

issued to complete the improvement. The effect of such transfer will be, that to the extent of the damages recovered, the assessments made against affected lands for the purpose of completing the improvement will be reduced.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

2322.

MUNICIPAL CORPORATIONS—SINKING FUND TRUSTEES—SALE OF SECURITIES BY SAID TRUSTEES IN ORDER TO PURCHASE OTHER MUNICIPAL BONDS UNAUTHORIZED—LIABILITY FOR LOSS WHERE TRUSTEES PERFORM UNAUTHORIZED ACT.

*The sale of securities in the hands of the sinking fund trustees, for the purpose of raising funds to purchase municipal bonds offered for sale by the municipality, is unauthorized by law and illegal, and such an act is a breach of official duty, rendering such trustees liable to the municipality for any loss or damage occasioned by reason of such illegal transaction.*

COLUMBUS, OHIO, August 12, 1921.

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

GENTLEMEN:—Receipt is acknowledged of your letter of recent date reading as follows:

“We are respectfully requesting your written opinion upon the following matter:

We are calling your attention to an opinion of December 7, 1912, which may be found in the Annual Reports of the Attorney-General for 1913, page 1456, and we would say that we are finding instances in which the sinking fund trustees of municipalities at times when they have no funds whatsoever for investment and the municipality has bonds which they wish to sell, that the sinking fund trustees either by selling certain investments, which they have on hand, below par to secure the funds necessary, or by taking the bonds offered for sale and selling them below par, paying for such bonds after they have them sold, in order to help out the city:

Question: Can the trustees of the sinking fund, who have acted as stated above, be held liable for the difference between the amount received for the bonds sold to complete such a transaction and the par value thereof; in other words, can the bureau make a finding for recovery?”

The question presented by your inquiry relative to the sale of municipal bonds by the trustees of the sinking fund under the conditions stated in your communication, would seemingly be best answered by an analysis of the statutes authorizing the sale of such bonds, as well as defining the powers and duties of the various officials participating therein.

Section 3922 G. C. provides as follows:

“When a municipal corporation issues its bonds, it shall first offer them at par and accrued interest to the trustees of the sinking fund, in their official capacity, or, in case there are no such trustees,

to the officer or officers of such corporation having charge of its debts, in their official capacity. If such trustees or other officers of the sinking fund decline to take any or all of such bonds at par and accrued interest, the corporation shall offer to the board of commissioners of the sinking fund of the city school district such bonds or so many of them at par and accrued interest and without competitive bidding as have not been taken by the trustees of the sinking fund, and the board of commissioners of the sinking fund of the city school district may take such bonds, or any part thereof."

This section apparently is mandatory, and emphatically provides that municipal bonds may not be sold at less than par and accrued interest. Section 3923 G. C. similarly provides:

"In no case shall the bonds of the corporation be sold for less than their par value, nor shall such bonds when so held for the benefit of such sinking fund or debts, be sold, except when necessary to meet the requirements of such fund or debt."

It is believed that this section refers to the original sale of bonds by the municipality, and would not limit the authority of the sinking fund trustees given by section 4517 G. C. to protect the credit of the municipality by giving them unlimited power to use the money and securities in their possession for that purpose.

Section 4517 G. C. provides as follows:

"The trustees of the sinking fund shall have charge of and provide for the payment of all bonds issued by the corporation, the interest maturing thereon and the payment of all judgments final against the corporation, except in condemnation of property cases. They shall receive from the auditor of the city or clerk of the village all taxes, assessments and moneys collected for such purposes and invest and disburse them in the manner provided by law. For the satisfaction of any obligation under their supervision, the trustees of the sinking fund may sell or use any of the securities or money in their possession."

It would seem obvious from the provisions of this section that the sinking fund trustees, while being empowered with very broad powers as to protecting the credit of the city, yet all taxes, assessments and moneys coming into their hands by the provisions of this section must, it would appear, "be disbursed in the manner provided by law."

Section 4514 G. C. provides as follows:

"The trustees of the sinking fund shall invest all moneys received by them in bonds of the United States, the state of Ohio, or of any municipal corporation, school, township or county bonds, in such state, and hold in reserve only such sums as may be needed for effecting the terms of this title. All interest received by them shall be re-invested in like manner."

This section clearly indicates that the trustees of the sinking fund "shall invest all moneys received by them in bonds of the United States," etc. The section does not authorize such trustees to sell the securities already within

their possession as investments in order to raise funds for the purpose of other investments, but definitely authorizes the investment of moneys in their possession not already invested.

It would seem, therefore, that the selling of the securities representing the invested funds of the sinking fund trustees, in order to obtain funds for the purchase of municipal bonds by such trustees, as well as the selling of both the securities in their hands and also those purchased from the municipality below par, is an act clearly unauthorized by law, and beyond the powers conferred upon the sinking fund trustees to consummate, and for which such trustees would be liable to the municipality for any loss or damage occasioned by reason of the illegal transaction.

Your question further asks, can the trustees of the sinking fund who have acted as stated above be held liable for the difference between the amount received for the bonds sold to complete such a transaction and the par value thereof?

While it is believed that such an amount as you indicate might generally be considered as prima facie evidence of the amount or measure of damages in the instances quoted, yet it might not in all cases represent the true measure of damages recoverable by the municipality, since the bonds in question may never have brought par value, or never may have been sold in the first instance. It would rather seem in such cases that the actual damage or loss sustained by the municipality would, no doubt, be such as might be determined by the court or jury as the circumstances in the particular case should warrant, and would as such more properly represent the true measure of damages recoverable from officials whose negligence or breach of official duty had occasioned the loss or damage to the municipality.

In specific answer to your question, and in view of the facts stated in your communication, it is the opinion of this department that the bureau would be warranted in making a finding for recovery against the sinking fund trustees in the instances cited.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

2323.

TAXES AND TAXATION—WHERE PERSON TAKES UP RESIDENCE IN THIS STATE LESS THAN SIX MONTHS NEXT PRECEDING DAY BEFORE SECOND MONDAY OF APRIL IN GIVEN YEAR WITH BONA FIDE INTENTION OF REMAINING HERE PERMANENTLY—MONEYS, CREDITS AND INVESTMENTS OF SAID PERSON TAXABLE.

*A person who takes up his residence in this state less than six months next preceding the day before the second Monday of April in a given year, with a bona fide intention of remaining here permanently, is subject to taxation in this state in respect of his moneys, credits and investments held on that day.*

COLUMBUS, OHIO, August 12, 1921.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—The commission requests the opinion of this department upon the following question: