

might affect the meaning of the statute, I am of the opinion that it should be construed as though the word "any" had not been changed to "as". Substituting the word "any" for the word "as" in Section 12910, General Code, it clearly appears that any employe of the village council may not lawfully, during the time of his employment, sell fire insurance to the village.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

966.

SALE OF NOTES—ISSUED IN ANTICIPATION OF SALE OF GENERAL OR SPECIAL ASSESSMENT BONDS—WHERE PREMIUMS AND ACCRUED INTEREST PAID.

**SYLLABUS:**

*Premium and accrued interest, received from the sale of notes issued in anticipation of the sale of either general or special assessment bonds, should be paid into the sinking or bond retirement fund of the subdivision.*

COLUMBUS, OHIO, October 2, 1929.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date is as follows:

"Section 5625-10, G. C., 112 O. L. 395 and Section 2293-29, G. C., 112 O. L. 376, provide that premiums and accrued interest received from the sale of bonds or notes shall be paid into the sinking or bond retirement fund of the subdivision. The last sentence of Section 2293-29, G. C., reads:

'If anticipatory notes have been issued, the moneys remaining from the proceeds of the sale of such notes, and money from the sale of bonds, shall be used for the purpose of paying such anticipatory notes.'

When municipal corporations have bonds outstanding which were issued prior to January 1, 1922, the sinking and bond retirement funds are under the control of a board of sinking fund trustees who are not charged with the duty of paying notes and interest thereon, by Sections 4506 to 4522, G. C.

It is the practice in many municipal corporations to pay over to the sinking fund trustees, premiums and accrued interest received from the sale of notes issued in anticipation of the sale of general bonds and in anticipation of the sale of special assessment bonds. When bonds are eventually sold, a sufficient amount of the proceeds to pay the notes and interest, less the accrued interest previously paid over, is transferred to the sinking fund trustees and the notes paid off by said trustees.

This practice leads to complications in determining the cost of an improvement which is to be assessed in whole or in part, against the abutting or benefited properties, in that the amount of premium received from the sale of the notes and the accrued interest is not deducted from the cost of the improvement, which includes interest on the notes in full and interest on the bonds.

Question 1. Is premium received from the sale of notes issued in anticipation of the sale of general bonds to be paid into the bond retirement fund, which is under the control of a municipal board of sinking fund trustees?

Question 2. Is interest received from the sale of notes issued in antic-

ipation of the sale of general bonds to be paid into the bond retirement fund, which is under the control of a municipal board of sinking fund trustees?

Question 3. Is premium received from the sale of notes issued in anticipation of the sale of special assessment bonds to be paid into the bond retirement fund, which is under the control of a municipal board of sinking fund trustees?

Question 4. Is accrued interest received from the sale of notes issued in anticipation of the sale of special assessment bonds to be paid into the bond retirement fund, which is under the control of a municipal board of sinking fund trustees?"

Considering first the matter of distinction between notes issued in anticipation of the sale of general bonds and notes issued in anticipation of the sale of special assessment bonds, I find no distinguishing provisions bearing upon your question, as to these two general classes of notes in either the Uniform Bond Act or the Budget Law. It may be stated at the outset, therefore, that apparently notes issued in anticipation of the sale of bonds, whether such bonds are to be paid by general taxation or by assessment, are, at least in so far as the questions which you present are concerned, subject to the same provisions of the statute.

Section 5625-10, General Code, to which you refer, provides in part as follows:

"All proceeds from the sale of a bond, note or certificate of indebtedness issue except premium and accrued interest shall be paid into a special fund for the purpose of such issue. The premium and accrued interest received from such sale and interest earned on such special fund shall be paid into the sinking fund, or the bond retirement fund of the subdivision."

