1528.

BOND FUNDS—UNEXPENDED BALANCE SHOULD BE PAID INTO SINKING OR BOND RETIREMENT FUND.

SYLLABUS:

Unexpended balances of bond funds of a municipal corporation should be immediately paid into the sinking fund or the bond retirement fund of the subdivision.

COLUMBUS, OHIO, January 5, 1928.

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

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

> "Section 3804, G. C., provided that unused balances of bond funds must be transferred to the sinking fund, but this section was repealed in House Bill No. 80, 112 O. L. 391, and we have been unable to find any re-enactment of this provision. In view of the provisions of Section 5625-13, G. C., 112 O. L. 397, we will appreciate your advice relative to the disposition of unused balances of bond funds in a municipal corporation. Section 4512, G. C., may be pertinent."

You raise the question in view of the provisions of Section 5625-13 of the General Code, which is in the following language:

> "No transfers shall be made from one fund of a subdivision to any other fund, by order of court or otherwise, except that transfers may be made from the general to special funds established for purposes within the general purposes of the general fund, and from such special funds to the general fund; but no transfers shall be made from any such special fund to the general fund, except of monies theretofore transferred from the general fund. Such transfers shall only be made by authority of an appropriation in the annual or supplemental appropriation measure, or by resolution of the taxing authority adopted by a three-fourths vote. Before any transfer shall be made, the fiscal officer of the subdivision shall certify in writing that the amount so to be transferred is not encumbered by any obligation or appropriation, and is in the treasury or in process of collection. At the end of a fiscal year any balance in a special fund to which a transfer has been made shall revert to the general fund but not in excess of the amount that was originally transferred during such fiscal year. In determining the balance in the general fund at the close of such fiscal year, balances which have so reverted shall be included."

This section has heretofore received consideration of this office and it is only necessary to say that, by reason of its provisions, transfers by court order cannot in any event now be made and only such transfers as are specifically authorized by this section apparently can be accomplished by the taxing authorities of a subdivision. Since this section is limited in its application to transfers from the general fund to special funds within the general purposes of the general fund, and of an amount not exceeding that theretofore transferred from such special funds back to the general fund, it is manifest that there is no authority therein contained for the transfer of the unexpended balances of bond funds to any other fund whatsoever.

Upon the issuance of bonds it is made clear by the provisions of House Bill 80, that a separate and distinct fund must be established for the purposes of the bond issue. Section 5625-10 contains the following language:

> "* * * 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. * * * "

You will observe that, while the principal amount of the bond issue is to be paid into the special fund for the purpose of the issue, the premium and accrued interest are paid into either the sinking fund or the bond retirement fund of the subdivision. This provision for the payment of the premium and accrued interest to the sinking fund or bond retirement fund evidences, in my opinion, the intention on the part of the legislature to devote all surplus of the proceeds of a bond issue to the retirement of the bonds.

You invite my attention, however, to the fact that the legislature, in the enactment of House Bill 80, repealed Section 3804 of the General Code, which provided specifically that unused balances of bond funds must be transferred to the sinking fund. In order that there may be unused balances in the fund of a particular bond issue, the purposes of the issue must necessarily have been accomplished. That is to say, the improvement which necessitated the issuance of bonds must have been completed. If, therefore, the restrictive language of Section 5625-13 of the Code, together with the additional restriction contained in the last paragraph of Section 5625-10 of the Code, are to be literally applied, these unused proceeds must continue to remain in these special funds although there is no possibility whatsoever of their ever serving any useful purpose. The last paragraph of Section 5625-10 of the Code, to which I have referred, is as follows:

> "Money paid into any fund shall be used only for the purposes for which such fund is established."

I do not feel that it is necessary to countenance a construction of House Bill 80 which will lead to such an absurd conclusion. 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 purpose 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. In my view, the devotion of the unexpended balances to the retirement of the bonds in question is merely a fulfillment of one of the purposes and therefore is not in contravention of anything contained in House Bill 80. Section 3804 of the General Code was, in effect, merely declaratory of a course of procedure which, even had it not been enacted specifically, would, nevertheless, have been established under authority of administrative practice or judicial opinion.

I am substantiated in my conclusion by the provisions of Section 4512 of the General Code, to which you also refer. That section is in the following language.

> "Upon demand of the board, the city auditor or village clerk shall report to it balances belonging to the city or village, to the credit of the sinking fund, interest accounts, or for any bonds issued for or by the corporation, and all officers or persons having them shall immediately pay them over to the trustees of the sinking fund, who shall deposit them in such place or places as the majority of such board shall select."

Here is apparent authority vested in the trustees of the sinking fund to require the transfer of balances of bond issues to the sinking fund. By analogy this section may be extended to include the transfer of unexpended balances of serial bonds to the bond retirement fund established by House Bill 80.

I am therefore of the opinion that unexpended balances of bond funds of a municipal corporation should be immediately paid into the sinking fund or the bond retirement fund of the subdivision.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1529.

APPROVAL, BONDS OF YELLOW CREEK TOWNSHIP SCHOOL DISTRICT, COLUMBIANA COUNTY, OHIO—$5,500.00.

COLUMBUS, OHIO, January 5, 1928.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1530.

APPROVAL, BONDS OF BUTLER TOWNSHIP RURAL SCHOOL DISTRICT, MONTGOMERY COUNTY, OHIO—$10,000.00.

COLUMBUS, OHIO, January 5, 1928.

Industrial Commission of Ohio, Columbus, Ohio.