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BONDS, SALE OF — INTEREST EARNED ON MONEY OF SCHOOL DISTRICT FROM BOND SALE—SHOULD BE PAID INTO SINKING FUND OR BOND RETIREMENT FUND OF DISTRICT—PUBLIC DEPOSITORY—SECURITIES—SECTIONS 135.01 ET SEQ., 135.12, 5705.10 RC.

SYLLABUS:

Under the provision of Section 5705.10, Revised Code, interest earned on money of a school district derived from the sale of bonds, whether deposited in a public depository as provided in Section 135.01 et seq., Revised Code, or invested in securities as authorized by Section 135.12, Revised Code, should be paid into the sinking fund or bond retirement fund of the district.

Columbus, Ohio, February 1, 1956

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your communication requesting my opinion and reading as follows:

> "Many School Districts in Ohio in the past few years, and in all likelihood in the years ahead, will have money coming into their treasuries from the sales of Bond Issues.
>
> "When the proceeds from the sale of a Bond issue are paid over to the Clerk-Treasurer of a School District such Treasurer, pursuant to the provisions of R. C. 5705.10, places the premium and accrued interest received in the Bond Retirement Fund and the balance pursuant to R. C. 5705.09, Section E, in a Special Bond Fund for each Bond Issue. As a matter of

practice these are generally referred to as Building Fund Number 1, 2, 3, or some similar designation cognizant with the purpose of the Bond Issue. Such a fund is then available for the purposes set out in the Bond Issue.

"However, it is frequently the case that this Fund is not immediately expended and in order to realize some revenue from the money a portion, if not always all of the Fund is invested.

"Now when these funds are invested in accordance with the provisions of R. C. 135.01 et seq., and particularly as inactive funds as set out in the Uniform Depository Act, or in accordance with the provisions of R. C. 135.12, and I might add in most instances such funds have been invested in short term Treasury Bills, we find some difficulty as to the application of the earned interest on such investments.

"R. C. 5705.10 provides all revenue derived from a source other than the General Property Tax and which the law prescribes shall be used for a particular purpose shall be paid into a Special Fund for such purpose. The proceeds from the sale of a Bond Issue obviously are from a source other than the General Property Tax and the statute further provides:

> 'All proceeds from the sale of a Bond, Note or Certificate of Indebtedness, except *premium and accrued interest*, shall be paid into a Special Fund for the purpose of such Issue.'

"R. C. 135.12 which deals with investments in securities states:

> '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 State or subdivision.'

"In your opinion, 1935, O. A. G. No. 4759 (page 1292) you have held:

> 'Interest earned on deposits of funds of the subdivisions of Ohio should be credited to the General Fund of such subdivisions *except where statutory provisions* prescribe the use of such interest for a particular purpose as provided by Section 5625-10 General Code (R. C. 5705.10). * * *

"An opinion is respectfully requested as to whether or not monies received by a School District and placed in their Building Fund, when invested should the interest be placed in the General Fund or whether such earned interest should follow the Common Law rule and be credited to the Fund which supplied the money."
* * *

While your question refers only to "investments," I infer from other parts of your letter that you use that term as including also deposits made under the uniform depository law.

Your inquiry, therefore, must be considered from two aspects, (1) as to moneys invested pursuant to law, in certain securities, commonly referred to as "treasury investments" and (2) as to moneys *deposited* in public depositories provided by law.

At the outset it must be observed that the "treasury investments" are to be distinguished from "deposits" in public depositories as provided in the Uniform depository law found in Sections 135.01 to 135.23, inclusive of the Revised Code. Those statutes relate to the placing of funds of the several political subdivisions in depositories selected as provided by law. Section 135.23, to which you call particular attention, governs generally the disposition of earnings on funds so deposited.

The only section in the depository law which refers to treasury investments, is Section 135.12, which provides in part as follows:

> "If, after compliance with sections 135.01 to 135.23, inclusive, of the Revised Code, requiring the deposit of public moneys in public depositories, the amount of public moneys of the state or of a subdivision is in excess of the aggregate amount of such deposits, and the board finds that such excess cannot be deposited in public depositories because of the limitations of such sections, such board may order the treasurer to invest any part of such excess in bonds, notes, certificates of indebtedness, treasury bills, or other securities, issued by and constituting direct obligations of the United States, provided that only such obligations as will mature or are redeemable at the option of the holder within two years from the date of purchase shall be eligible securities for such investments. Any order of the board directing the treasurer to invest public moneys shall specifically state the amount of public moneys to be invested and shall specifically describe the securities to be acquired."

Here it will be noted that under the circumstances stated, public moneys in the hands of a subdivision, instead of being placed in a depository, may be invested in certain securities. There is the provision in that section to which you have called attention, to wit:

> "* * * 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 state or subdivision."

