

1603

INTEREST EARNED ON SURPLUS FUNDS IN HANDS OF COUNTY TREASURER—INVESTED IN GOVERNMENT SECURITIES—SHOULD BE PAID INTO GENERAL FUND OF COUNTY—PROVISO, IF NO STATUTORY LANGUAGE TO CONTRARY—SECTION 2715-2 G. C.

SYLLABUS:

Interest earned on surplus funds in the hands of the county treasurer invested in government securities as authorized by Section 2715-2, General Code, should be paid into the general fund of the county, unless there is statutory language to the contrary.

Columbus, Ohio, March 29, 1950

Hon. Ralph J. Bartlett, Prosecuting Attorney  
Franklin County, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Board of County Commissioners of Franklin County, Ohio, has invested surplus funds in the hands of the County Treasurer in Government securities as authorized by General Code Section 2715-2. Said section provides that the interest shall be credited to the 'proper county fund.'

Will you please advise this office what fund is meant by 'proper county fund'?"

Section 2715-2, General Code, reads as follows:

"The commissioners in each county may, but shall not be so required, by resolution duly adopted and recorded, invest so much of the funds hereinafter received by it as are not required to meet current expenses, in bonds or other interest bearing obligations of the United States or those for the payment of principal and interest of which the faith of the United States is pledged, provided that the maturity of the bonds shall not be later than three years after the date of said investment.

No such investment shall be made at a price in excess of the current market value of such bonds or other interest bearing obligations.

The county treasurer shall pay for such bonds or other interest bearing obligations upon their delivery to him when the same are accompanied by a voucher signed by not less than two members of the board of county commissioners, to which voucher there is attached a certified copy of the resolution authorizing the purchase. All such bonds or other interest bearing obligations shall be deposited with the county treasurer as custodian thereof, and it shall be his duty to collect the principal sum of such bonds or other interest bearing obligations, and the installments of interest thereon as they become due and payable, and to pay the same when collected into the proper county fund. The board of county commissioners may sell any of said bonds or other interest bearing obligations for cash and for a sum not less than their current market price upon like action as required for their purchase; the proceeds thereof shall be paid by the purchaser to the county treasurer upon delivery of said bonds or other interest bearing obligations by the treasurer."

The question which you present was under discussion by my predecessor in office in an informal opinion rendered to the Prosecuting Attorney of Holmes County under date of April 16, 1946. The question involved in that opinion considered the disposition to be made of interest accruing on investments of proceeds of a special tax levy voted for the purpose of enlarging and improving the Holmes County Hospital. I have examined and studied the reasoning and conclusions stated therein, and find that I am in agreement therewith. The pertinent portion of said opinion, relative to the question which you have presented, reads as follows:

“There are two statutes relating to the authority of county commissioners to invest public funds in bonds and other interest bearing obligations of the United States, namely, Section 2296-12, General Code, 120 O. L., page 37, and Section 2715-2, General Code, 115 O. L. (Pt. II), page 64.

Section 2296-12, General Code, authorizes the county commissioners, as the governing board of the county under the Uniform Depository Act, to order the county treasurer to invest all or any part of the excess funds referred to in that section, in bonds, notes, certificates of indebtedness, etc. of the United States having maturities within fifteen months from their respective dates of issue, and the section also provides for the reinvestment of the proceeds of such securities when collected. This statute also provides that, ‘Interest realized on any investments authorized by this section shall be collected by the treasurer and credited by him to the general fund of the \* \* \* subdivision.’

The other section above referred to, Section 2715-2, was erroneously stated in bound Volume 2 of Page’s Ohio General Code, Annotated, to have been repealed, but the error was corrected in the 1943 Cumulative Supplement, wherein the section is published in full. This statute is permissive in character, and authorizes the county commissioners to invest public funds not required to meet current expenses, in bonds or other interest bearing obligations of the United States, provided the maturity of the obligations be not later than three years after the date of the investment. The statute also provides that installments of interest collected thereon shall be paid ‘into the proper county fund’, which fund, in my opinion, would be the general fund referred to in the last clause of the first paragraph of Section 5625-10, General Code. In other words, Sections 2715-2 and 5625-10 may be construed together so far as the interest is concerned, and since such interest is revenue derived from a source other than the general property tax, and there is no specific statutory provision that it shall be used for any particular purpose, such interest should be paid into the general fund.

This view is supported by an opinion of one of my predecessors, reported in Opinions of the Attorney General for 1935, page 1292, from which I quote the following:

‘Under Section 5625-10, General Code, the applicable portion of which is quoted in your letter, all revenue derived from sources other than the general property tax is to be paid into the general fund unless there is statutory provision to the contrary. Interest being compensation for the use of money, would be revenue derived from sources other than the general property tax and in my opinion should be paid into the general fund except where other provision is made therefor.’”

While the question under discussion in said opinion involved but one county fund, the same reasoning and conclusions would be applicable to all funds of the county invested in accordance with Section 2715-2, *supra*.

In accordance with the foregoing, you are therefore advised and it is my opinion that interest earned on surplus funds in the hands of the county treasurer invested in government securities as authorized by Section 2715-2, General Code, should be paid into the general fund of the county, unless there is statutory language to the contrary.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.