STATE BOARD OF ACCOUNTS: Clerk of Circuit Court—
Whether the clerk may file claims for trust funds lost in
depositories.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I have your request for an opinion in answer to the follow-
ing question:

"1. Is the Clerk of the Circuit Court authorized to
file his claim against the county, under the provisions
of Chapter 121 of the Acts of 1937, for the amount
of funds due to the Clerk from a closed depository?"

Chapter 121 of the Acts of 1937 referred to in your question,
is found in the December, 1941, Cumulative Pocket Supple-
ment of Burns' Indiana Statutes Annotated 1933, and takes
the following numbers in that supplement, to-wit: 61-664,
61-665, 61-666, 61-667 and 61-668. Section 6 of the Act is
omitted from the Burns' Supplement, the same being simply
a section declaring an emergency.

The above statute has been held to be constitutional and
valid in the case of State ex rel. Jackson, Attorney General,
v. Middleton, 215 Ind. 219. The present question has to do
simply with the procedure provided by the Act and relates
itself simply to the construction of the Act as applied to such
procedure.

Section 61-664 provides in part that:

"Every officer and former officer of and in any mu-
icipal corporation in this state who, in his official
capacity, deposited any funds payable to any munici-
pal corporation, or who deposited any public funds
or any trust funds received by or coming into the pos-
session of such officer, by virtue of his office, in any
bank or trust company which had been designated, as
provided by law, as a depository of public funds, and
which at such time was such a depository, but when
such funds could not be deposited under the terms and
provisions of the depository act, is hereby relieved, released and discharged from any and all personal liability on account of the loss of any such money caused by the failure or insolvency of any such bank or trust company, and such liability shall be assumed by the municipal corporation for or in which such officer served or is serving in an official capacity.

* * *”

It is further provided in said section that:

“Such municipal corporation shall have the right to receive any dividends arising from the liquidation of such bank or trust company, to the extent of its interest.”

Section 61-665 provides, in part, as follows:

“The legal claim of any officer or former officer contemplated in section one (61-664) of this act to any funds on deposit in any such bank or trust company shall inure to the municipal corporation for, in and on behalf of which such officer has officially served or is serving, and such municipal corporation shall be charged with full liability for the proper distribution of all such fees and funds so deposited by such officer. Any person or any municipal corporation to whom or to which such funds, or any part thereof, may be due and owing, is hereby authorized to prosecute his or its claim for the recovery of such funds, in his name or its corporate name, or otherwise, against such municipal corporation charged with the liability for such funds, and which is hereby declared to be fully subrogated to all of the rights which such officer or former officer would have had if this act had not been passed.”

While Section 61-664 purports to release the officer under the conditions therein described only from “all personal liability on account of the loss of any such money caused by the failure or insolvency of any such bank or trust company” (our italics) later provisions in the same section and also in Section 61-665 appear to transfer the liability of such bank or trust company from the officer who originally made
the deposit to the municipal corporation for, in and on behalf of which such officer has officially served or is serving. Note especially the provision of Section 61-665, _supra_, which provides specifically that:

"The legal claim of any officer or former officer contemplated in section one (61-664) of this act to any funds on deposit in any such bank or trust company shall inure to the municipal corporation for, in and on behalf of which such officer has officially served or is serving, and such municipal corporation shall be charged with full liability for the proper distribution of _all_ such fees and funds so deposited by such officer."

(Our italics.)

Your question seems to be asking as to whether the clerk of the circuit court should have a claim against the county for the total amount of funds due from the closed depository. Examination of the remainder of Section 61-665 seems to me to make it clear that the clerk has no such claim. Note the language:

"* * * Any person or any municipal corporation to whom or to which such funds, or any part thereof, may be due and owing, is hereby authorized to prosecute his or its claim for the recovery of such funds, in his name or its corporate name or otherwise, against such municipal corporation charged with the liability for such funds" * * *.

which, in the case of the clerk is the county. This clearly means to give the right to prosecute a claim for the recovery to the person or municipal corporation to whom or to which the funds belong, which would not be the clerk since his legal claim, by the express terms of the act, "inure to the municipal corporation for, in and on behalf of which such officer has officially served or is serving" which corporation is expressly charged "with full liability for the proper distribution" of such funds. It is difficult to see how the municipal corporation, to whom the legal claim of the officer or former officer, inures could be charged with full liability for the proper distribution of the funds, if upon the claim of the clerk, such corporation is obliged to turn the funds over to the clerk for distribution by him.
This conclusion is further strengthened by the provision of Section 61-666 which provides specifically that:

"Any person who may have any money due and owing to him from such fund may file his claim therefor with such municipal corporation taking over such deposits" * * *. (Our italics.)

In my opinion your question should be answered in the negative.

I desire to say in passing that your question is involved in what I think is a misapprehension of the situation created by the statute. It would seem at first that if the money is due the clerk, the clerk would, of course, have a claim for it. However, the statute makes it very clear that the claim of the clerk inures to the municipal corporation for, in and on behalf of which the officer has officially served or is serving, so that as a matter of fact, the funds are no longer due the clerk. That fact, however, would not alter the character of the funds involved, and, if they were trust funds their trust character would remain in the hands of the municipal corporation to the same extent and in the same manner as they were formerly held by the clerk. Kindred phases of this question have been considered by this department and are embodied in an opinion dated June 8, 1937, addressed to the Honorable W. P. Cosgrove, State Board of Accounts. See Opinions of Attorney General 1937, page 310.

INDIANA TAX BOARD: Whether tax board or county adjustment board may reduce salaries of school teachers.

June 11, 1942.

Hon. Henry S. Murray,
Chairman, Indiana Tax Board,
State House,
Indianapolis, Indiana.

Dear Mr. Murray:

I have before me your letter requesting an official opinion in answer to the following questions: