

1181.

SINKING FUND TRUSTEES—HOW EXPENSES OF SAID COMMISSION ARE TO BE PAID WHERE SAME ARE INCURRED FOR JOINT BENEFIT OF CITY AND SCHOOL DISTRICT BOARDS—BOARD OF EDUCATION NOT REQUIRED TO FIX AGGREGATE AMOUNT FOR CERTAIN EMPLOYEES OF COMMISSION—EMPLOYEES OF SCHOOL DISTRICT SINKING FUND COMMISSION ALSO RECEIVE COMPENSATION AS EMPLOYEES OF CITY SINKING FUND COMMISSION.

1. *The board of commissioners of the sinking fund of a school district, which is also a city board of commissioners of the sinking fund of a city, may charge against the board of education funds under their control a fair and just portion of the expenses incurred for the joint benefit of the city and school district boards of commissioners of the sinking fund.*

2. *After making the appropriation required by section 7618, for the necessary expenses of the sinking fund commission, the board of education is not required to fix an aggregate amount for certain employes of the commission and apportion such amount among such employes.*

3. *It is legal for the employes of the school district sinking fund commission to be compensated in addition to their compensation as employes of the city sinking fund commission, where it is physically possible for such employes to discharge the duties involved by such employments, as determined by the sinking fund commissioners.*

COLUMBUS, OHIO, April 27, 1920.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your recent request for the opinion of this department as follows:

“We are enclosing letter from the city solicitor of C., together with copy of our reply, and as this is a matter of general interest across the state, we are respectfully requesting your written opinion on the following questions:

1. Can the sinking fund trustees of a city charge against the board of education funds in their control part of the expenses of conducting the office of the sinking fund trustees, we refer, of course, to such trustees as acting both for the city and the board of education?

2. Must the board of education fix an amount to be expended in the conduct of the office and apportion the same amongst the employes of the sinking fund trustees?

3. If it be legal for the board of education funds to be used, then can compensation to employes of the sinking fund be paid in addition to that fixed by ordinance of council, or are the city funds simply reimbursed a proportionate part of the expense from the school funds?”

It is noted that the letter of your correspondent raises the first two questions and asked their submission to this department for a ruling, and your reply refers to the opinions of the attorney-general, dated April 8, 1918, and found in Opinions of the Attorney-General, Vol. I, page 523, and of the date of May 27, 1913, Vol. I, 1913, Opinion 260.

Sections 7614, 7618 and 4768 G. C. are pertinent to the matters stated in your inquiry.

Section 7614 is as follows:

"The board of education of every district shall provide a sinking fund for the extinguishment of all its bonded indebtedness, which fund shall be managed and controlled by a board of commissioners of the sinking fund of ----- (inserting the name of the district), which shall be composed of five electors thereof, and be appointed by the common pleas court of the county in which such district is chiefly located, except that, in city or village districts the board of commissioners of the sinking fund of the city or village may be the board of the school district. Such commissioners shall serve without compensation and give such bond as the board of education requires and approves. Any surety company authorized to sign such bonds may be accepted by such board of education as surety. The cost thereof, together with all necessary expenses of such commissioners shall be paid by them out of the funds under their control."

It is to be noted that your question relates to the board of commissioners of sinking funds in cities where the city sinking fund commissioners act also as such commissioners of the school fund.

At this point it may well be pointed out that the provision here is that the commissioners of the sinking fund of the city "may be the board of the school district." Here the provision is not that the city board shall perform the duties, but that it is in fact the board of the school district. The last sentence provides that the necessary expenses of the commissioners shall be paid by them out of the funds under their control. The effect of this section is to invest the city or village board of commissioners of the sinking fund with an additional capacity, and under it the commissioners become the commissioners of the sinking fund of the school district and as such may exercise all of the authority given by this and the other related sections. It is noted that the thing about which your first question inquires is whether "part of the expenses of conducting the office of the sinking fund trustees" may be charged against the board of education funds in the control and management of the commissioners of the school fund. The fact that the commissioners of the sinking fund have a dual capacity, becomes rather important by reflecting that should the commissioners of the sinking fund of the school district so desire, they could maintain a separate office for the transaction of the sinking fund business of the school district. This authority is conveyed in section 7614, empowering the school district sinking fund commissioners to manage and control the sinking fund and the provision for the payment of "all necessary expenses of such commissioners \* \* \* out of the funds under their control." Of course a clear abuse of the discretion as to the necessity of the expense would be the subject of judicial review and intervention.

