

2033.

INVESTMENT—VILLAGE MAY NOT INVEST TREASURY MONEYS NOT REQUIRED FOR IMMEDIATE USE—SECTIONS 4296-1 ET SEQ., DISCUSSED.

SYLLABUS:

1. Sections 4296-1, et seq., General Code, relate solely to the investment of moneys belonging to the treasuries of cities not required for immediate use, and have no application to such moneys belonging to treasuries of villages.
2. Under the provisions of these sections, such moneys may only be invested in obligations of the city in the treasury of which they are held.

COLUMBUS, OHIO, June 25, 1930.

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

GENTLEMEN:—Your letter of recent date is as follows:

“Section 4296-1, G. C., et seq., enacted 112 O. L., page 128, provides for the investment of moneys belonging to the trustees of cities which are not required for immediate use.

Question. May a village treasury invest treasury moneys not required for immediate use?

We are enclosing herewith a letter received from the solicitor for the village of W., who raises this question.”

Enclosed with your letter is the following communication from the village solicitor:

“The council of the village of W. has presented to me as its solicitor the request of an opinion as to the right of the village to invest its idle funds.

I have explained General Code Sec. 4296-1, et seq., and from my understanding of these sections, such surplus moneys may be invested when not required for use for a period of six months or more in obligations of the municipality.

While the term ‘city’ is used in G. C. Sec. 4296-1, instead of municipality, it comes under the heading of Chapter 5, entitled Cities and Villages, and therefore, I am assuming for the purposes of my question that the word ‘city’ may be construed to mean municipality.

I notice also by the provisions of G. C. Sec. 4240 that council shall have the management and control of the finances and property of the corporation, except as may be otherwise provided, and have such other powers and perform such other duties as may be conferred by law.

By the provisions of G. C. Sec. 4296-2, the mayor or other chief executive officer, chief law officer, and the auditor or other chief fiscal officer may, after adoption by an ordinance as provided in G. C. Sec. 4296-1, order investments of money in the treasury in such obligations at not more than par and accrued interest, as they may deem advisable in the interest of the city.

It would seem from a reading of Sections 4296-1, et seq., that the investments may be made only in obligations of the city desiring to invest its idle funds.

My question is whether or not the provisions of Sec. 4296-1, et seq., are a limitation upon the powers of a municipality in the investment of its idle funds, or whether they are simply permissive provisions, and if, by the provisions of Sec. 4240, general power is conferred upon council to legislate for

the investment of its idle funds in securities other than obligations of the municipality itself.

Our plan, if it can be accomplished according to law, is to make investments in securities of the United States, or of such state or subdivisions of states, which are first class and gilt edge. So few bonds of the village of W. are held in its sinking fund that there would be nothing gained by making such small investments in obligations of that village. Therefore, our desire to know if, in your opinion, or that of the Attorney General, if you choose to ask his opinion on this matter, we may make such investments as I indicate are desired to be made.

You may wish to consider an opinion to you by the Attorney General of date June 2, 1928, being Attorney General's Opinion No. 2186, in Opinions for the year 1928."

Section 4296-1, General Code, to which you refer, is part of an act passed by the 87th General Assembly entitled "An Act to supplement Section 4296 of the General Code, by the enactment of supplemental Sections 4296-1, 4296-2, 4296-3 and 4296-4, to provide for the investment of moneys belonging to the treasuries of cities, not required for immediate use." Section 4296-1 provides as follows:

"The council or other legislative authority of any city may by ordinance provide that whenever there are moneys in the treasury of such city which will not be required to be used by such city for a period of six months or more, such moneys may in lieu of being deposited in a bank or banks be invested in obligations of such city in the manner prescribed in the next succeeding three sections hereof. Provided, however, that the language herein contained shall not be interpreted to cause a different application of an unexpended balance in a fund created by an issue of bonds than that provided by Section 3804 of the General Code."

Although the foregoing section is part of Chapter 5, Title XII, Division V, Sub-division II, which chapter relates to the election, duties, etc., of the treasurer of both cities and villages, as commented upon by the village solicitor, it does not follow that this supplemental enactment of the Legislature here under consideration necessarily must have reference to both cities and villages. Section 3497, General Code, classifies municipal corporations so as to provide that all such corporations shall be either cities or villages. It is as follows:

"Municipal corporations, which, at the last federal census, had a population of five thousand or more, shall be cities. All other municipal corporations shall be villages. Cities which, at any future federal census, have a population of less than five thousand shall become villages. Villages which, at any future federal census, have a population of five thousand or more, shall become cities."

There is nothing in the language of Sections 4296-1, et seq., to indicate that the Legislature contemplated that these sections should be applicable to other than cities. In fact the language in this respect is clear and unambiguous. I am, accordingly, of the view that these sections make no provision for the investment of moneys in a village treasury not required for immediate use, their application being solely to such moneys in the treasury of cities as defined in Section 3497, General Code.

