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1. INTEREST COUPONS ON BONDS—NOT PAID UPON PRESENTATION WHEN DUE — BEAR SIX PER CENT INTEREST FROM DATE OF MATURITY—ISSUED BY SCHOOL DISTRICT.
2. INTEREST SHOULD BE PAID FROM MONEYS IN SINKING FUND OR BOND RETIREMENT FUND.

SYLLABUS:

1. Interest coupons on bonds issued by a school district which upon presentation for payment when due, are not paid, bear interest from the date of maturity thereof at the rate of six percent per annum.

2. Such interest when paid should be paid from moneys in the sinking fund or bond retirement fund of the issuing school district.

Columbus, Ohio, June 27, 1942.

Hon. Thomas J. O'Connor, Prosecuting Attorney,
Toledo, Ohio.

Dear Sir:

This will acknowledge receipt of your recent communication, which reads as follows:

“From 1933 to 1937 the Board of Education of Washington Township was in default of payment of interest coupons on certain bonds which had been purchased by the Industrial Commission. While the defaulted interest and principal on the bonds has since been paid in full, the Industrial Commission is requesting that the Board of Education pay additional interest for the period during which the Board was in default on the interest coupons. Your opinion is respectfully requested as follows:

1. Would the payment of this requested interest by the Board be a legal expenditure of the funds of said school district?
2. If the answer to the above is in the affirmative, may said payment be made from the sinking fund of said district?”

While it appears from an examination of authorities that courts in various jurisdictions are divided on the question of whether or not installments of interest falling due at stated intervals, bear interest upon

failure to make payment as agreed, the rule in Ohio seems to be well settled that such interest is recoverable.

In the case of *Watkinson v. Root*, 4 Ohio, page 374, it was held as disclosed by the syllabus:

“In an action for the recovery of interest upon money, the interest is considered principal and bears interest from the time it became due.”

Of like effect is the holding in the case of *Anketel, et al., v. Converse, et al.*, 17 O. S., page 11, wherein the court declared:

“Where interest is payable annually, or at other stated periods, it bears simple interest from the time it falls due till paid; and payments are to be applied, first, in satisfaction of the interest due upon interest; secondly, in satisfaction of interest due upon the principal; and thirdly, in satisfaction of the principal; but in no case will the interest upon interest be made to bear interest.”

Similarly, in the case of *Cramer v. Lepper, et al.*, 26 O. S., page 59, it was held:

“Under a contract for the payment of interest at a specified rate annually, upon default of payment, interest on the interest will be computed at six per cent.”

See also *Hydraulic Co. v. Chatfield*, 38 O. S. 575.

Section 8305, General Code, which prescribes the rate of interest where no stipulation therefor is made, reads:

“In cases other than those provided for in the next two preceding sections, when money becomes due and payable upon any bond, bill, note, or other instrument of writing, upon any book account, or settlement between parties, upon all verbal contracts entered into, and upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of a contract, or other transaction, the creditor shall be entitled to interest at the rate of six per cent per annum, and no more.”

While interest is generally regarded as an incident to a debt after its maturity, it would seem that contractual interest provided for by interest coupons is in reality a substantive part of the debt itself, as

much so as the principal, for the reason that both were contracted for. It would therefore appear that under the provisions of the above section, interest coupons on a bond would bear interest after the maturity thereof at the rate of six percent per annum. Of course, if the money is available to pay such coupons at maturity and they are not presented for payment, such interest cannot be recovered.

With respect to interest due on interest coupons after maturity, it is stated in 23 O. Jur., page 50:

“According to the great weight of authority, interest coupons or notes executed by the maker of a note or bond to evidence installments of interest do bear after maturity, although there is no provision for interest. The theory, in brief, of these cases, is that the coupons have all the qualities of commercial paper.”

I come now to your second question.

Under the law of Ohio, each political subdivision owing a bonded debt is required to establish a sinking fund or bond retirement fund, as the case may be. (See section 2295-14, General Code.)

A sinking fund is a fund created for the payment of a bonded debt. In fact, the only purpose of a sinking fund is to extinguish a debt, the existence of which warranted the creation of such fund.

The provisions of law in this connection with respect to the sinking fund of a school district are contained in section 7618 of the General Code, which reads:

“The board of education shall appropriate to the use of such sinking fund any taxes levied for the payment of interest on its bonded indebtedness, together with the sum provided for in sections seventy-six hundred thirteen and seventy-six hundred and fourteen. Sums so appropriated shall be applied to no other purpose than the payment of such bonds, interest thereon and necessary expenses of such sinking fund commission.”

In express terms, the above section provides that moneys appropriated to the use of the sinking fund of a school district shall be applied to the payment of bonds and interest thereon.

In view of the above, you are advised that in my opinion:

1. Interest coupons on bonds issued by a school district which upon presentment for payment when due, are not paid, bear interest from the date of maturity thereof at the rate of six percent per annum.

2. Such interest when paid should be paid from moneys in the sinking fund or bond retirement fund of the issuing school district.

Respectfully,

THOMAS J. HERBERT
Attorney General.