

2990.

DUTIES OF TREASURER AND AUDITOR OF A CITY OR CLERK OF A VILLAGE DISCUSSED—SECTIONS 2295-14, 3795, 5660 AND 5649-3g OF THE GENERAL CODE CONSTRUED.

SYLLABUS:

1. *It is the duty of the treasurer and the auditor of a city or the clerk of a village to keep a record of the bonds outstanding, maturing, interest payable, etc. when such treasurer assumed the duties of a sinking fund trustee.*
2. *The treasurer may not issue a check in payment of maturing bonds and bond interest without a warrant from the auditor of a city or the clerk of a village.*
3. *The treasurer may not pay maturing bonds and interest without having obtained a certificate from the auditor or clerk as provided by section 5660 of the General Code.*
4. *It is the duty of the auditor or clerk to keep a record of the sinking fund receipts and disbursements.*

COLUMBUS, OHIO, December 7, 1925.

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

GENTLEMEN:—I am in receipt of your communication in which you ask with reference to sections 2295-14, 3795, 5649-3g and 5660 of the General Code, the following questions:

“Question 1. Is it the duty of the treasurer or the auditor (clerk in villages) to keep a record of the bonds outstanding, maturing, interest payable, etc., when such treasurer assumes the duties of the sinking fund trustees?”

“Question 2. May the treasurer issue a check in payment of maturing bonds and bond interest without a warrant from the auditor of a city or clerk of a village?”

“Question 3. May the treasurer pay maturing bonds and bond interest without having obtained a certificate from the auditor of a city or clerk of a village as provided by section 5660, General Code?”

“Question 4. If it be the duty of the treasurer to obtain a certificate, does it become the duty of the clerk to keep a record of the sinking fund receipts and disbursements?”

Prior to the enactment of section 2295-14 of the General Code, 110 O. L., page 456, the sinking fund was in the custody of the sinking fund commissioners and the disbursement thereof by the sinking fund trustees was on checks issued by them without reference to approval by the auditor of the city or the clerk of a village.

Section 2295-14 of the General Code, abolished sinking fund trustees of a county or municipality after all outstanding bonds of a county, municipality or school district issued previous to January 1, 1922, had been paid and further provides with reference thereto as follows:

“And thereupon it (sinking fund trustees) 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 shall be deemed to be transferred to the treasurer of the county, municipality * * * 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 * * * payable, by virtue of the provisions 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, * * * said fund shall be applied by him to the purposes for which the sinking fund had theretofore been applicable."

By this section all the duties of a sinking fund trustee or sinking fund commissioners, when such were abolished, were placed in the hands of the treasurer and all powers relating thereto with reference to the application of such money was given to the treasurer.

Section 3795 of the General Code in part provides :

"Unless otherwise provided by law, no money shall be drawn from the treasury except upon the warrant of the auditor or clerk pursuant to the appropriation by council."

Section 5649-3g, as amended in 111 O. L. page 371, in part provides as follows :



"The appropriation measure or measures of any county or political subdivision or taxing district shall include provision for the full amount of interest, principal and sinking fund charges maturing on obligations of such county, subdivision or district during such year, excepting interest, principal or sinking fund charges the payment of which shall have been lawfully authorized and directed from the proceeds of bond issues * * * ."

This section as enacted was to replace section 5649-3d which was repealed by the same act.

Section 5649-3d of the General Code did not mention appropriation for interest, principal and sinking fund charges and no appropriation was necessary as under section 4517 of the General Code the trustees of the sinking fund were authorized to pay all obligations and to collect and disburse all moneys coming into the sinking fund.

The enactment in section 5649-3g of the provision making it necessary to appropriate the full amount of the interest, principal and sinking fund charges would seem to take away from the treasurer some of the authority and powers formerly granted to the sinking fund trustees.

Section 5660, 111 O. L. page 375, in part reads as follows :

"No contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds from whatsoever source derived, shall be made or assumed by any authority, officer, or employe of any county or political subdivision or taxing district, nor shall any order for the payment or expenditure of money be approved by the county commissioners, council, or by any body, board, officer or employe of any such subdivision or taxing district, unless the auditor or chief fiscal officer thereof first certifies that the money required to meet such contract, agreement or other obligation, or to make such payment or expenditure has been lawfully appropriated or authorized or directed for such purpose and is in the

treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation or certification, which certificate shall be filed with such authority, officer, employe, commissioners, council, body or board, or the chief clerk thereof."

Section 5660 of the General Code, prior to the amendment related only to the commissioners of the county, the trustees of the township and the board of education of a school district and did not relate to any authority, officer or employe of such political subdivision. The amendment seems to be much more comprehensive than the former statute and it is believed would include the treasurer of a municipality.

Sections 5660 and 5649-3g of the General Code, may be said to be in *pari materia* with the sections relating to the former duties of the sinking fund trustees, which by amendment were made duties of the treasurer of a municipality. Therefore, all these statutes must be considered together in arriving at the intent of the legislature in so enacting them.

In answer to your specific question it is believed that it is the duty of the treasurer and the auditor of a city or the clerk of a village to keep a record of the bonds outstanding, maturing, interest payable, etc., when such treasurer assumes the duties of a sinking fund trustee.

Second, the treasurer may not issue a check in payment of maturing bonds and bond interest without a warrant from the auditor of a city or the clerk of a village.

Third, the treasurer may not pay maturing bonds and interest without having obtained a certificate from the auditor or clerk as provided by section 5660 of the General Code.

Fourth, it is the duty of the auditor or clerk to keep a record of the sinking fund receipts and disbursements.

Respectfully,

C. C. CRABBE,

Attorney General.

2991.

COUNTY SEWER DISTRICTS—COMPENSATION OF COUNTY COMMISSIONERS—SECTIONS 6602-14 AND 2295-11 OF THE GENERAL CODE CONSTRUED.

SYLLABUS:

1. *A county commissioner who took office January 1st, 1925, is not entitled to compensation for preliminary engineering work done during 1924, in connection with a project which was constructed during 1925, the previous commissioner having been ineligible to receive compensation.*

2. *A county commissioner is eligible to receive compensation for preliminary work done prior to June 30th in a year in which he is eligible to receive compensation for work constructed during 1925.*

3. *Interest on bonds for the first year should not be included in the cost on which the commissioner's compensation is based.*

COLUMBUS, OHIO, December 7, 1925.

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

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

" Certain questions have presented themselves in regard to the proper computation of the compensation for the county commissioners of this coun-