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BONDS—PREMIUM FROM SALE—ISSUED BY BOARD OF EDUCATION—SCHOOL DISTRICT—PAID INTO SINKING FUND OR BOND RETIREMENT FUND—MAY BE USED FOR PURCHASE OF BONDS OF SAME ISSUE—BONDS SHALL THEN CONSTITUTE INVESTMENT OF SINKING FUND OR BOND RETIREMENT FUND—SECTIONS 133.34, 133.36, 3315.03 RC.

SYLLABUS:

The premium received from the sale of bonds issued by the board of education of a school district and, under the mandate of Section 133.36, Revised Code, paid into the sinking fund or bond retirement fund, may, under the provisions of Sections 133.34 and 3315.03, Revised Code, be used for the purchase of a portion of the bonds of the same issue, which bonds shall then constitute an investment of the sinking fund or bond retirement fund.

Columbus, Ohio, May 27, 1955

Hon. William A. Ambrose, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir:

I have before me your request in which you ask for my opinion on the following question:

"The specific question involved is: Is it proper to use the premium offered by the successful bidder for the purpose of purchasing a portion of an issue of bonds as an investment for the bond retirement fund?"

It is my assumption that the specific question presented for my opinion may be stated in this way: May the board of education of a school district, having sold all or a portion of an issue of bonds to the highest bidder and received a premium therefor, use this premium or any part thereof for the purpose of purchasing a portion of this same issue of bonds as an investment for the bond retirement fund?

It is clearly provided in the Uniform Bond Law that the officers in charge of the sinking fund may purchase the bonds issued by a subdivision. Section 133.34, Revised Code, reads as follows:

"Before selling any notes or bonds of a subdivision, the taxing authority shall offer such notes or bonds at par and accrued interest to the trustees, commissioners, or other officers who have charge of the sinking fund of the subdivision, and such officers shall have the option of purchasing said notes or bonds or rejecting them."

Your inquiry specifically relates to bonds issued under authority of the Uniform Bond Law. Section 133.01, Revised Code, the definitive section of the said Uniform Bond Law, reads in part:

"As used in section 133.02 to 133.65, inclusive of the Revised Code:

"(A) 'Subdivision' means any county, school district except the county school district, municipal corporation, joint township hospital district, or township. * * *

"(C) 'Taxing authority' or 'bond-issuing authority' means in the case of any county, the board of county commissioners; in the case of a municipal corporation, the legislative authority of such municipal corporation; in the case of a school district,. the board of education * * *."

It is then provided in Section 133.35, Revised Code, that if the notes or bonds are rejected by the officers in charge of the sinking fund, all notes and bonds which have a maturity of more than one year shall be sold to the highest bidder after having been advertised as provided in the said section.

Thus, it is immediately apparent that the bonds to which you refer in your inquiry could have been purchased by the officers in charge of the sinking fund; your inquiry indicates that they were not so purchased and have been sold to the highest bidder at a premium.

Turning now to Section 133.36, Revised Code, it is found that the pertinent part of the second paragraph provides as follows for the disposition of the purchase price received for the bonds or notes:

> "The money from the principal, on the sale of such bonds or notes, shall be credited to the fund on account of which the bonds or notes are issued and sold and used only for the purpose set out in the resolution or ordinance of the taxing authority, *and all moneys from premiums and accrued interest shall be paid into the sinking fund or bond retirement fund from which said bonds or notes are to be redeemed. * * *"* (Emphasis added.)

It is thus apparent that the Uniform Bond Law defines with exactness certain procedures to be followed in the sale of bonds or notes issued by the bond-issuing authority of a subdivision and also the required segregation into separate and distinct funds of the money received from the principal on the sale of such bonds or notes and that received from premiums and accrued interest.

There is still before us, however, the problem of determining what securities are approved as investments for the sinking fund or bond retirement fund from which the bonds or notes are to be redeemed. Section 3315.03. Revised Code, found in Chapter 3315, Revised Code, entitled School Funds, reads:

> "The board of commissioners of the sinking fund shall invest that fund in bonds of the United States, of Ohio, of any municipal corporation, county, township, or school district of any state, *or in bonds of its own issue.* All interest received from such investments shall be deposited as other funds of such sinking fund, and reinvested in like manner. For the extinguishment of any bonded indebtedness included in such fund, the board may sell or use any of the securities or money of such fund." (Emphasis added.)

It is at once evident that there is a variation in the terminology used in the above-quoted sections. Section 133.36, Revised Code, provides that all money received from premiums and accrued interest must be placed in the "sinking fund or bond retirement fund." Section 3315.03, Revised Code, on the other hand, specifies those securities in which "the board of commissioners of the sinking fund shall invest that fund."

These two sections of the Revised Code, however, refer to one and the same fund, namely, the fund held for the purpose of meeting the interest payments on the bonded indebtedness and retiring such indebtedness.

Section 131.22, Revised Code, which provides the answer to any seeming ambiguity, reads as follows:

> "The board of trustees of the sinking fund of any county or municipal corporation or the board of commissioners of the sinking fund of any school district shall continue to exercise the powers provided in sections 327.01 to 327.08, inclusive, 739.04 to 739.11, inclusive, and 3315.02 to 3315.05, inclusive, of the Revised Code, and provided in all other laws relating to its powers until all outstanding bonds of such county, municipal corporation, or school district issued previous to January 1, 1922, to be retired by means of a sinking fund, are paid. It shall then 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 such laws shall be transferred to the treasurer of the county, municipal corporation, or school district, 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, securities and assets, all moneys received by the county, municipal corporation, or school district for the payment of the interest and principal of its bonds or other funded debts, all inheritance taxes, and all other taxes and revenues which were theretofore payable into its sinking fund shall be paid to its treasurer and placed and held by him in a separate fund to be known as the 'bond payment fund.' Said fund shall be applied by such treasurer to the purposes for which the sinking fund had theretofore been applicable, subject to the law relating to transfer to other funds."

In City of Cleveland v. Baker, 4 Ohio App., 68 (1914), the court was considering a problem somewhat analogous to that presented in your inquiry. There it was contended that certain City of Cleveland electric light coupon bonds held as an investment by the sinking fund commission of Cleveland, Ohio, could not be sold, the argument being made that the purchase of these bonds by the sinking fund commission was in legal effect a retirement of the bonds.

The court found that these purchases were made under the authority of Sections 4514 and 3922, General Code, as they then existed. Those sections, respectively, required the trustees of the sinking fund to make certain investments, including investments in bonds of any municipal corporation, and also required a municipal corporation, when bonds were issued, to offer such bonds, at par and accrued interest, to the trustees of the sinking fund.

See also Opinion No. 3508, Opinions of the Attorney General for 1941, page 100, the syllabus of which reads:

> "Mortgage revenue bonds issued by a municipality for the acquisition, construction or extension of a public utility, under the authority of Article XVIII, Section 12 of the Constitution of Ohio, may be purchased and held as an investment by the trustees of the sinking fund of such municipality."

In specific answer to your inquiry, therefore, it is my opinion and you are advised that the premium received from the sale of bonds issued by the board of education of a school district and, under the mandate of Section 133.36, Revised Code, paid into the sinking fund or bond retirement fund, may, under the provisions of Sections 133.34 and 3315.03, Revised Code, be used for the purchase of a portion of the bonds of the same issue, which bonds shall then constitute an investment of the sinking fund or bond retiremnt fund.

Respectfully,
C. William O'Neill
Attorney General