

Based on this information and finding that said amendment to the articles of incorporation of said company are otherwise in conformity with the provisions of Section 9607-2, et seq., General Code, and with the Constitutions and pertinent laws of the United States and the State of Ohio, I have accordingly approved said amendment to the articles of incorporation of The Western and Southern Fire Insurance Company and return them herewith.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3352.

MUNICIPAL SINKING FUND TRUSTEES—MAY NOT PAY PREMIUMS FOR BURGLARY AND ROBBERY INSURANCE, COVERING BONDS UNDER THEIR CONTROL, FROM SINKING FUND AS AN INCIDENTAL EXPENSE.

*SYLLABUS:*

*Where the trustees of the sinking fund are bonded for the faithful performance of their duties, premiums for burglary or robbery insurance covering investments in their possession may not be paid from the sinking fund as an incidental expense.*

COLUMBUS, OHIO, June 23, 1931.

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

GENTLEMEN:—This will acknowledge the receipt of your recent communication which reads:

“Section 4508, General Code, provides that trustees of the sinking fund of a municipal corporation shall serve without compensation, and shall give such bond as council may require, but a surety company authorized to sign such bond shall be sufficient security, and the cost thereof, together with all other incidental and necessary expenses of such trustees, shall be paid by them from funds under their control.

Section 4514, General Code, provides that the trustees of the sinking fund shall invest all moneys received by them in bonds of the United States, the State of Ohio, or of other taxing districts, etc.

In many municipal corporations, surplus sinking funds have been invested in bonds of the political subdivision, which bonds have been deposited by the trustees in safety deposit boxes, the rental thereof being paid from funds under their control. The surety bonds given by the trustees are, with no exception to our knowledge, for the faithful performance of duty, and the question arises as to the liability of the surety for the loss of the investments through burglary or robbery.

Question. Under these conditions, may the premium for burglary and robbery insurance covering investments in the possession of the sinking fund trustees be legally paid from the sinking fund as an incidental expense?”

Section 4508, General Code, is quoted in full in your communication.

The general rule, which was last followed in an opinion rendered to your Bureau and found in Opinions of the Attorney General for 1930, No. 2066, is that if funds in the hands of officials or employes are protected by the bonds of such officials or employes, the premiums paid for burglary insurance to cover such funds would be an unauthorized and wholly unnecessary expenditure of public funds.

You do not present specific facts in your communication concerning the terms of the surety bonds given by the trustees of the sinking fund, but state that to your knowledge the same provide for securing losses to the municipality caused by failure of the trustees of the sinking fund to faithfully perform their duties.

In the case of *Seward vs. National Surety Company*, 120 O. S. 47, it was held, as disclosed by the third branch of the syllabus:

"The official bond given by a postmaster with surety, obligating him to faithfully perform all the duties of the office to which he has been appointed, embraces the duty to account for and disburse the moneys that have come into his hands according to law."

In the opinion of the court it was stated:

"It has been the general policy, not only with government employees and appointees, but with state officers, county officers, township officers, and all other public officials, to hold the public official accountable for the moneys that came into his hands as such official, and his obligation has been held to be as broad as is the obligation of a common carrier of freight received for shipment; that is to say, that when he comes to account for the money received, it must be accounted for and paid over, unless payment by the official is prevented by an act of God or a public enemy; and burglary and larceny and the destruction by fire, or any other such reason, have not been accepted by the courts as a defense against a claim for the lost money. The decisions to this effect are so uniform and so numerous that no useful purpose would be served by restating the law that has been so many times stated so clearly."

I do not see any material distinction between the duty of a postmaster to account for and disburse moneys which have come into his hands and that of the board of sinking fund trustees to account for investments of the municipality which they hold in their possession. So, under the language of the bond given for the faithful performance of duty, I believe that the bonding company would be liable for loss of investments through burglary or robbery if the sinking fund trustees were unable to meet such loss, and so such burglary or robbery insurance would be unnecessary. In fact, it was stated in the 1930 opinion, above cited, that a bond covering the faithful performance of duty of an officer would include the accounting for all funds coming into his hands as such official.

To decide specific cases, it is necessary that the terms and conditions of the bonds of the sinking fund trustees authorized by council be presented in detail.

In view of the foregoing, it is my opinion that where the trustees of the sinking fund are bonded for the faithful performance of their duties, premiums for burglary or robbery insurance covering investments in their possession may not be paid from the sinking fund as an incidental expense.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*