

5224

BONDS ISSUED FOR MUNICIPAL PURPOSES — WHEN PROCEEDS FROM SALE PAID TO DIRECTORS OF UNIVERSITY, INTEREST EARNED MAY BE USED FOR PURPOSES OF SUCH BOND ISSUE — SUCH INTEREST SHOULD NOT BE PAID INTO SINKING FUND OR BOND RETIREMENT FUND OF THE ISSUING MUNICIPALITY.

SYLLABUS:

When the proceeds from the sale of bonds issued for municipal university purposes are paid over to the board of directors of a municipal university pursuant to the provisions of Sections 7909 and 7910, General Code, the interest earned thereon should not be paid into the sinking fund or bond retirement fund of the issuing municipality, but may be used by such board of directors for the purposes of such bond issue.

Columbus, Ohio June 15, 1942.

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

Gentlemen:

Your letter, with accompanying documents, requesting my opinion with respect to the disposition to be made of interest earned on municipal university bond funds turned over to the board of directors of the University of Cincinnati under the provisions of Sections 7909 and 7910, General Code, was duly received.

The particular question submitted by you reads as follows:

“When the proceeds of bonds issued for city University purposes are turned over to the Directors of the University to be used by them in financing the authorized University improvements as contemplated by the bond ordinance, are said Directors required to remit the depository interest earnings on such bond funds to the Sinking Fund Trustees by favor of the provisions of Section 5625-10, General Code, or may such earnings be used to augment the bond funds available for construction of the improvements?”

Section 5625-10, General Code, referred to in your question, is one of the sections of the budget law (sections 5625-1 to 5626, General Code). That section, after providing in the fifth paragraph that the proceeds of

a bond sale shall be paid into a "special fund" for the purpose of the issue, also provides that "interest earned on such special fund shall be paid into the sinking fund, or the bond retirement fund of the subdivision." The "special fund" just referred to is the special fund mentioned in paragraph (e) of the preceding section 5625-9 which each *subdivision* is required to establish. Such being the case, the provisions of the fifth paragraph of Section 5625-10 apply only to the special bond fund of the subdivision, and consequently have no application to the proceeds of a bond sale which are not required to be paid into the subdivision's special fund, but which, on the contrary, are paid over to another independent agency under authority of law, such as the board of directors of a municipal university.

Special provision has been made in Sections 7909 and 7910, General Code, for paying over to the board of directors of a municipal university the proceeds of a bond issue put out by the municipality, and when such funds are paid over all power and control becomes vested in that board.

Section 7909, General Code, provides, among other things, that

"the board of directors of any such municipal university * * * may assume control and custody of such funds, by adopting a resolution to that effect, whereupon said funds upon receipt of the same by the treasurer of the municipal corporation shall be paid over by him to the said board of directors upon the warrant of the auditor, and thereafter the possession and disbursement of said funds shall be subject to the order of said board."

And Section 7910, General Code, after providing that a municipal corporation having a university may provide for university improvements, also provides that

"In the use of funds provided for such purposes, whether from taxation or the issue of bonds, all power and control shall be vested in the board of directors of the municipal university."

The two statutes last mentioned have been considered in former opinions of this office. In Opinions of the Attorney General, 1928, No. 1606, page 164, the syllabus reads as follows:

"Under the provisions of Sections 7909 and 7910, General Code, as amended (112 O. L. 105, and 112 O. L. 364, 380), the board of directors of a municipal university may, by the adoption of a resolution for the purpose, assume control of

funds derived from the sale of bonds issued by the municipal corporation for constructing, improving or equipping buildings of such municipal university, and require the same to be paid over to such board.”

And in Opinions of the Attorney General, 1933, No. 1384, page 1238, it was said (p. 1240):

“It thus appears that by virtue of section 7909, the board of directors may assume entire control and custody of all the university funds upon the adoption of a resolution to that effect. When this action has been taken it becomes mandatory for the treasurer of the municipality to pay over all such funds as he receives them to the board of directors upon the warrant of the auditor ‘and thereafter the possession and disbursement of said funds shall be subject to the order of said board.’”

