

OPINION NO. 88-063**Syllabus:**

1. Pursuant to Ohio Const. art. VIII, §2b, where a balance remains in the World War II compensation bond retirement fund after the retirement of all bonds that have been issued and the payment of all valid claims for compensation made within the applicable time limitations, the Board of Commissioners of the Sinking Fund may make a final report to the General Assembly setting forth the amount of the balance so that the General Assembly may then determine by law the proper distribution of the remaining balances.
2. Pursuant to Ohio Const. art. VIII, §2d, where a balance remains in the Korean Conflict compensation bond retirement fund after the retirement of all bonds that have been issued and the payment of all valid claims for compensation made within the applicable time limitations, the Board of Commissioners of the Sinking Fund may make a final report to the General Assembly setting forth the amount of the balance so that the General Assembly may then determine by law the proper distribution of the remaining balances.

3. Pursuant to R.C. 9.39, where a balance remains in the fund created under Ohio Const. art. VIII, §2c, after retirement of all bonds that have been issued and the payment of all valid claims for compensation made within the applicable time limitations, the Board of Commissioners of the Sinking Fund may credit the remaining balance to a trust fund in the treasury of the state until claimed by its lawful owner. However, moneys not claimed within a period of five years shall revert to the general fund of the state.

**To: Richard Sifko, Administrative Assistant, Commissioners of the Sinking Fund,
Columbus, Ohio**

By: Anthony J. Celebrezze, Jr., Attorney General, September 12, 1988

I have before me your request for my opinion concerning the disposition of balances remaining in certain bond retirement funds. Specifically, you ask how the Board of Commissioners of the Sinking Fund (Board) may legally close and distribute the moneys remaining in the Korean Conflict bond retirement fund, the World War II compensation bond retirement fund, and the fund created to retire the public debts contracted under Ohio Const. art. VIII, §2c, for the acquisition, construction, and reconstruction of major thoroughfares. You note that all valid claims have been disbursed from these funds, as the statute of limitations set out in R.C. 2305.06 bars further claims against the funds. The balance in each fund is under \$10,000.

The primary responsibilities of the Board of Commissioners of the Sinking Fund are set out in Ohio Const. art. VIII, §10, which provides that:

It shall be the duty of the...commissioners [of the sinking fund] faithfully to apply [the sinking] fund, together with all moneys that may be, by the general assembly, appropriated to that object, to the payment of the interest, as it becomes due, and the redemption of the principal of the public debt of the state, excepting only, the school and trust funds held by the state.

Several preceding provisions of Ohio Const. art. VIII establish classes of public debt for which the Board is responsible. Among these classes are the World War II compensation fund, established by §2b; the Korean Conflict compensation fund, established by §2d; and a fund for the construction of the state highway system, established by §2c. Each of these sections also establishes a corresponding fund for the retirement of the public debt.

The provisions of Ohio Const. art. VIII, §2b, specifically provide for the distribution of the World War II compensation bond retirement fund upon payment of all valid claims:

Upon the retirement of all of the bonds that may be issued hereunder and the payment of all valid claims for compensation made within the limitations of time as prescribed herein, the commissioners of the sinking fund shall make a final report to the general assembly of Ohio, and any balances remaining in any of the funds herein created and referred to shall be disposed of as shall be provided by law.

Ohio Const. art. VIII, §2d, contains a similar provision with reference to the distribution of any remaining balances in the Korean Conflict compensation bond retirement fund:

Upon retirement of all of the bonds that may be issued hereunder and the payment of all valid claims for compensation made within the limitations of time as prescribed herein, The Commissioners of the Sinking Fund shall make a final report to the General Assembly of Ohio, and any balance remaining in any of the funds herein created and referred to shall be disposed of as shall be provided by law.

Under these sections, where a balance remains in the named funds after all valid claims have been paid, the Board may submit a final report to the General Assembly

specifying the remaining balance. Based upon this report, the remaining balances are then to be disposed of "as shall be provided for by law." This language is capable of two possible interpretations, however. The phrase "as shall be provided for by law" clearly contemplates the enactment of laws by the General Assembly at an undefined future date. The phrase does not, however, specify whether the laws must be in response to the Board's final report or whether the balances should be disposed of under the general statutory provision for the distribution of unclaimed public funds. See R.C. 9.39 (unclaimed public moneys shall be retained in a trust fund for five years, following which the money shall revert to the general fund of the public office). Thus, your question in essence asks whether following the report to the General Assembly, the Board should await appropriation of the remaining balances by the General Assembly, or place the remaining balances in a trust fund in accordance with R.C. 9.39.

It is a well-established rule of statutory construction that words are to be interpreted according to the proper grammatical effect of their arrangement. R.C. 1.42; *Davis v. Halter*, 79 Ohio App. 419, 74 N.E.2d 207 (Stark County 1944). In both Ohio Const. art. VIII, §§2b and 2d, the phrase "as shall be provided for by law" is immediately preceded within the sentence by express provisions for the making of a final report. This structure clearly suggests that the framers of Ohio Const. art. VIII, §§2b and 2d, intended for the General Assembly to distribute the balances remaining in the bond retirement funds only after receiving the Board's final report.¹ Thus, I conclude that the Board should not place any balances remaining in the bond retirement funds created by Ohio Const. art. VIII, §§2b and 2d, in a trust fund. Rather, following the submission of a final report to the General Assembly, the Board should await the appropriation of the funds by the General Assembly, or such other disposition of the funds as the General Assembly may provide.

