1977.

SINKING FUND TRUSTEES—COUNTY BOARD—AUTHORITY TO INVEST AND DISBURSE MONEYS.

SYLLABUS:

Where a county board of sinking fund trustees is still in existence, it has the authority and obligation to invest and disburse moneys of the sinking fund and the bond retirement fund.

COLUMBUS, OHIO, April 16, 1928.

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

GENTLEMEN:—This will acknowledge your recent communication, as follows:

> "In Opinion No. 1899, rendered to this department, on page 6, the following statement was made:
>
> 'It is clear, from a reading of the above section that sinking fund trustees no longer have any existence except as to outstanding bonds issued prior to January 1, 1922.'
>
> Your conclusion is that there is no authority for the investment of the money in the bond retirement fund in any other manner than is provided for general county funds. In this connection may we call your attention to the opinion of a former Attorney General in his 1922 Report at page 626, paragraph 2 of the syllabus, which is as follows:
>
> 'Until all bonds outstanding on the first day of January, 1922, are retired, municipal, school district and county sinking fund trustees and commissions continue to exist and have full charge of the payment of all bonds issued by their respective subdivisions regardless of the date of issuance, with authority to manage and invest the funds raised by taxation for such purposes.'
>
> Inasmuch as this opinion was not referred to in your opinion and inasmuch as sinking fund trustees have been following the ruling of the former opinion, may we inquire whether it was the intent of your opinion to reverse the conclusion arrived at in the former opinion referred to."

The remainder of the language of Opinion No. 1899, which you have not quoted but which is, perhaps, inconsistent with the language found in the 1922 opinion, is as follows:

> "As to bonds issued after that date, said section provides that all funds which were formerly payable into the sinking fund shall be paid to the treasurer (in this case, county treasurer) and by him placed in a separate fund known as the 'bond payment fund.'
>
> I find no provisions of law specifically directing or authorizing the county treasurer to invest the moneys in the bond payment fund or the bond retirement fund, as the same is denominated, since the enactment of Section 5625-9, General Code (112 O. L. 391, 395), in any other manner than is provided for the deposit of other county funds. In other words, the bond payment fund or the bond retirement fund must be deposited in the same manner as other county funds, as directed in Sections 2715 to 2745, General Code, of which group of sections Section 2737, General Code, a part of which is quoted in your communication, is a part."

On the general subject therein discussed, the 1922 opinion, on page 633, contains the following language:

> "This language is very explicit, and on the basis thereof it seems clear that in a county (to which your second question seems to relate) the county treasurer will, after the abolition of the sinking fund trustees, acquire the power to invest the funds standing to the credit of the bond payment fund. It is equally clear, however, that this succession of power does not take place until the abolition of the sinking fund trustees. There is nothing in the Griswold act vesting in the treasurer of a subdivision the power or duty to provide for the payment even of 'serial bonds' until all the 'sinking' fund bonds as defined in this opinion are retired. With respect to counties, Sections 2976-19, and other similar sections remain in full force and effect. The section referred to requires the trustees of the county sinking fund to provide for the payment of all bonds issued for the county, and all interest maturing thereon, and provides that 'all taxes, assessments and other moneys collected for such purposes or held in the county treasury to the credit of the sinking fund shall be subject to investment and disbursement by them in the manner provided by law.' In other words, though the tax levies are to be made as provided in Section 5649-1d in the case of bonds which are to be designated as 'serial bonds' within the principles laid down in this opinion, yet the levies when collected are to be paid over to and administered by the sinking fund trustees as long as they remain in existence."

Section 2976-19 of the Code, to which reference is made in the quotation above, is as follows:

> "The trustees of the sinking fund shall provide for the payment of all bonds issued by the county and the interest maturing thereon. All taxes, assessments and other moneys collected for such purposes, or held in the county treasury to the credit of the sinking fund, shall be subject to investment and disbursement by 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 in their possession or disburse any of the money under their control."

This clearly imposes upon the trustees of the sinking fund the duty to provide for the payment of all bonds issued by the county without any qualification as to the date of issuance thereof. It further, without qualification, makes all taxes and assessments and moneys collected for bond retirement purposes subject to investment and disbursement by the trustees in the manner provided by law. It follows, therefore, that unless the provisions of Section 2295-14 of the Code, or some other later provision of law, place these functions and duties in the hands of other officials, the sinking fund trustees still continue to function in this respect.

Section 2295-14 of the Code received consideration in the 1922 opinion. That section is as follows:

> "The board of sinking fund trustees of any county or municipality or the board of sinking fund commissioners of any school district shall continue to exercise the powers provided in Sections 2976-18 to 2976-27, inclusive, 4511 to 4522 inclusive, 3932 and 7613 to 7619 inclusive of the General Code and all other provisions of law relating to its powers, until all outstanding bonds of such county, municipality or school district issued previous to January 1, 1922, shall have been paid; and thereupon it shall be deemed to

be abolished and its functions and powers relating to the purchase and sale of securities, receipt, deposit and investment of taxes, assessments and other funds raised for the payment of bonds and funded debts, the application of such funds to the payment of bonds and other indebtedness and all its other powers and the functions as set forth in said provisions of law as amended in this act (G. C. Sections 2295-6 to 2295-15), shall be deemed to be transferred to the treasurer of the county, municipality or school district, and all moneys, securities and other assets then in the custody and possession of such board shall be transferred and delivered to such treasurer. Thereafter all said moneys, securities and assets and all moneys received by the county, municipality or school district for the payment of the interest and principal of its bonds or other funded debts and all inheritance taxes and all other taxes and revenues which were theretofore payable, by virtue of provision of law, into its sinking fund shall be paid to its treasurer and placed and held by him in a separate fund to be known as 'bond payment fund' and, subject to the provisions of law relating to transfer to other funds, said funds shall be applied by him to the purposes for which the sinking fund had theretofore been applicable."

Undoubtedly the abolishment of the board of sinking fund trustees is not to take place until all outstanding bonds of the county issued previous to January 1, 1922, have been paid. The functions given to the treasurer of the county with respect to bonds are clearly not effective until after the abolishment of the board. Its functions are by the express terms of the act then to be transferred to the treasurer and he thereupon has all of its powers relating to the purchase and sale of securities, receipt, deposit and investment of taxes, assessments and other funds, raised for the payment of bonds and funded debts and other powers incident to the board.

Standing alone, this section must, in my opinion, be regarded as postponing the vesting of any functions in the treasurer with respect to bonds until the board of sinking fund trustees ceases to exist and, accordingly, the language used in Opinion No. 1899 must be modified unless other provisions of law are controlling.

You will observe that Section 2295-14 provides prospectively for a "bond payment fund" to be established at the time the functions of the board of sinking fund trustees are assumed by the treasurer. Inasmuch as the language is prospective, I feel, so long as the board of sinking fund trustees functions, no such fund is authorized and all payments made from taxation and other sources for the retirement and payment of interest on bonds should go to the sinking fund irrespective of whether the bonds were issued prior or subsequent to January 1, 1922.

It should be noted, however, that the bond payment fund is no longer recognized as such, since the provisions of House Bill 80 of the 87th General Assembly provide for levying taxes by local subdivisions and their method of budget procedure and do not mention any such fund. The funds to be established by each subdivision of the state are enumerated in Section 5625-9 of the General Code. That section is in part as follows:

"Each subdivision shall establish the following funds:

(a) General funds.

(b) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds.

(c) Bond retirement fund, for the retirement of serial bonds, or of notes or certificates of indebtedness."

The other funds enumerated in the portion of the section which I have not quoted are not material to our present inquiry. What is to be placed in these funds is described in Section 5625-10 of the Code, which, so far as pertinent, is as follows:

> "All revenues derived from the general levy for current expense within the fifteen mill limitation; from any general levy for current expense authorized by vote outside of the fifteen mill limitation; and from sources other than the general property tax, unless the law prescribes its use for a particular purpose, shall be paid into the general fund.
>
> All revenues derived from general or special levies for debt charges, whether within or without the fifteen mill limitation, which is levied for the debt charges on serial bonds or on notes or certificates of indebtedness having a life less than five years, shall be paid into the bond retirement fund; and all such revenue which is levied for the debt charges on all other bonds, notes, or certificates of indebtedness shall be paid into the sinking fund.
>
> * * * * * * * *
>
> 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."

