

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

COUNTIES:

County treasurer's duty to reconcile bank accounts

A county treasurer in a county under an optional unified form of county government is responsible for reconciling the county's bank accounts.

Opinion No. 6962

November 12, 1997

Honorable Joel Gougeon
State Senator
The Capitol
Lansing, MI 48913

You have asked if a county treasurer in a county under an optional unified form of county government is responsible for reconciling the county's bank accounts.

1973 PA 139, MCL 45.551 *et seq*; MSA 5.302(51) *et seq*, authorizes counties to adopt an optional unified form of county government providing for either an elected county executive or an appointed county manager. Section 13 authorizes the establishment of a county department of finance and specifies its responsibilities.

An optional unified form of county government shall have all functions, except when otherwise allocated by this act, performed by 1 or more departments of the county or by the remaining boards, commissions, or authorities. Each department shall be headed by a director. Subject to the authority of the county manager or elected county executive the following departments and their respective directors may be established and designated to be responsible for performance of the functions enumerated:

(b) The department of finance shall supervise the execution of the annual county budget and maintain expenditure control; perform all central accounting functions; collect moneys owing the county not particularly within the jurisdiction of the county treasurer; purchase supplies and equipment required by county departments; and perform all investment, borrowing, and debt management functions except as done by the county treasurer.

However, while an optional unified county may create and empower a department of finance, section 4(1) expressly preserves the office of the county treasurer. In addition, section 4(4) specifies that the powers of the county treasurer shall remain undiminished by establishment of an optional unified county.

The power vested in the office of county prosecuting attorney, county sheriff, county register of deeds, county clerk, county treasurer, county drain commissioner, or the board of county road commissioners, shall not be minimized or divested by this act.

(Emphasis added.)

Accordingly, the duties of the county treasurer remain intact notwithstanding a county's adoption of the optional unified form of county government. See, OAG, 1981-1982, No 6009, p 467 (November 20, 1981)

and OAG, 1979-1980, No 5587, p 454 (October 26, 1979).

Const 1963, art 7, § 4, establishes the constitutional office of county treasurer whose duties shall be established by the Legislature.

There shall be elected for four-year terms in each organized county a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, whose duties and powers shall be provided by law.

(Emphasis added.)

Consistent with Const 1963, art 7, § 4, the Legislature enacted RS 1846, ch 14, MCL 48.35 *et seq*; MSA 5.681 *et seq*, which specifies, in part, the duties of a county treasurer. Sections 40 and 41 enumerate some of a treasurer's duties as follows:

It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatever source they may be derived;¹ and all moneys received by him for the use of the county, shall be paid by him only on the order of the board of supervisors,² signed by their clerk, and countersigned by their chairman, except when special provision for the payment thereof is or shall be otherwise made by law.

At the annual meeting of the board of supervisors, or at such other time as they shall direct, the county treasurer shall exhibit to them all his books and accounts, and all vouchers relating to the same, to be audited and allowed . . .

(emphasis added).

In *Ottawa County Clerk v Ottawa County Bd of Comm'rs*, 428 Mich 300; 407 NW2d 384 (1987), the court reviewed the statutory functions and duties of a county clerk. Referring to the county clerk's authority to issue warrants for the payment of salaries of certain county officials, the court stated at page 312 as follows:

The purpose and function of this warrant is to . . . authorize payment by the treasurer of their salaries. This warrant does not function as or in lieu of a check drawn by the treasurer. The statutes do not contemplate that funds may be withdrawn from the county treasury without the signature of the treasurer on the warrant of the clerk. We conclude that the board may in its discretion also impose on the controller the duty of preparing all payroll checks for signature by the treasurer.

Since it is the county treasurer's duty to sign checks for the payment of county moneys, it is axiomatic that the treasurer must first ascertain that sufficient bank account funds are available prior to issuing county checks.

In signing checks for payment of county moneys, the treasurer must verify . . . that the payment order has been duly signed by the clerk and chairman of the board of commissioners, or is otherwise authorized by law. . . . [I]t is the treasurer's general responsibility to determine from his records that there are sufficient moneys available in the respective fund to cover the disbursement. This responsibility for signing checks where there are sufficient moneys available arises out of the treasurer's duty to keep records of all deposits and investments of county moneys and out of a recognition that if moneys are not in a fund, the treasurer is not in a position to make disbursements out of that fund.

OAG, 1981-1982, No 6009, *supra*, p 470. (Emphasis added.)

1909 PA 99, MCL 129.31 *et seq*; MSA 5.531 *et seq*, governs depositories for public moneys provided by county treasurers. Sections 1 and 8 prescribe the county treasurer's duties regarding bank accounts.

Sec. 1. The county treasurer shall deposit daily money, drafts, or checks on hand received by the treasurer as treasurer in a bank, savings and loan association, or credit union designated by the county board of commissioners or, if the county has a board of auditors, by the board of county auditors as provided in this act. . . .

Sec. 8. It shall be the duty of the county treasurer to *keep the accounts of the treasurer with all banks or depositories, where any moneys may be kept* or deposited, upon the regular books of his office, *so that each item of all such accounts shall appear thereon*. All items of interest, which may become due to the county from depositors, shall be entered on the books of the treasurer when received in such a manner that it shall appear upon what account and for what time such interest accrued.

(Emphasis added.)

The foregoing statutory obligations demonstrate that it is the county treasurer who is ultimately responsible for the safekeeping of county funds and for maintaining records of county accounts with all banks or depositories.¹ Since it is the county treasurer who is thus responsible, it must be concluded that the duty of reconciling the county's bank accounts rests with the county treasurer.

The above conclusion is consistent with the requirement that county treasurers be bonded as to their receipt of and accounting for county funds. Section 36 of RS 1846, ch 14, requires that the treasurer's bond:

[S]hall be conditioned that *the person shall faithfully and properly execute the person's duty and trust*, and that *the treasurer shall pay according to law all money which shall come to the treasurer's hands as treasurer, and will render a just and true account of that money at any time required by the county board of commissioners, or by law*.

(emphasis added).

It is my opinion, therefore, that a county treasurer in a county under an optional unified form of county government is responsible for reconciling the county's bank accounts.

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Attorney General

¹ See, OAG, 1981-1982, No 6009, *supra*, p 469, which concludes that when the department of finance receives moneys belonging to the county, such moneys must be turned over to the county treasurer pursuant to RS 1846, ch 4, § 40.

² Now the board of commissioners. 1966 PA 261, as added by 1969 PA 137, MCL 46.416; MSA 5.359(16).

³ "Since county treasurers are charged with the responsibility to account for county moneys, a principal job of county treasurers is cash management." VerBurg, *Guide to Michigan County Government*, (Michigan State University, 3d ed, 1997), ch 5, p 104.