If the city commissioners of the sinking fund have and maintain an office and organization for the discharge of their business as such city board, it would seem to be reasonable and practicable to consolidate and combine, as far as possible, the work of the two boards. I think it is fair to infer that such was the legislative belief in making the provisions above noted in section 7614. It then follows that a fair and just proportion of the expenses connected with the control and management of the school funds may be paid out of the school funds.

While neither of your questions formally request the interpretation of the words "necessary expenses" as they occur in these sections, with reference to the employment of clerks or other assistants to the commissioners, yet such interpre-

tation is necessarily involved in the solution of those questions and it may be discussed at this point.

As before quoted, it may be pointed out that section 7614 provides for the payment of "all necessary expenses of such commissioners." It may also be noted that there is no express grant of authority to employ such assistants and the query naturally arises whether this provision for the payment of the necessary expenses of "such commissioners" would include and justify the payment of the compensation of employes or does it rather relate to the personal expenses of the commissioners.

Considered by itself alone, without any extrinsic evidence, I should be inclined to adopt the latter interpretation. However, it is to be noted that in a later section, 7618, the provision for the payment of expenses is for the "necessary expenses of such sinking fund *commission*."

With these provisions of the act itself must be considered the purpose of the act and its subject matter. To illustrate, it is generally known—and such knowledge is attributable to the legislature in considering their intention in this act—that the purpose of this legislation is to secure for the good of the school district the benefit of the financial ability and experience and business judgment of a certain number of representative electors of the district; that members of the commission serve without compensation and are charged with very important duties in the investment and management of the sinking fund. It may be noted that under section 7616, the commissioners may issue refunding bonds and under the succeeding section they are obliged to make an annual report to the board of education, giving a detailed statement of the sinking fund and such other reports as may be required by the board of education. A fair consideration of the purpose of this act, and of the duties involved, makes it seem clear enough that the expenses referred to in such section 7614 and section 7818 must be held to include such compensation as is necessary to the proper control, investment and management of the sinking fund, as provided for in these sections.

Section 4509, relating to the trustees of the sinking fund of a city, has been considered; in this section council is authorized to provide for employes of the sinking fund commission of the city, but no such provision was made requiring or authorizing the board of education to exercise a similar power in connection with the control, investment and management of the school funds, which, as pointed out in the Donell case, *infra*, is by statute entrusted to the discretion of the sinking fund commissioners and to give effect to the manifest purpose of the law, it is believed that the broader meaning of the term expenses "of such commissioners" and of "such sinking fund commission" must be adopted.

Your second question must be answered in the negative, as it is believed that the control and management of the sinking fund is lodged exclusively in the sinking fund commissioners, without dictation on the part of the board of education, except as to the matter of actual payment, which will be later noted.

As said in *State ex rel. Donnell vs. Board of Education*, 3 O. N. P. (n. s.) 401, in the first branch of the syllabus; the sinking fund board "is entitled to the management and control of said fund for the payment of debts and investment of the surplus *without dictation*, but is not entitled to the custody or possession thereof." This thought is further amplified on pages 402 and 403 of the opinion where the court says:

"The board of education has nothing to do with said fund, that is, nothing to do or say with its management and control. No option or discretion is vested in it and no supervisory authority or check is delegated to it."

## OPINIONS

Under section 7618 the board of education is commanded to appropriate to the use of such sinking fund any taxes levied for the payment of interest on its bonded indebtedness, together with the sums provided for in section 7613 and section 7614. This section also recognizes the right of the sinking fund commissioners, for it provides that such "sum so appropriated shall be applied to no other purpose than the payment of such bonds, interest thereon and necessary expenses of such sinking fund commission." In the case above quoted, as also in the former opinion of this department referred to in your letter, Opinions of the Attorney-General for 1913, page 260, it was held that the management and control of the fund rested in the commissioners of the sinking fund, but that the actual possession of the school funds remained in the board of education and its officers, and that the method of disbursing the sum appropriated to the use of the sinking fund was, as stated in the common pleas court case referred to, as follows:

"I think the conclusion is irresistible that this sinking fund must remain with the treasurer of the board of education until paid out upon the order of its president and clerk to the person entitled thereto *upon requisition therefor made by said commission*, stating the amount and purpose thereof in each case."

