

Note from the Attorney General's Office:

1956 Op. Att'y Gen. No. 56-6183 was modified by 1980
Op. Att'y Gen. No. 1980-003.

6183

MUNICIPALITY—COUNCIL—WITH APPROVAL BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES, MAY BY ORDINANCE SEPARATE FUND OR FUNDS INTO WHICH INTEREST EARNINGS ON PUBLIC DEPOSITS MAY BE DEPOSITED—TREASURY INVESTMENTS—APPORTIONED TO GENERAL FUND OF MUNICIPALITY—EACH SEPARATE FUND MAY BE DEVOTED TO ANY DESIGNATED PURPOSE MUNICIPALITY MAY PROVIDE OUT OF GENERAL FUND—SECTIONS 135.12, 5705.10, 5705.12 RC.

SYLLABUS:

Under authority of Section 5705.12 of the Revised Code, the council of a municipality, with the approval of the Bureau of Inspection and Supervision of Public Offices, may establish by ordinance a separate fund or funds into which shall be deposited that portion of the interest earnings on public deposits and from treasury investments which under the provisions of Sections 135.12 and 5705.10 of the Revised Code, are apportioned to the general fund of such municipality, each such separate fund to be devoted to any designated purpose for which the municipality may provide out of its general fund.

Columbus, Ohio, January 25, 1956

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen :

I have before me your request for my opinion which reads as follows :

"In Attorney General's Opinion No. 4897, given on March 9, 1942, it was held as follows :

"Syllabus :

"2. The council of a city may not prescribe by ordinance, resolution or otherwise for any other disposition of interest earned on treasury investments.

"This ruling appears to have been based on the provisions of Section 5705.10, of the Revised Code (5625-10 G.C.), which provides in part, as follows :

"All revenue derived * * * from sources other than the general property tax, *unless the law prescribes its use for a particular purpose*, shall be paid into the general fund * * *'
(Emphasis added.)

"In this connection I wish to call your attention to the provisions of Section 5705.12 of the Revised Code (5625-11), which provides as follows :

"In addition to the funds provided for by Sections 5705.09 and 5705.13 of the Revised Code, the taxing authority of a subdivision may establish, with the consent of the bureau of inspection and supervision of public offices, *such other funds as are desirable*, and may provide by ordinance or resolution *that money derived from special sources other than the general property tax shall be paid directly into such funds.*'
(Emphasis added.)

"A question has arisen as to the proper deposit of interest earned on treasury investments or on inactive bank deposits in a municipality.

"There is further provision in Section 5705.10 Revised Code (5625-10) which requires all of indebtedness, except premiums and accrued interest, to be paid into a special fund for the purpose of the issue of such bonds, notes or certificates. It is further required by this same section that the premium and accrued interest received from such sale and *interest earned* on such special funds shall be paid into the sinking fund or the

bond retirement fund of the subdivision. *I find no other provision of law requiring interest earned on any of the funds belonging to a subdivision to be used for a particular purpose.* Under Section 135.12 R. C., interest earned on investments must be collected by the treasurer of state or of a subdivision, which must be deposited in the general fund.

“Also, under Section 132.12 RC., all other interest realized on any public deposit must be credited *to the general fund* of the state, county, *municipal corporation*, township, taxing district, assessment district or other local authority to which the principal sum thereof belongs.

“It thus appears that interest earned on treasury investments (other than that earned on funds arising from the proceeds of the sale of bonds, notes or certificates of indebtedness), and interest earned on public deposits, in a municipality, *are required to be deposited in the general fund* of the municipality, and such interest is not required to be used for *any particular purpose.*

“If it is not required to be used for any particular purpose, it then naturally follows that same can be used for *general municipal purposes.*

“The question then is this:

“Under authority granted by Section 5705.12 of the Revised Code, may the council of a municipality establish by ordinance, and with the approval of the bureau of inspection and supervision of public offices, a separate fund or funds, if thought desirable, to which shall be deposited the interest earned on treasury investments (other than that earned on funds arising from the sale of bonds, notes or certificates of indebtedness), or the interest earned on public deposits, such separate fund to be used for the improvement of highways and roads, and the maintenance and repair thereof, within the limits of the municipality, *or for some other particular purpose?*

“We find that numerous special funds have been established throughout the municipalities of the State, under authority of Section 5705.12 Revised Code (5625-11), *from funds other than the general property tax*, in years past, with the approval of this bureau. Can it not be so done with interest earned, if thought desirable?”

Your request relates to the disposition of moneys arising (1) from the interest earnings from public depositories of municipal funds and (2) from treasury investment of such funds.

