

4663.

MUNICIPALITY—MAY NOT PLACE FUNDS IN ESCROW PENDING PURCHASE OF REAL ESTATE IN ABSENCE OF AUTHORITY IN ITS CHARTER.

SYLLABUS:

A municipality, in the absence of express authority in its charter if it be a charter municipality, may not legally place its funds, representing the purchase price of real estate proposed to be purchased by it, in escrow pending the preparation and examination of the necessary legal papers and clearing of title to such property.

COLUMBUS, OHIO, September 30, 1932.

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

GENTLEMEN:—I acknowledge receipt of your communication which reads as follows:

“In recent years it has become a quite regular practice for the City of Cleveland, in the purchase of real estate, to place its funds on deposit with an escrow company. During the years 1930 and 1931, a total of \$1,390,000.00 of the city’s funds has been paid to local escrow companies for land purchases. The city not only loses the depository interest on the sums advanced, but also appears to have no protection in event of the escrow company’s failure. Usually, the city pays a share of the escrow fee.

Question. May a municipality in the purchase of real estate, legally place its funds in escrow pending the preparation and examination of the necessary legal papers and clearing of title to the particular property?

So far as the City of Cleveland is concerned, the sections of its charter which may be considered as pertinent, are quoted in part as follows:

Sec. 59 (1924 charter), 99 (1931 charter). ‘The city treasurer shall be custodian of all public money of the city. * * *’

Sec. 70 (1924 charter), 105 (1931 charter). ‘The commissioner of accounts * * * shall issue no warrant for payment unless he finds that the claim is in proper form * * * is justifiable and legally due and payable. * * *’

We will appreciate receiving an opinion from you on the above question at your convenience.”

The charter of the City of Cleveland provides that “all moneys received by any officer or employe of the city for or in connection with the business of the city shall be paid promptly into the city treasury and shall be deposited with such responsible banking institutions as furnish such security as the council may determine and shall agree to pay the highest rate of interest. All interest on money so deposited shall accrue to the benefit of the city.” This is somewhat similar to section 4295, General Code, which provides that “the council may provide by ordinance for the deposit of all public moneys coming into the hands of the treasurer, in such bank or banks, situated within the municipality or

county, as offer, at competitive bidding, the highest rate of interest and give a good and sufficient bond issued by a surety company authorized to do business in the state, or furnish good and sufficient surety," etc.

I find no provision in the charter and there is no statutory provision which would authorize the deposit of public funds with an escrow or title company pending the consummation of the purchase of real estate by a municipality. I am of the view that such procedure is illegal and that the treasurer would be liable for any loss resulting therefrom.

You are therefore advised that a municipality, in the absence of express authority in its charter if it be a charter municipality, may not legally place its funds, representing the purchase price of real estate proposed to be purchased by it, in escrow pending the preparation and examination of the necessary legal papers and clearing of title to such property.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

4664.

APPROVAL, BONDS OF DAYTON CITY SCHOOL DISTRICT, MONTGOMERY COUNTY, OHIO—\$273,000.00.

COLUMBUS, OHIO, September 30, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4665.

APPROVAL, BONDS OF NILES CITY SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO—\$10,500.00.

COLUMBUS, OHIO, September 30, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4666.

APPROVAL, BONDS OF BELLAIRE CITY SCHOOL DISTRICT, BELMONT COUNTY, OHIO—\$14,000.00.

COLUMBUS, OHIO, September 30, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.