There is no question but that in the case of municipalities having bonds outstanding which were issued prior to January 1, 1922, the bond retirement funds are under the control of a board of sinking fund trustees. You state that a board of sinking fund trustees is not charged with the duty of paying notes and interest thereon under the provisions of Sections 4506 to 4522, inclusive, General Code. This statement is in accord with a holding of this office, as appearing in the Annual Report of the Attorney General for the year 1914, p. 558. The language of the then Attorney General with reference to this question appearing on page 563 is as follows:

"As stated in the answer to your second question, the statutes do not authorize or require the trustees of the sinking fund to have anything to do with the payment of notes issued by a municipal corporation either in anticipation of the returns from a semi-annual installment of taxes or in anticipation of the collection of special assessments."

It must be kept in mind that since the rendition of this opinion both the Budget Law, as now constituted, being Sections 5625-1, et seq., General Code, and the Uniform Bond Act have been enacted. The language of Section 5625-10, supra, is clear and unquestionably requires that both premium and accrued interest received from the sale of notes shall be paid into the bond retirement fund. The language of Section 2293-29, General Code, which you quote, is also clear and unambiguous to the effect that moneys remaining from the proceeds of the sale of anticipatory notes shall be used for the purpose of paying such notes. While the premium and accrued interest may not be deposited in the construction fund under Section 2293-29, General Code, as is money from the principal on the sale of notes, it is nevertheless money received from the sale of notes. It being expressly provided, therefore, in Section 2293-29 that the moneys remaining from the proceeds of the sale of such notes shall be used for

the purpose of paying such notes, it must necessarily follow that accrued interest and premium, which, at the time of sale, was paid into the bond retirement fund, must, at the time of the sale of bonds, be paid back from the bond retirement fund for the purpose of paying the notes. It would follow accordingly that if bonds are to be issued only in such amount as is necessary to pay the cost of an improvement, if at the time of issuance there appears in the bond retirement fund any premium or accrued interest received at the time of the sale of the notes, the amount of bonds necessary to be issued would be reduced to the extent that there are funds in the bond retirement fund received at the time of the sale of the notes as premium and accrued interest.

You next raise the question of whether or not, in case the cost of an improvement is to be assessed, the amount of premium and accrued interest received from the sale of notes should be deducted from the cost of the improvement as assessed. In addition to the actual cost of an improvement being reduced on account of premium and accrued interest being received from the sale of notes, it would appear that such cost would in effect be further reduced in the event bonds are sold at a premium and the question would then become one of whether or not a subdivision has authority to levy assessments in excess of the actual cost of an improvement. In an opinion of my predecessor found in *Opinions of the Attorney General, 1928, p. 30*, very pertinent language was used bearing upon the authority to levy taxes in excess of an amount necessary to pay the cost of an improvement:

"In my opinion it is in no sense a diversion of the purpose of a fund to apply unexpended balances to the retirement of the bonds issued for the purpose of establishing the fund in question. The Legislature, in the provision for the payment of premium and accrued interest to the sinking fund, has certainly not diverted any of the proceeds of the bond issue to purposes foreign thereto. The retirement of a specific bond issue is as much a part of the issue as the construction of the improvement. It would surely be an anomalous situation to have unexpended proceeds of a bond issue in a fund and at the same time to tax the subdivision for the retirement of such bonds. The resultant unnecessary taxation is entirely foreign to all theories of tax imposition, which must in all cases have as its justification the existence of necessity."

I am of the view that the principles here expressed as applicable to taxation are equally applicable to the levy and collection of assessments. This view is strengthened by the fact that under Sections 2293-25 and 2293-26 of the Uniform Bond Act, it is required in all instances, including those in which bonds are issued in anticipation of assessments, that a tax be levied sufficient in amount to pay the interest on and retire the bonds at maturity.

It accordingly follows that in the event notes or bonds have been sold at a premium and accrued interest, such premium or accrued interest should be used for the retirement of such notes or bonds and either taxes or assessments which may have been theretofore levied without such premium and accrued interest having been taken into consideration, should, to the extent of premium and accrued interest received, be reduced.

Specifically answering your questions, I am of the opinion that premium and accrued interest, received from the sale of notes issued in anticipation of the sale of either general or special assessment bonds, should be paid into the sinking or bond retirement fund of the subdivision.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*