of a statute provides for the furnishing of a bond by depositories of public money. The treasurer or tax collector and the sureties on their respective bonds shall be liable for all money not deposited under this act." MCL 129.12; MSA 3.752.

Act 340 further provides:

"Notwithstanding section 2, additional funds coming into the possession of a county treasurer, township treasurer, school district treasurer, city treasurer or tax collector, or village treasurer shall not be deposited or invested in a bank, savings and loan association, or credit union which is not eligible to be a depository of surplus funds belonging to the state under section 5 or 6 of Act No. 105 of the Public Acts of 1855, being sections 12.145 and 21.146 of the Michigan

Complied Laws."² MCL 129.14; MSA 3.754.

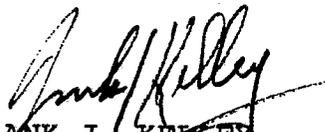
"As used in this act, 'deposit' includes purchase of, or investment in, shares of a credit union." MCL 129.15; MSA 3.755.

In summary, the township or city treasurer must deposit all tax collections with such banks, savings and loan associations or credit unions as the governing body of his or her township or city shall designate. Interest realized as a result of the deposit of tax collections for such other taxing authority must be accounted for and delivered to such other taxing authority in accordance with law. Grand Rapids Public Schools v City of Grand Rapids, supra. The local treasurer is required to discharge a purely ministerial function in depositing the sums collected in an account with a financial institution designated by the governing body of the township or city, as the case may be. Thus, such local treasurer has no discretionary duty, and, therefore, is under no duty to "invest" tax collections or to "maximize investment income."

It is my opinion, therefore, that a township or city treasurer, with respect to the collections made on behalf of taxing authorities other than his or her township or city, as

²See also OAG, 1983-1984, No 6168, p 151 (July 11, 1983), holding that public funds of the state and subordinate levels of government may not be deposited in financial institutions located in states other than Michigan.

the case may be, has a ministerial responsibility pursuant to MCL 129.12; MSA 3.752, to deposit all tax collections with such banks, savings and loan associations or credit union, as the governing body of the respective township or city shall designate. It is my further opinion that, with respect to the ministerial responsibility of collecting taxes on behalf of such other taxing authorities, a township or city treasurer is under no duty to invest tax collections or to maximize investment income.


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