1664.

DAYTON CHARTER—CITY COMMISSION NOT LEGALLY EMPOWERED TO APPROPRIATE MONEY TO CARRY ON CAMPAIGN BY NEWSPAPER ADVERTISING AND DISTRIBUTION OF LITERATURE TO EDUCATE ELECTORS ON SUBJECT OF PENDING BOND ISSUE ELECTION—HOW FINDINGS FOR RECOVERY MAY BE MADE.

1. *The city commission of the city of Dayton, Ohio, is not legally empowered to appropriate money to carry on a campaign by newspaper advertising and the distribution of literature to educate the electors on the subject of pending bond issue election.*

2. *Findings for recovery of money paid out for such purpose may be made jointly against the officer paying and the persons receiving the same.*

COLUMBUS, OHIO, November 26, 1920.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your recent request for the opinion of this department as follows:

> "This department has repeatedly held as per the following communication:
>
> 'We have your favor of February 4, 1919, and we know of no authority of law under which a publicity campaign in the interest of a proposed bond issue can be conducted at the expense of public funds. If it has been done, in any cities, findings for recovery will have to be made by our examiners.'
>
> We find that in the city of Dayton the city commission appropriated $1,596.00 by ordinance No. 10,817, 'To carry on a campaign by newspaper advertising and the distribution of literature to inform the citizens upon the subject of the deficiency bond issue declared necessary by resolution No. 618.' Under this authority the following items were paid:
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Warrant No. 4947 a, 11-18-19 to The Geyer-Dayton Adv. Co.---	$855 26
Warrant No. 4981 a, 11-20-19 to The General Printing Co.------	537 00
Warrant No. 4991 a, 11-20-19 to The Lammers Co.----------	8 75
	$1,401 01

> *Question* 1: Are such payments legal?
>
> *Question* 2: If illegal, can findings for recovery be returned by this department, and if so, from whom?"

The city of Dayton being a charter city, we may first inquire if the appropriation and expenditure of money for the purpose set out in the Dayton ordinance is authorized by the charter itself. The charter of the city of Dayton, as originally adopted, is found in Volume I, Supplement to Page and Adams Code, beginning at page 1062. This department has not been advised of any amendment of the charter in regard to the question under discussion, and this opinion is therefore based upon the charter as published in the supplement.

Section 1 of the charter enumerating the powers of the city, in part provides that it "may appropriate the money of the city for all lawful purposes;"

The latter part of this section also provides that the city "may make and enforce local police, sanitary and other regulations; and may pass such ordinances as

may be expedient for maintaining and promoting the peace, good government and welfare of the city, and for the performance of the functions thereof." It also provides that the city shall have all powers that are or hereafter may be granted to municipalities by the constitution or laws of Ohio. So that, at this time we may say that the city has power to appropriate and expend this money if express or implied authority therefor be found in the charter of the city or in the statutes relating to municipalities, or if such power be conferred in the so-called municipal home rule amendment, by virtue of self executing provisions. As to the charter provisions, it is to be noted that the appropriating power is limited to "lawful purposes," that is, purposes approved or authorized by law.

Section 45 provides for ten days publication of ordinances, and section 89 provides for making of contracts for legal publications required by the charter.

An examination of all of the sections of the charter as published in the supplement, discloses no express provision for such an appropriation, nor does it reflect any express power conferred from which the power under consideration may be implied.

This department is not aware of any reported decision bearing upon this subject, nor of any former opinion of this department directly bearing on the question, but Opinion 85, Opinions of the Attorney-General, 1919, page 143, by similarity of principle, is more or less pertinent. In that opinion, at page 147, quoting a former opinion, is is said:

> "If there is any rule of public policy at all applicable to the question, such a rule would, in my judgment, be against a public corporation engaging for any reason in the enterprise of influencing legislation."

While opinion 85 related to the payment of expenses of municipal officers in attending a meeting of mayors and city solicitors, for the purpose of considering and drafting legislation for the relief of municipalities, it is believed that such a purpose is akin to the object of the ordinance under discussion, that is, the object of this ordinance is to influence legislation then pending on a referendum. Your attention is also called to Opinion 1532, dated August 30, 1920, where a similar question with reference to school boards is considered.

In the light of these general principles, bearing in mind the express provision for ten day publication, and the absence of any provision for carrying on such a campaign, it must be held that the appropriation is not authorized by the charter of the city of Dayton.

This department is aware of no general statute or provision of Article 18, as adopted in 1912, which is effective to authorize this appropriation, and these conclusions necessarily require a negative answer to your first question.

While your second question has not been precisely determined by the courts of this state, it is believed that the cases of State ex rel vs. Maharry, 97 O. S., 272, and The Vindicator Printing Company vs. State, 68 O. S., 362, are in point. In the fourth branch of the syllabus of the former case, of sections 274 et seq., it is said:

> "These statutes are comprehensive enough to warrant actions against either public officers, former public officers or private persons."

As this department is informed, it has been the administrative policy of your department in such cases to make joint findings against the official paying out

illegal moneys and the persons receiving the same, and no reason is at present apparent why that policy should not be followed in the present case.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1665.

SCHOOLS—BONDS ISSUED FOR PURPOSE OF ERECTING NEW SCHOOL BUILDING—INTEREST FOLLOWS FUND—BALANCE OF SAID FUND WILL GO TO SINKING FUND.

As the statutes contain no reasonable ground from which to deduce an intent to the contrary, the general rule that interest follows the fund would govern, so that interest upon the proceeds of bonds sold for the purpose of meeting the expense of a particular improvement, will not be turned over to the sinking fund trustees nor to the contingent fund, but will be credited with the special fund created by the bond issue, and expended for the purpose of the fund. After the accomplishment of such purpose all balance of said fund will go to the sinking fund as provided in sections 3804 *and* 5654 *G. C.*

COLUMBUS, OHIO, November 26, 1920.

HON. F. M. CUNNINGHAM, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following statement of facts:

> "The board of education of Franklin village school district, of Franklin, Ohio, have been receiving interest from the Franklin National Bank, upon the money deposited by said school board received from the sale of bonds for the purpose of building a new school house.
>
> The board of education wishes to know whether it will be lawful to put said interest money, so received, into the contingent fund of said board. And if not, then in what fund should it be proper to place said money?"

Section 2295 G. C. reads in part as follows:

> "All moneys from the principal on the sale of such bonds shall be credited to the fund on account of which the bonds are issued and sold." (106 O. L., v. 492.)
>
> "Interest is to be regarded as incidental to the debt. Principal is always debt and the debt. Interest is an accessory or incident to the principal. The principal is a fixed sum. The accessory is a constantly accruing one. The former is the basis from which the latter arises and on which it rests." (Howe vs. Bradley, 19 Me., 36.)
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> "Interest * * * is considered as a necessary incident, *the natural growth of money,* and American courts incline to give it with the principal * * *." (Woerz vs. Schumacher, 56 N. Y., 37 App. Div., 374.)
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> "That within thirty days after the first Monday in January, 1916,