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INTEREST EARNED ON BOND FUND—SALE OF BONDS ISSUED FOR PURPOSE OF ERECTING AND EQUIPPING COUNTY HOSPITAL—INTEREST MUST BE CREDITED TO BOND RETIREMENT FUND AND USED TO RETIRE BONDS—OPINIONS ATTORNEY GENERAL, 1929, PAGE 636, APPROVED AND FOLLOWED.

SYLLABUS:

Interest earned on a bond fund established from the sale of bonds issued for the purpose of erecting and equipping a county hospital must be credited to the bond retirement fund and used to retire said bonds. 1929 Opinions of the Attorney General, page 636, approved and followed.

Columbus, Ohio, October 24, 1949

Hon. G. L. Schilling, Prosecuting Attorney
Clinton County, Wilmington, Ohio .

Dear Sir :

Your request for my opinion reads as follows :

“A bond issue was submitted to the voters of Clinton County, Ohio, for the erection and equipment of a county hospital. The bond issue request of \$600,000.00, and said issue was approved by the electors of this county probably by the greatest majority of any bond issue ever submitted to any political subdivision.

“Said bonds were sold and were sold at a premium but of course the money could not be used as there was the necessity of the preparation of plans and specifications and the preliminary ground work which had to be submitted by and to the Department of Health of the State of Ohio and the Adjutant General

of the United States in view of the fact that the government was furnishing a certain amount for the erection of this said hospital.

“In view of this fact it was felt only prudent and wise that said moneys might as well be producing some income and was invested in short term government securities producing seven-eighths per cent and since the investment of said securities they have produced some \$10,000.00 which the Board of Hospital Trustees desire to use in the construction of said hospital as the estimates and bids were higher than they had expected.

“It was the ruling of my office that any interest produced from this bond would have to go into the bond retirement fund and could not be used in construction. However, the Board of Hospital Trustees desired an opinion of your office as to this question and the question merely boils down to this: During the time that said \$600,000.00 was invested in U. S. Securities, can the interest produced by that investment be used by the hospital trustees in the construction of said Clinton County Hospital or must said interest be placed in the bond and retirement fund and used to retire said bonds?”

The question which you present is governed by a provision of Section 5625-10, General Code. The pertinent part of said section of the General Code relating to the disposition of interest earned on bond funds reads as follows:

“All proceeds from the sale of a bond, note or certificate of indebtedness issue except premium and accrued interest shall be paid into a special fund for the purpose of such issue. The premium and accrued interest received from such sale and *interest earned on such special fund shall be paid into the sinking fund, or the bond retirement fund of the subdivision.*”

(Emphasis added.)

The identical language above quoted was contained in a prior enactment of this code section and was under consideration by one of my predecessors in office in an opinion reported in Volume I, Opinions of the Attorney General for the year 1929, at page 636. The question then presented was whether the council of a city which had a charter providing that ordinances and resolutions should supersede statutes in conflict therewith, could legally appropriate depository interest earned on bond funds for the purpose of supplementing such bond funds, and authorize the expenditure of such depository interest for the purposes of such bond funds. I am in agreement with the conclusions reached in that opinion which are embodied in the syllabus thereof, as follows:

"1. The provisions of Section 5625-10, General Code, that interest earned on money in a special bond fund shall be paid into the sinking fund or the bond retirement fund of the subdivision, is a limitation upon the power to tax and is, accordingly, applicable to charter municipalities as well as to other taxing subdivisions of the state.

"2. A charter city may not legally appropriate depository interest earned on bond funds for the purpose of supplementing such bond funds and authorize the expenditure of such depository interest for the purposes of such bond funds."

The principles therein contained apply with even more force to subdivisions of the state without charters for local government.

You are advised, therefore, that it is my opinion that interest earned on a bond fund established from the sale of bonds issued for the purpose of erecting and equipping a county hospital must be credited to the bond retirement fund and used to retire said bonds.

Respectfully,

HERBERT S. DUFFY,
Attorney General.