

196

EDUCATION — FUNDS, INVESTMENT — PREMIUM FROM SALE OF BONDS: SINKING FUND, BOND RETIREMENT FUND—PERMITTED INVESTMENTS OF SUCH FUNDS— §§133.36, 3315.03 R.C.

SYLLABUS :

The premium received from the sale of bonds issued by a board of education of a school district and, as required by Section 133.36, Revised Code, may, under the provisions of Section 3315.03, Revised Code, be used for the purchase of bonds of the United States, of Ohio, of any municipal corporation, county, township, or school district of any state, or in bonds of its own issue.

Columbus, Ohio, March 10, 1959

Hon. William H. Weaver, Prosecuting Attorney
Williams County, Bryan, Ohio

Dear Sir:

I have your request for my opinion reading:

"The electors of the Millcreek-West Unity Local School District of Williams County, Ohio, at the last general election, approved a school bond issue for the sum of \$456,000.00. There will be a premium paid by the successful bidder of the bonds.

"The question is: What authority if any, does the Millcreek-West Unity Local School Board of Education to re-invest this premium which they will receive from the successful bidder as to the sale of the bonds, in short-term U. S. Government notes or other legal securities?"

I invite your attention initially to the following portion of Section 133.36, Revised Code:

"The money from the principal, on the sale of such bonds or notes, shall be credited to the fund on account of which the bonds or notes are issued and sold and used only for the purpose set out in the resolution or ordinance of the taxing authority, and *all moneys from premiums and accrued interest shall be paid into the sinking fund or bond retirement fund from which said bonds or notes are to be redeemed.* If anticipatory notes have been issued, the moneys remaining from the proceeds of sale of such notes, and the moneys from the sale of bonds shall be used for the purpose of paying such anticipatory notes. * * *"

(Emphasis added)

Since the premium on the bond issue is required to be paid into the *sinking fund or bond retirement fund* as provided in Section 133.36, *supra*, the resolution of your question is found in Section 3315.03, Revised Code, providing:

"The board of commissioners of the sinking fund shall invest that fund in bonds of the United States, of Ohio, of any municipal corporation, county, township, or school district of any state, or in bonds of its own issue. All interest received from such investments shall be deposited as other funds of such sinking funds, and reinvested in like manner. For the extinguishment of any bonded indebtedness included in such fund, the board may sell or use any of the securities or money of such fund."

In Opinion No. 5263, Opinions of the Attorney General for 1955, p. 262, in considering these sections it is stated at pp. 264, 265:

“It is at once evident that there is a variation in the terminology used in the above-quoted sections. Section 133.36, Revised Code, provides that all money received from premiums and accrued interest must be placed in the ‘sinking fund or bond retirement fund.’ Section 3315.03, Revised Code, on the other hand, specifies those securities in which ‘the board of commissioners of the sinking fund shall invest that fund.’

“These two sections of the Revised Code, however, refer to one and the same fund, namely, the fund held for the purpose of meeting the interest payments on the bonded indebtedness and retiring such indebtedness.”

Therefore, in specific answer to your inquiry, it is my opinion and you are accordingly advised that the premium received from the sale of bonds issued by a board of education of a school district and, as required by Section 133.36, Revised Code, may, under the provisions of Section 3315.03, Revised Code, be used for the purchase of bonds of the United States, of Ohio, of any municipal corporation, county, township, or school district of any state, or in bonds of its own issue.

Respectfully,

MARK McELROY

Attorney General