

971.

MUNICIPAL CORPORATIONS—MONIES CREDITED TO BOND AND COUPON ACCOUNT BY CITY DEPOSITORY ARE PUBLIC FUNDS AND AS SUCH DRAW INTEREST.

Monies credited to a bond and coupon account by a city depository are public funds and as such draw interest.

COLUMBUS, OHIO, January 29, 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:

“We are enclosing copy of communication to Mr. E. R. M., Attorney-at-Law, in answer to the following communication:

December 22, 1919.

MR. A. V. DONAHEY, *State Auditor, Columbus, Ohio.*

DEAR SIR:—Representing the First National Bank, I called at your office some time ago and talked with Mr. Baker. I desired information as to how a certain matter should be handled which matter is as follows:

The bank is the depository for city funds under contract, by which they agree to pay interest to the city under the statute upon average daily balances.

In addition to the general accounting, the city carries a bond and coupon account. This latter account is made up from checks drawn upon the general account by the city treasurer, the accounts of the checks covering coupons upon bonds issued by the city.

It occurred to me that as this account was practically set aside for a certain purpose, namely, the payment of coupons, that it immediately becomes appropriated to that purpose and is no longer a part of the average daily balance, and that no interest should be required to be paid by the city upon them.

Will you kindly let me have your views upon this matter?

Yours very truly,

(Signed)

E. R. M.’

The proper method and the general custom is that the sinking fund trustees about the first of each month draw an order upon the general sinking fund moneys in favor of the bond and coupon account from which the bank pays the matured bonds and coupons as presented.

Question:

Is not the actual balance of cash in the bond and coupon account a part of public moneys subject to depository interest, same as all other deposits?”

With your request was also submitted copy of the reply of your department to your correspondent, passing upon the question which his letter presented. The facts stated in the quoted letter from your correspondent do not disclose whether the case therein stated arose on a depository agreement under sections 4215 et seq., although the latter is suggested by the reference to the “bond and coupon account.” However, the enclosure indicates that your department has passed upon that specific case and it is inferred that you desire a general rule as to the status of the cash in the bond and coupon account, as stated in your letter.

The sections above mentioned are pertinent to your inquiry.

Section 4295, relating to the deposit of municipal funds, in part provides:

"The council may provide by ordinance for the deposit of *all public moneys* coming into the hands of the treasurer."

Section 4515, relating to the duties of the trustees of the sinking fund, in part provides: •

"At least once every three years the trustees of the sinking fund shall advertise for proposals for the deposit of all sums held in reserve and shall deposit such reserve in the bank or banks, incorporated under the laws of this state or of the United States, situated within the county, which offer, at competitive bidding, the highest rate of interest and best security and accommodation and give a good and sufficient bond issued by a surety company authorized to do business in this state. * * *"

Section 4516 in part reads:

"The trustees of the sinking fund shall determine the method by which such bids shall be received, the authority which shall receive them, the sufficiency of the security offered, the time for the contracts for which deposits of public money may be made and all details for carrying into effect the authority here given, but proceedings in connection with such competitive bidding and the deposit of money shall be conducted in such manner as to insure full publicity and shall be open at all times to the inspection of any citizen. * * *"

The purpose of such sections as these is considered in opinion No. 852, dated December 6, 1919, and addressed to your department. It is there pointed out that in construing such sections it must be remembered that the legislature was dealing with the subject of public money and great care is attributable to it in safeguarding its deposit in every possible manner. To this may be added that the purpose is to safeguard and insure the proper custody and use of public money, that the public for whom it is held in trust may receive the greatest income obtainable with a minimum risk.

Section 4515 does not provide for the deposit and payment of interest *on part*, but "all sums held in reserve," and the whole theory underlying the sinking fund is that such fund is reserved for certain purposes. The language in the light of the legislative purpose negatives the idea of the depository being exempt from its interest-paying obligations as to a part of such reserve. While section 4516 vests certain things in the discretion of the trustees, an examination of this section shows that they are so vested "for carrying into effect the authority here given," which is to control and deposit all sums held in reserve. It may be pointed out that if some part of this reserve ought not, for good and sufficient reasons, to be deposited in the sinking fund depository, it would be controlled by sections 4516-1 and 4295. The latter governs the custody and deposit of "all the public money coming into the hands of the treasurer."

Section 4516-1 is:

"The provisions of sections 4515 and 4516 of the General Code shall not apply where sums held in reserve, by trustees of the sinking fund, are deposited in the city treasury, so as to become part of the general city balance to be deposited in banks as otherwise provided by law."

While not directly in point, the opinion of the attorney-general in 1915, found in opinions of the Attorney-General for 1915, Vol. II, page 1187, has a general bearing on

the matter of handling the bond and coupon account, and the general tendency is to the effect that such an account is embraced in the depositary agreement.

Consideration of the character of such funds as trust funds, and the purpose of these sections, leads me to the conclusion that monies credited to a bond and coupon account by a city depositary are public funds and, as such, draw interest.

Respectfully,

JOHN G. PRICE,
Attorney-General.

972.

MUNICIPAL COURT OF ALLIANCE—JUDGE NOT ENTITLED TO ALLOWANCE BY COUNTY COMMISSIONERS IN PLACE OF FEES IN FELONIES WHERE STATE FAILS OR IN MISDEMEANORS WHERE DEFENDANT PROVES INSOLVENT—UNDER SECTION 3016 G. C. NO COSTS PAYABLE TO JUDGE FROM COUNTY TREASURY IN FELONIES WHERE DEFENDANT IS CONVICTED—ALSO SAME RULE WHERE THERE IS NO CONVICTION BUT RECOGNIZANCES FORFEITED AND COLLECTED.

1. *The judge of the municipal court of Alliance is not entitled to an allowance by the county commissioners in place of fees in felonies where the state fails or in misdemeanors where the defendant proves insolvent. (Section 3019).*

2. *Under section 3016 no costs are payable to the judge of the municipal court from the county treasury in felonies where the defendant is convicted or in other cases where there is no conviction, but recognizances are forfeited and collected.*

COLUMBUS, OHIO, January 29, 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 on the question submitted to you by Hon. W. S. Ruff, prosecuting attorney of Stark county, as follows:

“I wish that you would give me a ruling with reference to the payment of costs of preliminary hearings in criminal cases heard in the municipal court of the city of Alliance.

Section 3016 and following sections do not include municipal courts. We have a municipal court in the city of Alliance and another is to be established January 1st in the city of Massillon. I have been in doubt as to whether I had the right to allow the county to pay to the municipal court the costs in preliminary hearings. I trust that you will find it convenient to give me a ruling at an early date.”

Your inquiry does not state whether it is “costs under section 3016 or an allowance “in place of fees” under section 3019 which is involved. Mr. Ruff’s letter refers to the matter as “costs in preliminary hearings” but it also refers to “section 3016 and following sections.” So that it becomes necessary to consider the question with reference to both of these sections.

Sections 1479-195 et seq. (Alliance municipal court act), sections 3016 et seq. and section 4581 G. C. are pertinent.