You do not inquire as to whether or not under the provisions of Section 4296-1, supra, moneys in the treasury of cities which are not required to be used by such city

for a period of six months or more may be invested in other than obligations of such cities, but since this latter question is raised in the letter of the village solicitor which you have enclosed with your communication, it may be well to comment thereon. The authority for the investment of such moneys is expressly limited in Section 4296-1 to investment in the obligations of the city in which such idle funds are held. It is well established that public officials have only such powers as are expressly conferred by law and such implied powers as are necessary to carry out such express powers so conferred. There is no express power to invest the funds here under consideration in other than obligations of the city and it may not be said that in order to carry out the power granted to invest the funds in obligations of the city, it is necessary to invest them in obligations of the United States government, the various states of the United States or other subdivisions of the State of Ohio. It is true that, under Section 4240, General Code, the council has the management and control of the finances and property of the corporation, except as may be otherwise provided, and has such other powers and performs such other duties as may be conferred by law. In view of the express provisions as to the investment of these public funds, and a stipulation as to particular securities in which such funds may be invested, Section 4240 may not in my opinion be construed so as to change or extend these special provisions. In other words, the general authority to control and manage finances and property does not vest council with the right to invest public funds in any sort or class of securities, when specific authority is granted to invest such money in specified securities. The maxim "Expressio unius est exclusio alterius" is clearly applicable.

Sections 4296-1, et seq., were under consideration by this office in an opinion appearing in Opinions of the Attorney General for 1928, Vol. II, p. 1349. The first branch of the syllabus is as follows:

"A general ordinance authorizing the investment of moneys in the treasury of a city, which will not be required to be used for a period of six months or more, may be enacted by the council or other legislative authority of a city, leaving the determination of the amount of funds available for investment and the particular securities in which they will be invested to the chief executive officer, the chief law officer and the chief fiscal officer, as provided in Section 4296-2, General Code."

It is observed that the reference throughout this opinion was to cities, no mention whatsoever having been made of villages. It is further observed that nowhere in this opinion did this office hold that idle funds in the treasury of a city may be invested in other than obligations of that city. At p. 1351, the following language is used:

"I have accordingly reached the conclusion that a general ordinance authorizing the investment of moneys in the treasury of a city, which will not be required to be used for a period of six months or more, may be enacted by the council or other legislative authority of a city, leaving the determination of the amount of funds available for investment and the particular securities in which they will be invested to the chief executive officer, the chief law officer and the chief fiscal officer, as provided in Section 4296-2, General Code."

The reference to the determination of the particular securities in which these funds may be invested being in the chief executive officer, the chief law officer and the chief fiscal officer, contemplates that these officers are charged with the duty of determining which securities of the city shall be purchased. There is nothing to indi-

cate that these officers may select from a list of securities including obligations of any taxing authority other than those of the city making the investment.

Specifically answering the questions which you have raised in your letter and the communication of the village solicitor, it is my opinion that:

1. Sections 4296-1, et seq., General Code, relate solely to the investment of moneys belonging to the treasuries of cities not required for immediate use, and have no application to such moneys belonging to treasuries of villages.

2. Under the provisions of these sections, such moneys may only be invested in obligations of the city in the treasury of which they are held.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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2034.

JUSTICE OF THE PEACE—MAY LEGALLY ENGAGE IN COLLECTION BUSINESS, SO LONG AS HIS FEES DO NOT RESULT FROM SUITS FILED IN HIS COURT.

*SYLLABUS:*

1. *There is no provision of law prohibiting a justice of the peace from engaging in the collection business, and he may accept fees for collections made, even though such collections be effected through court action in any court other than his own.*

2. *Where a justice of the peace engaging in the collection business, effects a collection by means of suit brought in his own court and receives a fee therefor, he is receiving a reward other than is provided by law, for the performance of his official duties, in violation of Section 12916 of the General Code.*

COLUMBUS, OHIO, June 26, 1930.

HON. DON. ISHAM, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—Your office has requested an opinion upon the following:

“A justice of the peace has been collecting or receiving a commission from the plaintiffs in various cases tried in his court, receiving usually a commission of 25% or more on the amount of the judgment collected.

Section 12916, G. C., reads as follows:

‘Whoever, being an officer under the constitution or laws of this state, knowingly asks, demands or receives a reward, other than is allowed by law, to execute his official duty, or knowingly charges, asks, demands or receives greater fees or costs than are allowed by law for such official duty, or engages in, or permits another in his employ to engage in a business, which by reason of his office, he is prohibited from doing, shall be fined not more than two hundred dollars or imprisoned not more than twenty days, or both, and forfeit his office.’

In the case of *State vs. Mackelfresh*, 5 N. P. (N. S.) 43, 17 D. 709, it is held that ‘A justice of the peace, engaged in the business of a collecting agency, is not punishable under Section 12916, G. C.’ Reading of this decision shows that in this particular instance the justice was acting as a collection agency and that the collections were not made as suits upon his dockets, but simply as collections.