From these sections it is clear that a new fund, to be known as "bond retirement fund" is created and its maintenance is now mandatory upon all subdivisions of the state, including counties where serial bonds are outstanding.

In this respect it essentially differs from the bond payment fund described in Section 2295-14, General Code, supra. The latter fund was prospective and only came into existence when, upon the final payment of all bonds issued previous to January 1, 1922, the board of sinking fund trustees was abolished and the treasurer assumed its functions.

It is to be noted also that there is a further distinction between the two funds. The "bond payment fund," provided in Section 2295-14, obviously could only contain funds derived from taxation or otherwise for the purpose of paying interest and retirement obligations incurred subsequent to January 1, 1922. On the other hand the bond retirement fund is now established for the purpose of retiring all serial bonds. While it may be said that the ordinary procedure prior to the enactment of the so-called Griswold act, requiring all bonds thereafter issued to be serial bonds, was to issue term bonds, yet as a matter of fact there were many subdivisions of the state which did actually issue serial bonds prior to January 1, 1922. Apparently under the provisions of Section 5625-9 and 5625-10 the bond retirement fund, as now in existence, is for the purpose of retiring all serial bonds irrespective of whether they were issued prior or subsequent to January 1, 1922. Likewise the sinking fund is now restricted to the payment of bonds other than serial bonds.

While, therefore, the statute now requires the maintenance of a bond retirement fund, there is no provision, so far as I have been able to discover, indicating specifically who is to administer this fund. In the absence of specific provision, recourse must be had to the general provisions of law in order to determine what board or official has control of the fund as to its investment and disbursement. I believe that the language of Section 2976-19 of the Code is decisive of this question. For the purpose of clarity, I repeat the pertinent provisions thereof, as follows:

> "The trustees of the sinking fund shall provide for the payment of all bonds issued by the county and the interest maturing thereon. All taxes,

assessments and other moneys collected for such purposes, or held in the county treasury to the credit of the sinking fund, shall be subject to investment and disbursement by them in the manner provided by law."

Manifestly from the definitions of the bond retirement fund and its sources as contained in Section 5625-9 and 5625-10 of the Code, this fund is made up of levies for debt charges on serial bonds and, according to the provisions of Section 2976-19 of the Code, these moneys are subject to investment and disbursement of the trustees of the sinking fund.

My conclusion is, therefore, that while the provisions of the new budget law require the maintenance of two separate funds, viz., the sinking fund and the bond retirement fund, the moneys therein are both subject to investment and disbursement by the trustees of the sinking fund so long as the board continues in existence by reason of the fact that bonds issued prior to January 1, 1922, have not been paid.

It follows necessarily from what I have said that the language of Opinion No. 1899, which I quote in the first portion of this opinion, must be modified in accordance with the views hereinabove expressed. That is to say, I am of the opinion that, where a county board of sinking fund trustees is still in existence, it has the authority and obligation to invest and disburse moneys of the sinking fund and the bond retirement fund.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1978.

DISAPPROVAL, BONDS OF RICHLAND TOWNSHIP, BELMONT COUNTY, OHIO—$15,635.74.

COLUMBUS, OHIO, April 16, 1928.

Re: Bonds of Richland Township, Belmont County, Ohio, $15,635.74.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—An examination of the transcript pertaining to the above issue of bonds reveals that said bonds are being issued to pay the township's portion of the cost of certain road improvements. The transcript also reveals that the bond resolution was passed on September 24, 1927.

Section 2293-17, General Code, (112 O. L. 364, 372), provides:

"The net indebtedness created or incurred by a township, exclusive of the bonds excepted in Section 2293-13 of the General Code, and exclusive of county bonds issued in anticipation of township tax levies shall never exceed two per cent of the total value of all property in such township as listed and assessed for taxation; and no such indebtedness with said exceptions shall be incurred unless authorized by vote of the electors."

It will be noted that Section 2293-17, supra, provides that no indebtedness, with the exception of the bonds excepted in Section 2293-13, General Code, shall be incurred unless authorized by vote of the electors. The bonds excepted in Section 2293-13, General Code, (112 O. L. 364, 369), are as follows: