

1097.

MUNICIPAL BONDS—WHERE PAYABLE—WHEN PAYMENT FOR BANK'S SERVICES IN REDEEMING AUTHORIZED AND UNAUTHORIZED—NECESSITY FOR AGREEMENT BETWEEN SINKING FUND TRUSTEES AND BANK.

SYLLABUS:

1. *Municipal securities and the interest thereon lawfully may be made payable at the municipal treasury or any other designated place.*

2. *When municipal bonds are made payable at the treasury of the municipality, the municipal sinking fund commissioners are not authorized to enter into an agreement with a bank to pay for the services of the bank in connection with the redemption of the bonds or interest coupons thereon.*

3. *When municipal bonds are made payable at a specified bank the board of sinking fund trustees of the municipality lawfully may enter into an agreement with the bank to pay for its services made necessary for the redemption of the bonds or interest coupons thereon whether the said bank is located in the municipality or outside the municipality and whether the said bank is the regularly designated depository of the municipality or not.*

4. *Unless an agreement is entered into between the board of sinking fund trustees of a municipality and a bank providing for the payment to the bank for services rendered by it in connection with the redemption of bonds or interest coupons thereon any services rendered by the bank with reference thereto will be presumed to be gratuitous and it is unlawful for the bank to deduct from moneys in its custody belonging to or accruing to the municipality any charge for such services.*

COLUMBUS, OHIO, October 24, 1929.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

“The syllabus of Opinion No. 581, page 1187, Opinions of the Attorney General for 1915, reads:

‘A board of sinking fund trustees of a city, having accepted a bid of a bank to act as depository, cannot subsequently thereto undertake to compensate the bank for alleged services rendered by said bank in handling the bond and coupon account, when the bonds are payable at the office of the city treasurer.’

The syllabus of Opinion No. 971, page 140, Opinions of the Attorney General for 1920, reads:

‘Monies credited to a bond and coupon account by a city depository are public funds and as such draw interest.’

The city of ----- has made some of its bonds and coupons payable at the First National Bank in said city. This bank was awarded the use of the city funds, including the sinking and bond retirement funds at competitive bidding and entered into a contract with the city to pay two per cent on daily balances. No provision is made in such contract for payments to the bank for services or commission in connection with the redemption of bonds and coupons. The bank has paid interest on the bond and coupon account at the rate of two per cent on daily balances, less one-tenth of one per cent of the amount of all bonds and coupons paid.

Question (1). In view of these conditions may the bank which is a legal depository be paid for services in connection with the redemption of the bonds and coupons which are payable at such bank?

(2) May such bank legally be paid for services in connection with the redemption of bonds and coupons which are payable at the city treasury?

(3) May the sinking fund trustees, during the life of the contract, enter into a supplemental agreement to compensate such bank for services in connection with the redemption of bonds and coupons made payable at such bank and for the redemption of bonds and coupons payable at the city treasury?"

By the terms of Sections 4514, 4515, and 4516-1, the trustees of the sinking funds of municipalities are directed to invest all moneys received by them in certain designated securities, holding in reserve only so much money as is necessary to effect the purposes for which the sinking fund is established and maintained.

The amount held in reserve shall be deposited in a legally designated public depository, according to law, or deposited in the city treasury so as to become part of the general city balance to be deposited in banks, as provided by law. There must be held in reserve, at all times, sufficient moneys to pay municipal bonds and installments of interest thereon as they become due. There can be no objection to carrying sufficient funds to pay maturing securities in a special account designated a bond and coupon account. However, until this account is drawn on, it is a part of the sinking fund, and interest should be paid thereon by the bank with whom it is deposited just the same as though it were in the general account.

Section 4517, General Code, provides in part as follows :

"The trustees of the sinking fund shall have charge of and provide for the payment of all bonds issued by the corporation and the interest maturing thereon. * * * "

There is no constitutional or statutory inhibition in this State upon the making of municipal bonds or installments of interest thereon, payable at any place the municipal authorities may see fit to designate, and it has become a general practice for municipal authorities, when in their judgment some advantage may be gained with respect to the marketing of bonds, or for any other reason, to provide that the bonds and interest thereon shall be payable at some particular place or bank other than the municipal treasury. Frequently, the bank or place where bonds are made payable, is in some other city than the city where the bonds are issued. In this way, it frequently happens that some other bank than the regular depository bank is the place of payment. In fact, when bonds are issued, there is no way to tell what bank will be the depository bank of the subdivision when the bonds become due. In Abbott on Public Securities, Section 357, it is said :

"In the absence of statutory or constitutional provision to the contrary, it is the universal holding that the validity of bonds is not affected by the fact that they in terms are made payable, either in interest or the principal, or both, at some designated place outside the geographical limits of the public corporation issuing them."

