

In the case of the Prudential Insurance Company of America vs. Frank R. Fuller, a minor, by J. C. Yeend, his duly appointed guardian, 9 Ohio Circuit Court Reports, N. S., at page 441, the syllabus reads as follows:

“Upon repudiating his contract of life insurance and surrendering to the company its policy therefor an infant may recover the whole amount of premiums paid by him thereon.”

This case was decided in 1907 and prior to the enactment of section 9392-1 G. C., above mentioned. It is believed that the above mentioned section was enacted to permit the minor to contract for insurance, for the benefit of such minor, or for the benefit of those persons mentioned in the statute. It is believed that it is permissible only and is to be strictly construed within the purposes therein mentioned.

It is contemplated that the premiums due under an insurance policy are to be paid in cash or its equivalent. It is not contemplated that insurance premiums are to be paid by a note. The note becomes a contract in and of itself, and standing independently of the insurance contract, must of necessity be subject to any defense which may exist against it.

While there has apparently been no adjudication under this section, it is believed that the minor is entitled to and may exercise the loan privileges under his policy, subject to all its conditions, and if he does not repay the loan, he would be subject to all its penalties for non-payment of the loan, among others being the reduced value of his policy, but an action at law could not be successfully maintained against him to compel repayment.

It is believed that section 9392-1 G. C., being in derogation of the rule of the common law, must be strictly construed, and that the minor may only do the things therein specifically mentioned.

Referring to your questions numbers one and two, it is therefore my opinion that both are required to be answered in the negative.

Respectfully,
C. C. CRABBE,
Attorney-General.

2248.

BOND ISSUED FOR SPECIFIC PURPOSES—ATTORNEY FEES FOR PREPARING THE LEGISLATION FOR A BOND ISSUE MAY NOT BE PAID FROM THE PROCEEDS OF THE SALE OF SAID BONDS.

SYLLABUS,

Attorney fees for preparing the legislation for a bond issue may not be paid from the proceeds of the sale of bonds issued for specific purposes.

COLUMBUS, OHIO, March 2, 1925.

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

GENTLEMEN:—I am in receipt of your communication as follows:

“Bonds of the Village of ‘W’ were issued for the purpose of creating funds to extend and improve the waterworks system by extending mains, sinking two or more wells, purchasing and installing pumps and other machinery and making other necessary improvements to said plant. A clause

in the ordinance authorizing such issue provided that such bonds should be prepared by the village solicitor. The solicitor is employed when necessary and compensated by council for each specific service; said solicitor assisted them in the above instance in the preparation of the legislation and bonds, etc. The solicitor rendered a bill of \$160.00 for services, which council authorized to be paid from the proceeds of the sale of the above bonds. The village clerk takes the position that the attorney fees are not a part of the cost of improving and extending the waterworks and that such fees cannot therefore be paid from the proceeds of the sale of such bonds.

“Question: Under the above conditions may attorney fees be paid from the proceeds of the sale of bonds issued for specific purposes?”

It is noted that the bonds in the instant case were issued for the purpose of “creating funds to extend and improve waterworks system by extending mains, sinking two or more wells, purchasing and installing pumps and other machinery and making other necessary improvements to said plant.”

Section 3939 G. C., found in 110 Ohio Laws, page 373, provides for what specific purpose a municipality may issue bonds. Item number two of this section permits the issue of bonds for the purpose of extending and improving waterworks.

Your question is whether attorney fees for preparing legislation for a bond issue are incidental expenses connected with such bonds and whether the same may be paid from the proceeds of the sale of such bonds. The subject of incidental expenses connected with the issuing of bonds is discussed in Opinions of the Attorney-General of 1913, Volume 1, page 360, as follows:

“I am of the opinion that the silence of the Municipal Code upon the subject at hand is to be interpreted in the light of the express provisions of closely related statutes. The purposes for which a municipal corporation may issue bonds are specifically set forth in the statutes. Thus section 3939, General Code, mentions a large number of specific objects for the accomplishment of which bonds may be issued. The whole subject is fully treated of in the chapter of the Municipal Code which is entitled ‘Borrowing Money.’ This chapter will be searched in vain for any provisions expressly authorizing a municipal corporation to borrow money for the purpose of paying the expenses of legal advertising. In each instance, for example, in which a specific improvement is contemplated, the thing for which the money is borrowed, is the making of the improvement. When bonds are sold their proceeds constitute one of the funds of the municipality. This fund is available only for the purposes properly within the purview of the improvement itself. Similarly, when money is borrowed and bonds are issued for an object other than the making of a specific improvement, a fund is thereby created which is available only for the object stated. Unless, therefore, the payment of the expense of advertising the sale of the bonds can be regarded as one of the purposes of the improvement, or as related to and a part of the object for which the money is borrowed, such an expenditure is not a proper one to be made from such a fund.

“Furthermore, there are statutes specifically disposing of balances of such funds when the object for which they were created is satisfied without the expenditure of the total amount borrowed. I refer to section 3915, General Code, which disposes of unexpended balances in a fund created by the issuance of bonds in anticipation of special assessments, and to section 3604 which makes similar disposition of the unexpended balances of a fund created by the issuance of general bonds of the municipality.

"Section 3896, General Code, provides what may be included in the cost of an improvement for which special assessments are to be levied and specifically authorizes the inclosing therein of 'The expense of * * * printing and publishing the notices and ordinances required,' together with 'any other necessary expenditure.' Under this language it would seem that the expense of advertising special assessment bonds may be included in the assessment.

"Inasmuch, then, as the bonds themselves are issued in anticipation of the assessment, such bonds are not required to be limited in amount to the cost of construction alone, but the amount thereof may include all the items of expense mentioned in said section 3896. In other words, special assessment bonds are not bonds issued for the purpose of a specific improvement in the technical sense; but they are bonds issued in anticipation of the assessment.

"The inference then to be drawn from the provisions of section 3896, considered in connection with the other sections referred to, is that in the case of the issuance of the general bonds of the municipality, the expense incident to their issuance is not a proper charge against the fund created thereby."

I am in accordance with the reasoning expressed in the above opinion relating to the expense incident to the issuance of general bonds of a municipality.

It is, therefore, my opinion that attorney fees for preparing the legislation for a bond issue may not be paid from the proceeds of the sale of bonds issued for specific purposes.

Respectfully,
C. C. CRABBE,
Attorney-General.

2249.

APPROVAL, BONDS OF BLOOMFIELD TOWNSHIP RURAL SCHOOL DISTRICT, TRUMBULL COUNTY, \$76,500.00.

COLUMBUS, OHIO, March 2, 1925.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2250.

APPROVAL, BONDS OF SALEM TOWNSHIP SPECIAL RURAL SCHOOL DISTRICT, MONROE COUNTY, \$57,500.00.

COLUMBUS, OHIO, March 2, 1925.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.