Section 5705.10, Revised Code, contains this provision:

> "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.*"

There is a manifest conflict between the two statutes last noted. Under Section 135.12, interest on any investments authorized by that section shall be "collected by the treasurer and credited to the general fund." Under Section 5705.10, interest earned on money arising from sale of bonds "shall be paid into the sinking fund or bond retirement fund."

The Uniform Tax and Budget Law, of which Section 5705.10 is a part, was enacted in 1927. The Uniform Depository Act, of which said Section 135.12 is a part, was enacted much later, to wit, in 1937. Hence it might be suggested that the later enactment operated as a repeal of the earlier so far as they were inconsistent.

That result, however, does not necessarily follow. It will be observed that the language quoted from Section 135.12 is very general. The section deals with interest from investments generally. It makes no specific reference to the moneys derived from sale of bonds. On the contrary, the provision quoted from Section 5705.10 is special in its language, relating specifically to interest arising from proceeds of sale of bonds.

It is stated in 37 Ohio Jurisprudence, page 409, with citation of many cases:

> "As a general rule, general statutory provisions do not control, or interfere with, specific provisions. To the contrary, to the extent of any irreconcilable conflict, the special provision generally operates as an exception to the general provision, which accordingly, must yield to the former."

And it is further well established that the above principle may apply where the general statute is later in time of enactment. 37 Ohio Jurisprudence, 413. In the case of Commissioners v. Board, 39 Ohio St., 628, it was held:

> "4. A local and special act is not repealed or otherwise affected by the conflicting provisions of a subsequent general

> statute on the same subject, unless the legislative intent that such effect be given the later enactment is clearly manifest."

To like effect, see Crawford on Statutory Construction, Section 230.

There is nothing in the general language of Section 135.12, supra, that indicates an express intention to repeal the special provision of Section 5705.10, supra, relative to the disposition of interest earned on the proceeds of sale of bonds.

In Opinion No. 4897, Opinions of the Attorney General for 1942, page 168, the question submitted related to the disposition of interest earnings on treasury investments by a municipality. Authority for such investments as to municipalities was found in Section 4296-1, General Code, now Section 731.56, Revised Code, authorizing the investment by order of the council of any funds in the treasury of a municipality which would not be required for use within six months. Answering the question as to the disposition of interest earned on moneys so invested, it was held:

> "1. Interest earned on investments of money in a city treasury made pursuant to Section 4296-1, et seq., General Code, should be paid into the general fund, except that where part of the money so invested is taken from the special fund or funds derived from the sale of bonds, notes or certificates of indebtedness, the interest so earned by such investments should be paid into the sinking fund or bond retirement fund of such city and the general fund. The amount to be paid into the sinking fund or the bond retirement fund should be in the ratio which the money invested derived from the special fund or funds bears to the entire amount invested and the remainder of such interest should be paid into the general fund."

While the syllabus does not mention it, it appears from the opinion that the writer relied upon the provisions of Section 5625-10, General Code, Section 5705.10, Revised Code, from which I have already quoted. He apparently did not consider Section 2296-12, General Code, now Section 135.12, Revised Code, as having any bearing, as that section was not referred to in the opinion.

I am in agreement with that opinion, and in answer to your question will hold that while interest earned on the investment of general funds belonging to a school district must be paid into the general fund, such interest when earned on the investment of funds realized from the sale of bonds should be paid into the sinking fund or bond retirement fund of the district.

Coming then to the other phase of your question regarding the disposition of interest earned on moneys placed in public depositories pursuant to the uniform depository law, Section 135.01 et seq., Revised Code, we turn to Section 135.23, Revised Code, which, so far as pertinent, provides as follows:

> "All interest realized on money included within a public deposit and belonging to undivided tax funds shall, except as otherwise expressly provided by law, be apportioned by the auditor pro rata among the separate funds or taxing districts in the proportions in which they are entitled to receive distribution of such undivided tax funds, due allowance being made for sums transferred in advance of settlements. * * *"

After making a further exception relative to custodial or trust funds, that section provides that "all other interest realized on any public deposit shall be credited to the general fund of the state or the county, municipal corporation, township, taxing district," etc.

Here we encounter the same conflict with Section 5705.12, supra, which was above noted as to treasury investments. This section unquestionably governs as to the disposition of interest on deposits generally, but in my opinion it was not the intention of the legislature in enacting the uniform depository law and making the general provision contained in said Section 135.23, to repeal the special provision in the uniform tax and budget law found in Section 5705.10, supra, directing that interest earned on bond money should be paid into the sinking fund or bond retirement fund. Accordingly, the special provision should govern as to interest so earned.

In specific answer to your question, it is my opinion that under the provision of Section 5705.10, Revised Code, interest earned on money of a school district derived from the sale of bonds, whether deposited in a public depository as provided in Section 135.01 et seq., Revised Code, or invested in securities as authorized by Section 135.12, Revised Code, should be paid into the sinking fund or bond retirement fund of the district.

Respectfully,

C. William O'Neill

Attorney General