1. As to interest from depositories the Uniform Depository Act, enacted in 1937, is comprised in Sections 135.01 to 135.23 inclusive, of

the Revised Code, 2296-1 to 2296-21, G. C. The provisions of the law apply to the state and all of its subdivisions.

As to the disposition of interest arising from the deposit of funds by the state or by the various taxing subdivisions, we find in Section 135.23, Revised Code, the following provisions :

“All interest realized on money included within a public deposit and belonging to undivided tax funds shall, except as otherwise expressly provided by law, be apportioned by the auditor pro rata among the separate funds or taxing districts in the proportion in which they are entitled to receive distribution of such undivided tax funds, due allowance being made for sums transferred in advance of settlements. All interest arising from other moneys deposited by a treasurer, which, by reason of being custodial funds or funds belonging in the treasury of a taxing assessment, or other district of which he is acting as ex officio treasurer, or for any other reason, do not belong in the treasury of the state or subdivision, shall be apportioned among and credited to the funds to which the principal sums of such deposits, or portions thereof belong.

“All other interest realized on any public deposit shall be credited to the general fund of the state or the county, municipal corporation, township, taxing district, assessment district, or other local authority to which the principal sum thereof belongs. The auditor shall inform the treasurer in writing of the amount apportioned by him to each fund, district, or account.”

Prior to the enactment of the above statutes and prior to the enactment in 1928 of the Uniform Tax Levy Law, Section 5625-1 et seq., General Code, 5705.01 et seq., Revised Code, the Attorney General had held in Opinion No. A-284, Opinions of the Attorney General for 1911, 1912, page 281 :

“As the statutes contain no reasonable ground from which to deduce an intent to the contrary, the general law that interest follows the fund will be allowed to govern, so that interest from the proceeds of bonds sold for the purpose of meeting the expense of a particular improvement will not be turned over to the sinking fund trustees but will be credited with the special fund created by the bond issue, and expended for the purpose of the fund, after the accomplishment of which purpose all balance of said fund will go to the sinking fund as provided in section 3804 G.C.”

In Opinion No. 4759, Opinions of the Attorney General for 1935, page 1292, the then Attorney General reviewed that opinion and called attention to the later enactment of the Uniform Tax Law, particularly to Section 5625-10, General Code, reading in part as follows :

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

“All revenue derived from the general levy for current purposes authorized but voted outside of the ten mill limitation ; and from sources other than the general property tax, unless the law prescribes its use for a particular purpose, shall be paid into the general fund.”

In that opinion it was held :

“Interest earned on deposits of funds of the subdivisions of Ohio should be credited to the general fund of such subdivision except where statutory provisions prescribe the use of such interest for a particular purpose, as provided by Section 5625-10, General Code.”

The provisions of Section 5625-10 G.C., above quoted, appear in Section 5705.10, Revised Code, in substantially the same language. That opinion would appear to be a correct statement of the law as it then stood. The subsequent enactment of the depository law, with the provision of Section 135.23, Revised Code, above quoted, makes a slight modification. It is there provided that *except as otherwise expressly provided by law*, all interest realized on money in a public depository and belonging to undivided tax funds shall be apportioned among the separate funds in the proportion in which they are entitled to the tax funds and that *all other interest* realized on any public deposit, excluding custodial and trust funds, shall be credited to the general funds of the respective subdivisions.

Clearly an instance of “otherwise expressly provided” is the provision of Section 5705.10 supra, with reference to the proceeds of the sale of bonds, which are to be paid into a special fund, and “interest earned on such special fund shall be paid into the sinking fund or the bond retirement fund of the subdivision.” It may be added that this, so far as I can find, is the only exception provided by the law.

In this connection it seems proper to note the provisions of Section 5705.09, Revised Code, which read as follows:

“Each subdivision shall establish the following funds:

“(A) General fund;

“(B) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds;

“(C) Bond retirement fund, for the retirement of serial bonds, notes, or certificates of indebtedness;

“(D) A special fund for each special levy;

“(E) A special bond fund for each bond issue;

“(F) A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose;

“(G) A special fund for each public utility operated by a subdivision;

“(H) A trust fund for any amount received by a subdivision in trust.”

It is to be noted that the above provision is mandatory, and these special funds are, in my opinion, the funds which are referred to in Section 135.23 *supra*.

Accordingly, we reach the general conclusion that interest earned on public funds of a municipality in a public depository is to be apportioned to the several funds from which such interest accrued, and that only the interest arising from funds representing taxes belonging to the general fund, and from sources other than taxes is to be paid into the general fund.

