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1. SINKING FUND TRUSTEES, BOARD OF—ESTABLISHED BY MUNICIPAL CHARTER—DUTIES OUTLINED—SECTION 2295-14 G. C. DOES NOT ABOLISH BOARD.
2. WHERE CHARTER SO PROVIDES, BOARD HAS CUSTODY OF FUNDS CREATED TO PAY PRINCIPAL AND INTEREST MATURITIES OF MORTGAGE BONDS.

SYLLABUS:

1. When a municipal charter has established a Board of Sinking Fund Trustees and has outlined its duties, Section 2295-14, General Code, does not abolish it.

2. When the charter of a municipality so provides, the Board of Sinking Fund Trustees has the custody of funds created for the purpose of paying the principal and interest maturities of mortgage bonds.

Columbus, Ohio, August 1, 1949

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Dear Sir:

I am in receipt of your request for my opinion which reads as follows:

“A number of questions have arisen in connection with the audit of records of municipal sinking fund trustees in certain cities and villages which involve the powers and duties of the sinking fund trustees, in both Charter and Non-charter cities.

“The trustees of the sinking fund of the city of Zanesville, a charter city, are organized, and exercise the powers, as provided under Sections 145 to 153, inclusive, of the city charter. Section 147 reads in part:

“ * * * The City auditor shall act as secretary of the board, and shall be paid such salary as the council may provide * * * ”
At the present time the salary of the city auditor is paid \$1,500.00 from the General fund, and for services as secretary \$2,500.00 per year from the Sinking fund. The city auditor is elected for a term of four years, under Section 99 of the city charter.

“Section 100 of the city charter provides:

“The salary of the auditor shall be Fifteen Hundred Dollars per annum; but said salary may be changed by ordinance of council, provided that such ordinance must be passed at least one

year prior to the beginning of the term of the auditor to be affected thereby.’”

“All bonds issued by the city of Zanesville prior to January 1, 1922 were paid and redeemed in the year 1941, however, the sinking fund trustees have continued to function since that time, and the city auditor continues to act as secretary in accordance with the provisions of Section 147 of the city charter.

“In view of the large number of Ohio cities now operating under a charter form of government, the question of abolishing the board of sinking fund trustees in such cities, pursuant to the provisions of Section 2295-14, General Code, will occur frequently, and the answer thereto is deemed to be of state-wide interest.

“Accordingly, we respectfully request that you give consideration to the facts herein set forth, and furnish us with your formal Opinion in answer to the following questions:

“1. When the board of trustees of the sinking fund in a charter city has provided for all bonds issued prior to Jan. 1, 1922, and said bonds have been redeemed, is said board thereupon abolished under the provisions of Section 2295-14, G. C., and its functions and powers relating to the payment of bonded debt and the investment of funds held for the payment of debt obligations transferred to the city treasurer?

“2. If the answer to question number one is in the affirmative, is it lawful for a charter city to continue the board of trustees of the sinking fund after all bonds issued prior to Jan. 1, 1922 have been paid, and to pay the salary provided for the secretary of said board to the city auditor?

“3. Where Mortgage Bonds have been issued, under the provisions of Section 12 of Article 18 of the Ohio Constitution, do the powers and duties of the sinking fund trustees, with reference to the custody of bond payment funds, extend to and include the custody of funds created for the purpose of paying the principal and interest maturities of such Mortgage Bonds?”

Before answering your questions, I believe Section 2295-14, General Code, should be quoted. It reads as follows:

“The board of sinking fund trustees of any county or municipality or the board of sinking fund commissioners of any school district shall continue to exercise the powers provided in sections 2976-18 to 2976-27 inclusive, 4511 to 4522 inclusive, 3932 and 7613 to 7619 inclusive of the General Code and all other provisions of law relating to its powers, until all outstanding bonds of such county, municipality or school district issued previous to January 1, 1922, shall have been paid; and thereupon it shall be

deemed to be abolished and its functions and powers relating to the purchase and sale of securities, receipt, deposit and investment of taxes, assessments and other funds raised for the payment of bonds and funded debts, the application of such funds to the payment of bonds and other indebtedness and all its other powers and functions as set forth in said provisions of law as amended in this act (G. C. Sec. 2295-6 to 2295-15), shall be deemed to be transferred to the treasurer of the county, municipality or school district, and all moneys, securities and other assets then in the custody and possession of such board shall be transferred and delivered to such treasurer. Thereafter all said moneys, securities and assets and all moneys received by the county, municipality or school district for the payment of the interest and principal of its bonds or other funded debts and all inheritance taxes and all other taxes and revenues which were theretofore payable, by virtue of provision of law, into its sinking fund shall be paid to its treasurer and placed and held by him in a separate fund to be known as 'bond payment fund' and, subject to the provisions of law relating to transfer to other funds, said fund shall be applied by him to the purposes for which the sinking fund had theretofore been applicable."

