

**OPINION NO. 69-157****Syllabus:**

Under the provisions of Section 169.05, Revised Code, a bank has the option of determining whether or not the balance of the unclaimed funds reported to the Director of Commerce shall be retained by it as a deposit in the name of the mortgage insurance fund. Once that option is exercised, however, the State of Ohio, on behalf of the mortgage insurance fund, as owner, has the right and prerogative of designating the form and classification in which the deposit shall be carried, as these forms and classifications are offered to the public at large, and to receive the same rate of interest that is normally paid on the selected form of deposit.

---

**To: J. Gordon Peltier, Director, Dept. of Commerce, Columbus, Ohio**  
**By: Paul W. Brown, Attorney General, November 24, 1969**

You have requested my opinion on the question of what interest rate a bank should pay on deposits retained by it under the provisions of Section 169.05, Revised Code. Chapter 169 of the Revised Code, comprises the Unclaimed Funds Act of Ohio. Section 169.05, supra, provides that within sixty days after making its report of unclaimed funds to the Director of Commerce, each bank shall pay over to the Director ten percent for the use of the rotary fund and the balance of ninety percent, less certain specified deductions, shall be dealt with under one of several ways at the option of the bank. The statutory option in which we are particularly interested is the one permitting the bank to retain the balance as one of

its deposits to the credit of the mortgage insurance fund created under Section 122.561, Revised Code.

Your question presented reads as follows:

"Since most banks have several forms of deposits with varying interest rates, once the financial organization has determined to retain these funds, does the right exist on the part of the State of Ohio, on behalf of the mortgage insurance fund to designate which type and/or classification of accounts offered on similar terms to the public by that organization, shall be used?"

Section 169.05 (A), Revised Code, reads in pertinent part as follows:

"\* \* \* The remainder of such aggregate amount of unclaimed funds \* \* \* shall, at the option of the holder, be retained by \* \* \* a financial organization \* \* \* such funds to be in an income-bearing account to the credit of the mortgage insurance fund \* \* \*."

Section 169.05 (C), Revised Code, reads in pertinent part as follows:

"Earnings on the accounts in financial organizations to the credit of the mortgage insurance fund shall at the option of such a financial organization be credited to such accounts at such times and at such rates as earnings are paid on other accounts of the same classification held in the financial organization or paid to the director of commerce.  
\* \* \*"

Thus, the statutes expressly provide that the deposits retained by a bank shall be in an income-bearing account and that the rate of interest shall be at the same rate as earnings are paid on other accounts of the same classification. You have indicated in your letter that banks normally pay different rates of interest on different classes of accounts, depending upon the amount invested, the form of the deposit, and the duration, if in the form of a certificate of deposit. You ask specifically whether Ohio, on behalf of the mortgage insurance fund, has the right and prerogative of designating the classification of the deposit in which the funds shall be held by the bank.

The statute provides that the income bearing account shall be to the credit of the mortgage insurance fund. Thus, the State of Ohio, on behalf of the mortgage insurance fund, becomes in fact the owner of the account. One of the incidents of ownership is the right to determine the form of the deposit in which the funds are invested. The bank offers a selection of the forms of deposits it is prepared to issue to each prospective individual depositor who is then free to select the

one he wants. There is no reason why the State of Ohio, once the account is transferred to the name of the mortgage insurance fund, should not be entitled to that same privilege of selection.

I am of the opinion and you are, therefore, advised that under the provisions of Section 169.05, Revised Code, the bank has the option of determining whether or not the balance of the unclaimed funds reported to the Director of Commerce shall be retained by it as a deposit in the name of the mortgage insurance fund. Once that option is exercised, however, the State of Ohio, on behalf of the mortgage insurance fund, as owner, has the right and prerogative of designating the form and classification in which the deposit shall be carried, as these forms and classifications are offered to the public at large, and to receive the same rate of interest that is normally paid on the selected form of deposit.