2. Your inquiry further concerns interest arising from so-called “treasury investments.” Such investments are provided for in Section 135.12, Revised Code, 4296-1, G. C., being a part of the depository law. There provision is made authorizing subdivisions generally, if they have money in excess of the amount which can be placed in public depositories, to invest the same in certain securities. There is nothing in the depository law which directs the distribution of the interest realized from such treasury investment, and furthermore the last paragraph of Section 135.12 excludes municipalities from its operation.

Accordingly, we must look to Section 731.56, Revised Code, 4296-1, G. C., for such municipal authority. It is there provided:

“The legislative authority, of a municipal corporation may, by ordinance, provide that whenever there are moneys in the treasury of such municipal corporation which will not be required to be used by such municipal corporation for a period of six months or more, such moneys may, in lieu of being deposited in a bank, be invested in obligations of such municipal corporations, in bonds or other obligations of the United States or * * *”

I find no explicit provision in the law as to the distribution of interest earnings on such investments. However, the language of Section 5625-10, General Code, 5705.10, Revised Code, which has already been quoted, seems broad enough to cover the situation. In Opinion No. 4897, Opinions of the Attorney General for 1942, page 168, it was held:

“1. Interest earned on investments of money in a city treasury made pursuant to Section 4296-1, et seq., General Code, should be paid into the general fund, except that where part of the money so invested is taken from the special fund or funds derived from the sale of bonds, notes or certificates of indebtedness, the interest so earned by such investments should be paid into the sinking fund or bond retirement fund of such city and the general fund. The amount to be paid into the sinking fund or the bond retirement fund should be in the ratio which the money invested derived from the special fund or funds bears to the entire amount invested and the remainder of such interest should be paid into the general fund.”

The writer of that opinion quoted Section 5625-10 General Code, now 5705.10 Revised Code, and appears to have based his conclusion on the provisions of that section. My own conclusion is in accord therewith.

The specific question presented by your communication is whether the funds realized from both of the above sources may be placed in a separate fund to be set up with the approval of the Bureau of Inspection and Supervision of Public Offices, such separate fund to be used for the improvement, maintenance and repair of highways, or for some other particular purpose.

Section 5705.12, Revised Code, provides:

“In addition to the funds provided for by sections 5705.09 and 5705.13 of the Revised Code, the taxing authority of a subdivision may establish, with the approval of the bureau of inspection and supervision of public offices, such other funds as are desirable,

and may provide by ordinance or resolution that money derived from specified sources other than the general property tax shall be paid directly into such funds.”

I have already called attention to the special funds required by Section 5705.09, Revised Code. Section 5705.13, Revised Code authorizes the establishment of special funds for fire, police, and sanitary police pension funds, as well as a cemetery fund. The above provision of Section 5705.12 must certainly relate to allocations of moneys which form a part of the general fund, for I cannot conceive that the legislature intended to authorize the division of any of the moneys belonging to one of the required special funds.

Section 5705.05, Revised Code, outlines the broad field of purposes for which a general tax levy may be levied, and I take it that the “general fund” is at least as broad. Among the purposes, as particularly relating to municipalities, is “for the maintenance, operation and repair of public * * * streets.”

Accordingly, your question resolves itself into a proposition of allocating to a certain purpose which is within the general purview of the general fund, a certain portion of the moneys which must flow into the general fund, and with the approval of your Bureau, set up a separate fund designed for that purpose.

I can see no objection to that procedure. It appears to me to carry out the manifest purpose of Section 5705.12 supra. If such allocation cannot be made, what possible purpose can that section serve? Your reference to the second branch of the syllabus of the 1942 opinion above referred to, suggests that you fear that it forbids such a procedure. That syllabus reads:

“The council of a city may not prescribe by ordinance, resolution or otherwise for any other disposition of interest earned on treasury investments.”

That statement does not touch the question with which you are concerned. It only means that the allocation by law, of certain interest earnings to specific funds, may not be diverted by the council of a city to some other fund. I am strengthened in my conclusion by the provisions of Section 5705.14 (F), which provides:

“(F) Money appropriated for the general fund may be transferred from such fund to a fund authorized by section

5705.12 or 5705.13 of the Revised Code or to the proper fund of a district authority.”

Accordingly, in specific answer to your question it is my opinion that under authority of Section 5705.12 of the Revised Code the council of a municipality, with the approval of the Bureau of Inspection and Supervision of Public Offices, may establish by ordinance a separate fund or funds into which shall be deposited that portion of the interest earnings on public deposits and from treasury investments which under the provisions of Sections 135.12 and 5705.10 of the Revised Code, are apportioned to the general fund of such municipality, each such separate fund to be devoted to any designated purpose for which the municipality may provide out of its general fund.

Respectfully,

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Attorney General