In support of the text are cited a number of cases, among which is *Meyer vs. City of Muscatine*, 68 U. S., 384, which holds as stated in the second branch of the head-notes :

"A city having power to borrow money, may make the principal and interest payable where it pleases."

See also, McQuillen on Municipal Corporations, Second Edition, Sections 2451 and 2504.

Where bonds and installments of interest thereon are made payable at some distant bank or place, there must necessarily be entailed some expense in making payment. It often happens that bonds and interest coupons are not presented for payment or redemption on the exact day they become due, and it is necessary to provide some means for their payment when presented. It would be practically impossible for a member of a sinking fund commission or its secretary to always be present personally, with the necessary funds to meet such obligations as they arise. No doubt the most practical method of taking care of such matters is to arrange with some bank to do so, and the bank's services may, in my opinion, lawfully be paid for.

No doubt the legislative authority of the municipality could lawfully provide by specific legislation for the payment of any expense incident to the redemption of bonds when such expense is necessarily incurred. However, the broad general authority contained in Section 4517, General Code, for the trustees of a sinking fund to provide for the payment of the bonds issued by the corporation and the interest maturing thereon, in my opinion, is sufficient to permit of the payment of any necessary expense incurred in making those payments without specific legislation therefor.

While statutory boards are limited in their powers to those expressly granted, there is said to be implied within such express grants of power the authority to do all things necessary to carry out the power expressly granted.

Moreover, while local legislative authorities may not have expressly authorized the incurring of necessary expenses in redeeming bonds, they impliedly do so, as the bond issuing agency of the municipality, when in any particular case, they provide for the payment of such securities at some place where expense must necessarily be incurred in making payments.

In the concrete case mentioned in your inquiry, it appears that no agreement had been made with the bank in question, for the payment to them for services in connection with the redemption of bonds and interest coupons thereon. The bank was the regular municipal depository, and apparently, from your statement, deducted one-tenth of one per cent of the amount paid on all bonds and coupons without any understanding or agreement authorizing such a deduction from the amount of interest due to the municipality on its depository account.

I am of the opinion that under the circumstances, this deduction made by the bank was unauthorized and illegal, unless there was an agreement or understanding authorizing it.

It is a familiar principle of law that persons dealing with public corporations cannot be paid for services on a quantum meruit basis and a promise to pay for services rendered to a public corporation will not be implied from the mere fact of the rendition of the services. The bank in this case was the regular depository and redeemed bonds and coupons from the municipality's bond and coupon account as the same were presented for payment, apparently without any agreement or understanding that they were to be paid for such services, and under those circumstances, the law will not imply a promise to pay.

In specific answer to your questions, therefore, I am of the opinion:

First, under the circumstances outlined in your inquiry, the bank might lawfully be paid for services in connection with the redemption of the bonds and coupons if an agreement to that effect had been made, otherwise the services will be presumed to have been gratuitous.

Second, when municipal bonds are made payable at the treasury of the municipality, sinking fund commissioners are not authorized to enter into an agreement with any bank to pay for the services of the bank in connection with the redemption of

the bonds or interest coupons thereon. The bonds and interest coupons should be presented to the municipality at the office of its treasurer, and it is his duty in conjunction with the board of trustees of the sinking fund and its secretary to pay such bonds and interest coupons as a part of their public duties and without additional compensation.

Third, sinking fund trustees may lawfully enter into a supplemental agreement to compensate a bank for services in connection with the redemption of bonds and coupons made payable at such bank even though the bank, at the time when such bonds and interest coupons are payable, is the regularly designated depository of the municipality.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1098.

APPROVAL, BONDS OF SHAKER HEIGHTS VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY—\$43,000.00.

COLUMBUS, OHIO, October 24, 1929.

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

1099.

APPROVAL, BONDS OF FINDLAY CITY SCHOOL DISTRICT, HANCOCK COUNTY—\$140,000.00.

COLUMBUS, OHIO, October 24, 1929.

Industrial Commission of Ohio, Columbus, Ohio.