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1. BOND ISSUING AUTHORITY—PAYING AGENT DESIGNATED TO REDEEM BONDS AND INTEREST COUPONS AGENT OF BOND ISSUING AUTHORITY AND NOT OF BONDHOLDER WHO PRESENTS BONDS OR COUPONS FOR PAYMENT.
2. PAYING AGENT MAY NOT DEDUCT SERVICE CHARGE FROM FULL FACE AMOUNT OF BONDS OR COUPONS AT TIME OF PRESENTATION FOR PAYMENT.

SYLLABUS:

1. The paying agent designated by the bond issuing authority to redeem its bonds and interest coupons is the agent of the bond issuing authority and not of the bondholder presenting such bonds or coupons for payment.

2. The paying agent designated by the bond issuing authority to redeem its bonds and interest coupons may not deduct a service charge from the full face amount of such bonds or coupons at the time they are presented for payment.

Columbus, Ohio, September 28, 1949

Retirement Board, School Employes Retirement System of Ohio
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“From time to time we receive bills from the Treasurer of State for reimbursement of exchange charges made by paying agents for various securities owned by this System and which

were issued by various bond issuing authorities of Ohio under the laws of Ohio. The charge is made at the time the bonds and interest coupons are forwarded at maturity to the paying agent of the bond issuing authority.

“The Treasurer of State is the legal custodian of the investments of this System and the various bonds and coupons are forwarded for payment by him to the paying agent designated by the bond issuing authority. In the cases in question the paying agents have been deducting a charge from the remittance at the time of payment.

“It is our understanding that this problem is common also to the Public Employes and the State Teachers Retirement System, as well as the Industrial Commission of Ohio.

“Your formal opinion is requested as to the authority, if any, for the paying agent designated by the bond issuing authority to make a charge of any kind to the holder of such securities at the time of payment of principal and/or interest.”

I think the question you present is essentially one of agency. The question could be rephrased to ask, whose agent is the bank in receiving and paying the coupons and bonds?

The question virtually answers itself. You identify the bank as the “paying agent” and further point out that the bank has been designated as such by the bond issuing authority. In such circumstances it is difficult to see how it can be questioned or denied that the bank is the agent of the bond issuing authority and not of the bondholder. However, in order to emphasize this conclusion, I think it appropriate to refer to the rule of law concerned.

The general rule is stated as follows in the note appearing in 90 A. L. R. 467, at page 468:

“It may be noted that where corporate bonds are payable to the bearer at a specified banking house, the bank is not the agent of the bondholder in respect of funds forwarded to the bank by the obligor for the purpose of making payment. On the contrary, in the absence of special circumstances establishing some other agency, the bank is the agent of the obligor in the handling of such funds.”

To the same effect see the note in 103 A. L. R. 1265, particularly the following observation at page 1267:

“All of the few cases found hold that the bank is the agent of the issuer of the coupon, rather than of the holder. In Wil-

liamsport Gas Co. v. Pinkerton (1880) 95 Pa. 62, where interest coupons attached to a bond were made payable at a certain bank, and money was deposited there to pay them as they became due, it was held that the bank was the agent of the issuer of the bond and coupons, and the holder of the coupons could not lose in the event of its insolvency, notwithstanding a delay on the part of such holder in presenting the coupons for payment after they became due.

“In Lusk State Bank v. Lusk (Wyo.) 48 Wyo. 547, 52 P. 2d 413, 103 A. L. R. 1256, it was held that the bank whereat coupons were made payable by the issuer was the agent of the issuer and not of the holder of the coupons.”

It should follow from the preceding that since the bank is acting as agent for the bond issuing authority and not as agent for the bondholder, in redeeming the coupons and bonds, any and all charges for the services rendered in this capacity should be paid by the bond issuing authority. A further reason occurs to me as to why this should be so. The bond issuing authority is obligated to pay and the bondholder is entitled to receive the full face amount of each coupon or bond presented for payment to the designated paying agent. If the paying agent is allowed to deduct its charges from the amount payable to the bondholder the obligation of the bond issuing authority would not be fully discharged and the right of the bondholder to the full face amount of the coupons or bonds would be denied.

Therefore, in specific answer to your question, I am of the opinion:

(1) The paying agent designated by the bond issuing authority to redeem its bonds and interest coupons is the agent of the bond issuing authority and not of the bondholder presenting such bonds or coupons for payment.

(2) The paying agent designated by the bond issuing authority to redeem its bonds and interest coupons may not deduct a service charge from the full face amount of such bonds or coupons at the time they are presented for payment.

Respectfully,

HERBERT S. DUFFY,
Attorney General.