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SINKING FUND OF COUNTY, TRUSTEES OF — NO POWER TO SELL SECURITIES IN THEIR POSSESSION — PURPOSE — TO ADJUST MATURITY DATE OR TO REINVEST MONEYS RECEIVED FROM SUCH SALE IN SECURITIES OF UNITED STATES GOVERNMENT.

SYLLABUS:

The trustees of the sinking fund of a county have no power to sell securities in their possession for the purpose of adjusting maturity dates of obligations or for the purpose of reinvesting the moneys received from such sale in securities of the United States Government.

Columbus, Ohio, December 5, 1942.

Hon. Carson Hoy, Prosecuting Attorney,
Cincinnati, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

“The Board of Sinking Fund Trustees of this County, of which I am President, has requested that I seek your opinion relative to the power of the Board to sell securities now on hand in the sinking fund for the purpose of applying the money received from such sale to the purchase of securities of the United States Government, particularly United States Defense Bonds.

An examination of the statutory sections governing our Board, particularly General Code 2976-21 and -22, fails to shed much light upon this matter.

We are mindful of three previous opinions written by your office in regard to such action by municipalities, namely, No. 2322 of 1921, in which such proposal is held to be improper, also No. 2385 of 1928 in which the practice is apparently proper under certain conditions, and finally your Opinion No. 4943 of March 22, 1942, under which this procedure is apparently sanctioned for municipalities upon the passage of a proper ordinance authorizing such action.

Our purpose in disposing of certain securities at this time is two-fold — (1) to adjust maturity dates of obligations, and (2) to assist in the war effort to the greatest practical extent.

Will you be good enough therefore to advise whether or not the Board of Sinking Fund Trustees of this County may sell a portion of the securities in its present portfolio for the purpose of purchasing legal obligations of the United States Government, and more particularly United States Defense Bonds; and, if so, the proper procedure for carrying such a proposal into effect?”

The board of trustees of the sinking fund of a county is created by the provisions of Section 2976-18, General Code, which provides:

“In each county owning a bonded debt, there shall be a board designated as the trustees of the sinking fund, to be composed of the prosecuting attorney, the county auditor and the county treasurer. The prosecuting attorney shall be the president of such board and the county auditor shall be the secretary thereof.”

Sections 2976-19, 2976-20 and 2976-21, General Code, which have to do with the powers and duties of the trustees, respectively provide:

Section 2976-19.

“The trustees of the sinking fund shall provide for the payment of all bonds issued by the county and the interest maturing thereon. All taxes, assessments and other moneys collected for such purposes, or held in the county treasury to the credit of the sinking fund, shall be subject to investment and disbursement by them in the manner provided by law. For the satisfac-

tion of any obligation under their supervision, the trustees of the sinking fund may sell or use any of the securities in their possession or disburse any of the money under their control.”

Section 2976-20.

“Immediately after each semi-annual settlement of taxes and assessments the county auditor shall report to the trustees the amount in the treasury of the county to the credit of the sinking fund.”

Section 2976-21.

“The trustees of the sinking fund shall invest all moneys subject to their control in bonds of the United States, the state of Ohio, or of a municipal corporation, school district, township, or county of the state, and hold in reserve in cash only such sums as may be needed for effecting the purposes of this act.”

There are no reported cases or opinions of this office dealing with your precise question, but, as stated in your letter, the analogous sections having to do with the powers of the trustees of the sinking fund of a municipal corporation have been the subject of several opinions by various Attorneys General of this state. Sections 4514 and 4517, General Code, which are the analogous sections with respect to the powers and duties of the trustees of the sinking fund of a municipal corporation, respectively provide:

Section 4514.

“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 any municipal corporation, school, township or county bonds, in such state, and hold in reserve only such sums as may be needed for effecting the terms of this title. All interest received by them shall be reinvested in like manner.”

Section 4517.

“The trustees of the sinking fund shall have charge of and provide for the payment of all bonds issued by the corporation and the interest maturing thereon. They shall receive from the auditor of the city or clerk of the village all taxes, assessments and moneys collected for such purposes and invest and disburse them in the manner provided by law. For the satisfaction of any

obligation under their supervision, the trustees of the sinking fund may sell or use any of the securities or moneys in their possession.”

It will be noted that these sections are very similar in their provisions to those contained in Sections 2976-19 and 2976-21, General Code, *supra*. In Opinion No. 2322 of Opinions of Attorney General, 1921, found in Vol. I, at page 678, the then Attorney General said concerning Section 4514, General Code, at pages 679 and 680:

“This section clearly indicates that the trustees of the sinking fund ‘shall invest all moneys received by them in bonds of the United States,’ etc. The section does not authorize such trustees to sell the securities already within their possession as investments in order to raise funds for the purpose of other investments, but definitely authorizes the investment of moneys in their possession not already invested.”

The power of the trustees of the sinking fund of a municipal corporation to sell securities within their possession in order to raise funds for the purpose of other investments again arose in 1928 and was the subject of an opinion of the then Attorney General found in Vol. III, at page 1811, of the Opinions of the Attorney General for that year. He reviewed the 1921 opinion and also discussed the case of *Cleveland v. Baker*, 4 O.App., 68, and with some reluctance stated that he felt impelled to follow the 1921 opinion. He did state, however, that by reason of the provisions of Section 4519, General Code, the council of a municipal corporation might possibly have power to give the trustees of the sinking fund by ordinance authority to sell securities and reinvest the proceeds of such sale where such course would be clearly beneficial to the sinking fund.

This question was also submitted to me and was the subject of consideration in my Opinion No. 4943 rendered March 21, 1942. In that opinion I reached the following conclusion as shown by the syllabus which reads:

“An ordinance duly passed by the legislative authority of a municipal corporation authorizing the trustees of the sinking fund to sell at not less than par and accrued interest securities in which the trustees have theretofore invested the funds of such sinking fund and use the proceeds of such sale to purchase securities consisting of either United States obligations or obligations of such municipal corporation is valid and the trustees of the sinking fund may lawfully act in pursuance of the power so authorized.”

I based my conclusion partly on the provisions of Section 4519, General Code, and partly upon the provisions of Sections 3 and 7 of Article XVIII, of the Constitution of Ohio. Neither Section 4519, General Code, nor the constitutional provisions referred to have any application to the trustees of a county sinking fund and my said Opinion No. 4943 is of no assistance in answering your question.

However, I believe that the two opinions of my predecessors heretofore noted are directly in point. While the statutes with respect to trustees of municipal sinking funds are not identical with those with respect to the trustees of county sinking funds, so far as the present question is concerned they are in their essential aspects so similar as to require the same construction. More than twenty years have elapsed since the rendition of the 1921 opinion which was followed in the 1928 opinion. The General Assembly has had many sessions since such time but has not seen fit to amend the law so as to overcome the conclusion of my predecessors. The case of *Cleveland v. Baker*, supra, cited in the 1928 opinion, supports the conclusion reached. Although it is stated in the 1928 opinion by the then Attorney General that he had some reluctance about following the 1921 opinion, he nevertheless did so.

If I were to advise that the trustees of a county sinking fund might sell securities in their possession for the purpose of reinvesting the proceeds derived from such sale, I would in effect be overruling the two opinions of my predecessors. This I would be unwilling to do unless it appeared to me that such opinions were palpably wrong. I am unable to reach such conclusion.

Specifically answering your question, I am of the opinion that the trustees of the sinking fund of a county have no power to sell securities in their possession for the purpose of adjusting maturity dates of obligations or for the purpose of reinvesting the moneys received from such sale in securities of the United States Government.

Respectfully,

THOMAS J. HERBERT
Attorney General.