

**Deposits in Court—How Disposed of by Clerk—Interest
Accruing Thereon.**

The Clerk of Court must deposit all funds received by him from "deposits in court" with the County Treasurer.

The county is not entitled to the interest accruing on such funds.

H. S. Magraw, Esq.,
State Examiner,
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My dear Mr. Magraw:

You have submitted to this Department, for opinion, the following questions:

1. Is it obligatory on the part of the Clerk of Court to deposit with the County Treasurer moneys deposited with the Clerk of Court as alimony, cash bail, moneys in litigation, etc.?
2. Would interest accruing thereon belong to the county?

In the Revised Codes of 1907, under the title "Deposit in Court," Section 6706 reads as follows:

"If money is deposited in court, it must be paid to the clerk who must deposit it with the county treasurer, by him to be held subject to order of the court."

Section 8057, Revised Codes of 1907, provides as follows:

"Whenever moneys are paid into or deposited in court, the same shall be delivered to the clerk in person, or to such of his deputies as shall be specially authorized by his appointment in writing to receive the same. He must unless otherwise directed by law deposit it with the county treasurer, to be held by him subject to the order of the court. The treasurer shall keep each fund distinct, and open an account with each."

From the two sections above, it is plain that the Clerk of Court has no discretion in the matter of handling such money. The law in both instances is mandatory. It says that he *must* deposit it with the County Treasurer.

Referring to your second question, Section 1 of Chapter 88, 13th Session Laws, requires the County Treasurer "to deposit all public moneys in his possession and under his control, excepting such as may be required for current business, in any solvent bank or banks located in his county * * * "; and further provides that "all interest paid and collected on such deposits shall be credited to the general fund of the county."

The question now arises: Are such funds "public funds" in so far as to bring them within the provisions of Chapter 88, *supra*?

It has been held that interest on the money of litigants deposited by a county official does not belong to the county. (15 C. J. 515.)

In the case of "In re Controller's 52nd Annual Report," 59 Pa. Superior Ct. 450, it was held as follows:

"A county cannot claim interest allowed and paid over to a sheriff by a bank on moneys belonging to litigants deposited in the name of the sheriff."

The funds in question are really in the class of trust funds and as such cannot be considered as public funds within the meaning of Chapter 88, *supra*. If the County Treasurer deposits them in banks with other funds he does so merely for protection of the funds, and not because the law requires him to do so. He might keep these funds in his personal possession being responsible therefor under his official bond (Sec. 6706, *supra*), without violating Chapter 88, *supra*. If, on the other hand, he does deposit the funds, and interest accrues thereon, it would become part of the distinctive fund and should so be accounted for.

It is, therefore, my opinion that the Clerk of Court must deposit all funds received by him from deposits in court, with the County Treasurer, and that interest accruing thereon does not belong to the county but should be credited to the respective funds.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.