

Note from the Attorney General's Office:

1942 Op. Att'y Gen. No. 42-4897 was overruled in part by 1958 Op. Att'y Gen. No. 58-2190 and 1980 Op. Att'y Gen. No. 80-003.

4897

1. INTEREST — INVESTMENTS OF MONEY IN CITY TREASURY — SHOULD BE PAID INTO GENERAL FUND — EXCEPTION, WHEN PART OF MONEY IS FROM SPECIAL FUND OR FUNDS FROM SALE, BONDS, NOTES OR CERTIFICATES OF INDEBTEDNESS — INTEREST SHOULD BE PAID INTO SINKING FUND OR BOND RETIREMENT FUND AND GENERAL FUND — HOW RATIO APPORTIONED — SECTION 4296-1 ET SEQ., GENERAL CODE.
2. CITY COUNCIL MAY NOT PRESCRIBE ANY OTHER DISPOSITION OF INTEREST EARNED ON TREASURY INVESTMENTS.

SYLLABUS:

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.

2. The council of a city may not prescribe by ordinance, resolution or otherwise for any other disposition of interest earned on treasury investments.

Columbus, Ohio, March 9, 1942.

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

Gentlemen:

You have submitted for my opinion two questions concerning investments made of funds in a city treasury pursuant to Section 4296-1, et seq., General Code, viz.:

“1. May the council of a municipal corporation, by ordinance or resolution, determine the funds to receive credit with earnings on treasury investments?

2. If the answer to the first question should be in the

negative, is the fiscal officer of the municipal corporation required to distribute the said earnings to the various general and special funds in proportion to the average cash balances of said funds during the investment period?"

Sections 4296-1 and 4296-2, General Code, respectively provide:

Section 4296-1.

"The council or other legislative authority of any municipality may by ordinance provide that whenever there are moneys in the treasury of such municipality which will not be required to be used by such municipality for a period of six months or more, such moneys may in lieu of being deposited in a bank or banks be invested in obligations of such municipality or in bonds or other obligations of the United States, or those for the payment of principal and interest of which the faith of the United States is pledged, bonds issued by the home owners' loan corporation pursuant to the act of congress known as the home owners' loan act of 1933, and the amendments thereto, bonds of the state of Ohio, legally issued bonds of any municipality, village, county, township or other political subdivision of this state, and as to which there is now no default of principal, interest or coupons; provided, however, that any such investments shall not be made at a price in excess of the current market value of such bonds or other interest bearing obligations, and that said bonds or other interest bearing obligations may be sold for cash and for a sum not less than their current market price, in the manner prescribed in the next succeeding three sections hereof."

Section 4296-2.

"Whenever the money in the municipality treasury of any municipality is to be invested as provided for in section 4296-1 of the General Code, the auditor or other chief fiscal officer shall submit to the mayor, or to the chief executive officer if the mayor be not such, and to the chief law officer of such city, a statement of moneys in the treasury or in the process of collection, and a schedule showing the probable requirements of money for the use of the municipality for such period not less than six months as the aforesaid ordinance or the chief executive officer shall direct, together with a recommendation as to whether any moneys in the treasury shall be invested in such obligations. The mayor or other chief executive officer, the chief law officer, and the auditor or other chief fiscal officer may thereupon order such investments of moneys in the treasury in such obligations, at not more than the current market value, as they may deem advisable in the interest of the municipality. It shall not be necessary to advertise such bonds before such investment is made. No investment shall be made except in obligations which have been passed upon and approved as to validity by a reputable firm of bond attorneys. Whenever it is necessary to convert any such investment into cash, it shall

be done by first offering the obligations held by the municipality to the sinking fund commission, and if the sinking fund commission decline to take the same or any part thereof, then such remaining obligations shall be sold in any manner authorized by law for the sale of investments by the sinking fund; provided, that no such obligations shall be sold for less than the current market value."

Section 4296-3, General Code, provides for the maintaining of an account by the chief accounting officer of all transactions relating to the investments provided in Sections 4296-1 and 4296-2, General Code, and also for the keeping of a record of the number and maturity of interest coupons. It is further provided in such section that the chief accounting officer shall issue his order for the collection of securities and coupons which are due.

Section 4296-4, General Code, provides for the custody and safe-keeping of the securities belonging to the treasury of the city or any fund thereof.

No section of the so-called Treasury Investment Law makes any provision with respect to the disposition of the interest earned by reason of such investment. In Opinion No. A284, rendered June 30, 1911, and found in Volume I of the Annual Report of the Attorney General for 1911-1912, at page 281, it was said:

"The general principle is that interest produced by the investment or deposit of a public or trust fund follows the principal and becomes a part of the principal."

This statement of the rule is unquestionably correct and would be applicable to the questions you propound if the General Assembly had not made other provision with respect to the interest earnings of its public funds. Section 5625-10, General Code, provides in part:

"All revenue derived * * * 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 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."

In Webster's New International Dictionary the term "revenue" is defined inter alia as "public income of whatever kind." This definition is sufficiently broad to include the interest earned on treasury investments of a municipality. The portion of Section 5625-10, General Code, last above quoted, requires all proceeds from the sale of bonds, notes or certificates of indebtedness, except premiums and accrued interest, to be paid into a special fund for the purpose of the issue of such bonds, notes or certificates. It is further required by this same provision that 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. I find no other provision of law requiring interest earned on any of the funds belonging to a subdivision to be used for a particular purpose. All interest, therefore, earned by treasury investments derived from a source other than the special fund into which the proceeds from the sale of bonds, notes and certificates of indebtedness have been paid, should be paid into the general fund, and all interest earned on treasury investments derived from such special fund should be paid into the sinking fund or the bond retirement fund.

Interest, therefore, earned by treasury investments should be paid into the bond retirement fund or the sinking fund if the money used to make such treasury investments was derived from the special fund into which the proceeds from the sale of bonds, notes or certificates of indebtedness were paid. If the money used to make such investments is derived from any other fund, the interest earned on such investment should be paid into the general fund. If money from the special fund into which the proceeds of bonds, notes and certificates of indebtedness are required to be paid and also from another fund or funds is used to make treasury investments, the interest earned on such investments should be paid into the sinking fund or the bond retirement fund, and the general fund. The amount payable to the sinking fund or the bond retirement fund is in the ratio which the amount invested from the special fund bears to the entire amount invested.

I have given consideration to that portion of Section 2296-21, General Code, which reads:

"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, assessment district or other local authority to which the principal sum thereof belongs.”

This is part of the Uniform Depository Act and has application to interest earned on public deposits and not to interest earned on treasury investments. The section is therefore inapplicable to your questions.

For these reasons, your first question is answered in the negative. Your second question is also answered in the negative with this qualification, the fiscal officer of a municipal corporation is required to distribute interest earned on treasury investments as hereinabove indicated.

Respectfully,

THOMAS J. HERBERT
Attorney General.