Ohio Const. art. VIII, §2c, provides for the contracting of public debt for the purpose of constructing state thoroughfares:

The state may contract debts not exceeding five hundred million dollars for the purpose of providing moneys for acquisition of rights-of-way and for construction and reconstruction of highways on the state highway system. Not more than one hundred twenty-five million dollars of the debt authorized by this section shall be contracted within any calendar year, and no part of such debt shall be contracted after the thirty-first day of March, 1962. The principal

¹ My conclusion is also supported by the language of R.C. 129.57, R.C. 129.65, and R.C. 129.76. Each of these sections is functionally identical, with the only difference being that each concerns the disposition of the remaining balances in debt retirement funds created under Ohio Const. art. VIII, §§2f, 2h, and 2i, respectively. The language used in each of these sections of the Ohio Constitution is also analogous to that used in §§2b and 2d. With respect to the disposition of remaining balances, R.C. 129.57 provides:

Any moneys remaining in the improvements bond retirement fund created by section 2f of Article VIII, Ohio Constitution, after payment of all interest, principal, and charges for the issuance and retirement of bonds or other obligations issued pursuant to section 2f of Article VIII, Ohio Constitution, and section 129.50 of the Revised Code, shall be disposed of for the purposes enumerated in Section 2f of Article VIII, Ohio Constitution, in accordance with appropriations made by the general assembly.

While the express terms of R.C. 129.57 are not applicable to the distributions of any balance remaining in the funds created by Ohio Const. art. VIII, §§2b and 2d, the similarity of language used in those sections and §2f strongly supports a similar resolution.

amount of any part of such debt at any time contracted shall be paid in substantially equal semi-annual or annual installments, beginning not later than eighteen months after such debt is contracted, and in such number of installments that the entire debt shall be discharged not later than the year 1972. Securities evidencing the debt authorized by this section shall bear interest and shall be sold upon such terms as may be prescribed by law. Both the principal of such debt and the interest thereon shall be exempt from taxation by this state or by any taxing subdivision thereof. Moneys raised under the authority of this section shall be expended only to provide adequate highways, including the acquisition of rights-of-way and including participation therein with federal government, municipal corporations, counties and other legally authorized participants, but excluding costs of planning and supervision by the state. All construction shall be done by contract as shall be provided by law. No part of such proceeds shall be appropriated except to meet the requirements of programs or schedules of acquisition of rights-of-way, highway construction and reconstruction which the governor, or other highway authority with the concurrence of the governor, shall submit to the general assembly before such appropriations are made. Such appropriations shall be made only for major thoroughfares of the state highway system and urban extensions thereof. The debt contracted under the authority of this section shall be paid by revenue bonds issued by the state of Ohio as provided by law, secured by a pledge of moneys derived from fees, excises or license taxes, levied by the state of Ohio, relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, and a sufficient amount thereof shall be set aside each year, before any other distribution is made, to pay the interest on the outstanding debt and principal of such debt becoming due in that year, without other appropriations, but according to regulations to be established by law.

....

Unlike Ohio Const. art. VIII, §§2b and 2d, the provisions of Ohio Const. art. VIII, §2c, do not include specific instructions for the disposition of any balances remaining after all valid claims are paid. In the absence of a specific provision for disposal of the remaining balances, the general provision of R.C. 9.39 applies:

All public officials are liable for all public money received or collected by them or by their subordinates under color of office. All money received or collected by a public official under color of office and not otherwise paid out according to law shall be paid into the treasury of the public office with which he is connected to the credit of a trust fund and shall be retained there until claimed by its lawful owner. If not claimed within a period of five years, the money shall revert to the general fund of the public office.

Pursuant to this section, where a balance remains after the lawful payment of the public debt incurred under §2c, the Board should place the remaining balance in a trust fund in the "treasury of the public office with which the public office is connected." Since the Board of Commissioners of the Sinking Fund is a state entity created for the purpose of administering the bonded debt of the state, *see* Ohio Const. art. VIII, §10; R.C. 129.04, the state treasury would constitute the treasury with which the Board is "connected." Thus, any remaining balances should be placed in a trust fund in the state treasury. The balance should remain, subject to any lawful claims, in the trust fund for five years. Following the expiration of this period, the balance should then revert to the general revenue fund within the state treasury. *See* R.C. 113.09 (except as otherwise provided, all moneys deposited with the Treasurer of State shall be placed in the general revenue fund).

Accordingly, it is my opinion and you are hereby advised that:

1. Pursuant to Ohio Const. art. VIII, §2b, where a balance remains in the World War II compensation bond retirement fund after the retirement of all bonds that have been issued and the payment of all valid claims for compensation made within the applicable

time limitations, the Board of Commissioners of the Sinking Fund may make a final report to the General Assembly setting forth the amount of the balance so that the General Assembly may then determine by law the proper distribution of the remaining balances.

2. Pursuant to Ohio Const. art. VIII, §2d, where a balance remains in the Korean Conflict compensation bond retirement fund after the retirement of all bonds that have been issued and the payment of all valid claims for compensation made within the applicable time limitations, the Board of Commissioners of the Sinking Fund may make a final report to the General Assembly setting forth the amount of the balance so that the General Assembly may then determine by law the proper distribution of the remaining balances.
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