Here is authority for the management and control of public moneys and authority for the payment of the necessary expenses incurred in such management and control to be paid out of the funds under their control. The reasonableness and necessity of the expenses would seem to be a matter of discretion with the sinking fund commissioners, and it is believed that the board of education is not required to fix an aggregate amount to be expended for such expenses and apportion such aggregate amount among the employes of the sinking fund commission. The compensation of employes of the sinking fund commission is payable in the manner pointed out in this decision, upon the requisition of the sinking fund commission. Of course the board of education in making its appropriation for expenses of the sinking fund commission does in this fashion, and to this extent, fix the amount to be expended for such expenses, but this does not require the board of education to make the apportionment above referred to.

Your third inquiry raises the question of paying to employes of the sinking fund commission compensation in addition to that fixed by ordinance of council, for services performed for the commissioners of the sinking fund of the school district. Where the employes are employed both by the city and school board sinking fund commissioners, the rule against increasing the salary or compensation of city employes would not apply.

Assuming that such employes were first in the employ of the city sinking fund commission and then later were employed by the school district sinking fund commission, and charged with additional duties by the school district sinking fund commission, it is at once apparent that any additional compensation for the duties last referred to would not be compensation for their duties as city employes. Their duties would not be incompatible and it is believed that section 4213 G. C., or similar charter provisions, would not be a bar to their receiving compensation for both employments. The new duties would not be incident or germane to the regular duties involved in their previous employment, and, as has been held in *Lewis vs. State ex rel*, 21 O. C. C., 410, and in other cases where new duties of this character are conferred and additional compensation provided, it is not an increase of the compensation under the previous employment or holding of office.

The answer to your third question is, that it is legal for the employes of the school district sinking fund commission to be compensated in addition to their

compensation as employes of the sinking fund commission, where it is physically possible for such employes to discharge the duties involved by such employments, as determined by the sinking fund commission.

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

1182.

ROADS AND HIGHWAYS—WHEN PROCEEDS OF TAX LEVY AUTHORIZED BY SECTION 6929 G. C. MAY BE EXPENDED BY COUNTY COMMISSIONERS—MAY NOT BE EXPENDED IN IMPROVEMENT OF VILLAGE STREET LYING ON LINE OF INTER-COUNTY HIGHWAY.

1. *The proceeds of the tax levy authorized by section 6926 G. C. may be expended by county commissioners in the improvement of such sections of an inter-county highway within the county as have not become subject to maintenance by the state as provided by sections 1224, 7464 and 7465 G. C.*

2. *The proceeds of the levy authorized by said section 6926 G. C. may not be expended by county commissioners in the improvement of a village street lying on the line of an inter-county highway.*

(Second conclusion in this opinion revised. See Opinion No. 1531 dated August 30, 1920.)

COLUMBUS, OHIO, April 27, 1920.

HON. BARCLAY W. MOORE, *Prosecuting Attorney, Cadiz, Ohio.*

DEAR SIR:—Your letter of recent date is received reading as follows:

“Money raised under the law which authorizes a special levy for road purposes, by vote of the people, under section 6926-1 G. C., says that such money shall be used for the purpose of paying the county’s proportion of the compensation, damages, costs and expenses of constructing, reconstructing, maintaining and repairing county roads.”

Does this prohibit the expenditure of money from this fund on any road which has been laid out as an inter-county highway?

Would a portion of a village street, which is on the line of an inter-county highway, be considered an inter-county highway?

Does an interpretation of ‘county road’ make any difference between a road which has been designated and laid out as an inter-county highway, but not improved, and a road which has been constructed and is maintained by the state?

In other words, the commissioners desire instructions specifically as to where they can and where they can not spend this money.”

Said section 6926-1 to which you refer, appears in 108 O. L., 500, and with its two accompanying sections, provides for a vote of the electors of the county upon the question of exempting from all tax limitations the levy of two mills provided by section 6926 G. C. Therefore, the language quoted in your letter from section 6926-1 must be taken as constituting a reference to section 6926, rather than as describing or authorizing a levy. However, your quoted language fairly rep-