In view of the explanatory material in your letter, the first question is in effect as follows:

"When the board of sinking fund trustees and its powers have been established by charter provision of the municipality, what effect does Section 2295-14, General Code, have upon the board when all bonds issued prior to January 1, 1922 have been provided for?"

Article XVIII, Section 3 of the Ohio Constitution reads as follows:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

This section gives to the municipalities all the powers of local self-government.

Local self-government means that on all matters of purely local interest in regard to the governing of a municipality, the municipality has the power to lay down the rules. In the case of the *City of Mansfield v. Endly*, 38 O. App. p. 535, it says as follows:

"* * * a municipal corporation may enact all such measures as pertain exclusively to it, in which the people of the state at large have no interest or concern, and which they have not expressly withheld by constitutional provision. * * *"

In this case, the municipality has decided who and what branch of its government shall "have charge of and provide for the payment of all bonds issued by the city." It cannot be said that this is a matter which concerns anyone but the local citizens.

It is purely local matter as to who has charge of the bonds of the city. It could not possibly make any difference to a non resident whether the board or the city treasurer had charge of the bonds of a city. In other words, this matter pertains exclusively to the government of the city and concerns no other persons.

Article XVIII, Section 13 of the Ohio Constitution reads as follows :

"Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities."

This does not limit the power of "local self-government" as to the establishment of sinking fund trustees. This section only limits the power to tax and incur debts. It does not extend to the matter of who and what kind of organization the municipality has in regard to the matter of debt.

Article XVIII, Section 7 of the Ohio Constitution reads as follows :

"Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government."

This gives a municipality power to adopt a charter which it has done in this case. In 28 O. Jur. p. 77, there appears the following statement :

"A municipality, in framing, adopting, or amending a Home Rule charter, under the provisions of Section 7 of article 18 of the Constitution, may prescribe therein the *form* of the municipal government and *define the powers and duties of the different departments, * * **" (Emphasis added.)

Also, in 28 O. Jur. p. 228, it is stated as follows :

"The provisions of Home Rule charters, adopted pursuant to the authority granted by Section 7 of article 18 of the Constitution, and of ordinances adopted pursuant to the authority of Section 3 of such article, in so far as they constitute an exercise

of the powers of local self-government conferred by such sections, as distinguished from mere police regulations, and in so far as they comply with constitutional requirements and do not exceed constitutional limitations, supersede provisions of general laws on the same subject, in so far as concerns their operation within the municipality. * * * ”

Again, at page 243 of same volume, there is the following statement :

“One of the powers of local self-government is the power of legislating with reference to the *form* and the *manner* of the *administration* of the local government. * * * ”(Emphasis added.)

In *Switzer v. State ex rel. Silvey*, 103 O. S. 306 at page 307, it was said in part as follows :

“The main question in this case is not whether the people of a municipality under the Constitution of 1912 have the right of referendum vote to adopt their own *form* of government and to amend the same from time to time, agreeable to the constitution. All parties concede the soundness of that general proposition.”
(Emphasis added.)

In view of the above, I am of the opinion that Section 2295-14, General Code, has no effect upon a board of sinking fund trustees which has been established by charter.

Since the answer to the first question is in the negative, it is unnecessary to answer the second question.

Section 148 of the Charter of the City of Zanesville reads as follows :

“The trustees of the sinking fund shall have charge of and provide for the payment of all bonds issued by the city, the interest maturing thereon and the payment of all final judgments against the city, except in condemnation of property cases. They shall receive from the auditor all taxes, assessments and moneys collected for such purposes, and invest and disburse them in the manner provided by general 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 money in their possession.”

It will be noted that it says that they shall receive “all taxes, assessments, and *moneys* collected for such purposes.” Section III of the same Charter which deals with the duties of the Treasurer reads in part as follows :

“Unless otherwise specifically prescribed by law or ordinance, all money belonging to or due the city shall be promptly and directly paid to the treasurer * * * .”

In this instance, it is otherwise prescribed by charter provision that the trustees of the sinking fund “shall receive all * * * moneys collected for such purposes.”

The last sentence of Section 148, supra, gives the board permission to “sell or use any of the securities or moneys in their possession.” This strengthens the view that the board is to have custody of “all * * * moneys collected for such purpose.”

Therefore, I am of the opinion that the board of sinking fund trustees has the custody of funds created for the purpose of paying the principal and interest maturities of such mortgage bonds.

In summation, it is my opinion that Section 2295-14, General Code, has no effect upon a board of sinking fund trustees which has been created by charter. I believe the above mentioned board has the custody of funds created for the purpose of paying the principal and interest maturities of such mortgage bonds.

Respectfully,

HERBERT S. DUFFY,
Attorney General.