At another place in the same opinion (p. 1241) it was further said with respect to funds paid over to the board of directors, that “the (municipal) council is without authority to exercise control over them by the adoption of a depository ordinance or otherwise.”

It would seem therefore to follow that if the proceeds of the bond issue referred to in your letter were not paid into the special bond fund established by the municipality under paragraph (e) of Section 5625-9, but instead were paid over to the board of directors of the University of Cincinnati under authority of Sections 7909 and 7910, the provision in the fifth paragraph of Section 5625-10 with respect to paying earned interest into the municipality’s sinking fund or bond retirement fund would not and could not be applicable.

Since your inquiry involves bond issues put out as far back as the year 1929, I have also examined the former municipal depository laws (Section 4295 and related sections) which were in force from that time to April 16, 1937, and found nothing therein which required that interest earned on money turned over to the board of directors of a municipal university, should be paid into the sinking fund or bond retirement fund of the municipality which issued the bonds.

I have also examined the Uniform Depository Act (Section 2296-1, et seq., General Code), which became effective April 16, 1937. This act relates to the deposit of public moneys, but the term “public moneys,” as defined in the first section of the Act, so far as municipalities are concerned, refers to moneys in the treasury of the municipality or lawfully

in the possession of its treasurer, and it is not altogether clear that the terms "treasurer" and "subdivision," also defined in the first section, include either a municipal university, its treasurer, or its board of directors. If, however, the municipal university, its treasurer, or its board of directors are included in the statutory definition of the Act, it would be my opinion that interest earned on a deposit made after the Uniform Depository Act became effective belongs to the municipal university under the terms of the last sentence of the first paragraph of Section 2296-21, and could be used for the same purpose for which the deposit may be used. That sentence reads as follows:

"All interest from other moneys deposited by a treasurer, which, by reason of being custodial funds, or funds belonging in the treasury of a taxing or assessment or other district of which he is acting as ex-officio treasurer, or for any other reason, do not belong in the treasury of the state or subdivision, shall be apportioned among and credited to the funds to which the principal sums of such deposits, or portions thereof belong."

Before closing, attention should be called to the last paragraph of Section 7909, General Code, which reads as follows:

"At any time after such funds have been so paid over by the treasurer of such municipal corporation to the board of directors, such funds, together with any other moneys coming into the custody and control of the board of directors from any source, may be by resolution of said board deposited in a bank or banks situated in the municipality or county, upon like terms and conditions as to surety or security as such funds or other public moneys coming into, or remaining in, the hands of the treasurer of said municipal corporation may under the statutes of the state of Ohio be deposited in local banks under the authority of an ordinance of council; and the board of directors may require such a bank or banks in which said funds are deposited to pay interest thereon."

This provision of Section 7909 is not only a legislative recognition of the fact that the board of directors of a municipal university has control of all moneys paid over to it by the municipality, but also expressly empowers the board to deposit such moneys in any bank within the county at interest. There being no provision in this statute that interest earned on such deposit shall be paid over to the municipality or its sinking fund, it would seem that such interest should follow the fund which earned it, and be subject to the custody and control of the board of directors. See Annual Report of Attorney General for 1911-1912, No. A-284, page 281, that the general rule of law is that interest follows the

fund which creates it, in the absence of a statutory provision to the contrary.

For the reasons above stated, it is my opinion that when the proceeds from the sale of bonds issued for municipal university purposes are paid over to the board of directors of a municipal university pursuant to the provisions of Sections 7909 and 7910, General Code, the interest earned thereon should not be paid into the sinking fund or bond retirement fund of the issuing municipality, but may be used by such board of directors for the purposes of such bond issue.

Respectfully,

THOMAS J. HERBERT
Attorney General.