

are such in my opinion as constitute him an assistant within the meaning of the term as used in paragraph 8 of Section 486-8, General Code.

Under the provisions of said paragraph 8 of Section 486-8 of the General Code, each of the principal appointive executive officers, boards or commissions, except the civil service commission, is entitled to have one personal stenographer in the unclassified service. Under this provision of said paragraph, there does not seem to be any question with respect to the power of the Ohio State Dental Board to appoint a stenographer exempt from the classified civil service.

By way of specific answer to the questions made in your communication, I am of the opinion that the Ohio State Dental Board may appoint persons to each of the positions therein named exempt from the classified civil service of the state.

The position of secretary to the Ohio State Dental Board is such that it cannot in any view be considered as one in the classified service. However, as to the other two positions here under consideration, to wit, those of inspector and stenographer, the Ohio State Dental Board, if it desires to exempt said positions and the incumbents thereof from the classified civil service, should by communication directed to the State Civil Service Commission, designate said positions and incumbents in the unclassified service as it is authorized to do by paragraph 8 of Section 486-8, General Code.

Since writing the above opinion I am informed by the secretary of the Civil Service Commission that the letter of the commission dated February 27, 1928, which prompted your inquiry was in nowise a notice of any action or attempted action on the part of the commission to place the three positions involved in the classified service. On the other hand, it was merely a request for information to enable the commission to make a survey and to ascertain what if any of the employes of the dental board are or should be in the classified service. I therefore advise that the information desired by the commission should be transmitted to it.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1899.

COUNTY SINKING FUND—INTEREST ARISING OUT OF FUND—DISPOSITION OF INTEREST WHICH HAS NOT BEEN INVESTED BY SINKING FUND TRUSTEES—INTEREST ON BOND PAYMENT FUND OR BOND RETIREMENT FUND.

SYLLABUS:

1. *Interest arising out of the investment of monies in the county sinking fund by the trustees of the sinking fund, under authority of Section 2976-21, General Code, should be placed in the county treasury and credited to said sinking fund.*
2. *Interest earned on the deposit of monies in the county sinking fund, which have not been invested by the trustees of the sinking fund under authority of Section 2976-21, General Code, should be credited to the general fund of the county, in accordance with Section 2737, General Code.*

3. *Interest on the bond payment fund or bond retirement fund of a county should be credited to the general fund of the county, in accordance with Section 2737, General Code.*

COLUMBUS, OHIO, March 26, 1928.

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

GENTLEMEN:—Receipt is acknowledged of your recent request for my opinion which reads as follows:

“Section 2737, G. C., provides for the distribution of depository interest on county funds in the following words:

‘All interest arising from the deposit of funds belonging specifically to the county shall be credited to the general fund of the county by the county treasurer.’

Section 6602-4a, G. C., relating to the establishment of sanitary sewer districts provides that interest earned on the funds realized from the sale of bonds placed on interest under Sections 2715 to 2745, G. C., shall be credited to the bond and interest fund established for the redemption of the bonds so sold.

Section 5625-10 as amended 112 O. L. 396, provides that all proceeds from the sale of a bond, note or certificate of indebtedness issue except premium and accrued interest shall be paid into a special fund for the purpose of such issue. The premium and accrued interest received from such sale and interest earned on such special fund shall be paid into the sinking fund, or bond retirement fund of the subdivision.

Question: Is the interest on the sinking fund or bond retirement fund either for the retirement of general bonds or for the retirement of bonds issued in anticipation of the collection of assessments under the sanitary sewer laws to be credited to the general fund of the county in accordance with Section 2737, General Code?”

Section 6602-4a, General Code, amended by the 87th General Assembly in amended Senate Bill No. 29, (112 O. L. 275, 286) and Section 5625-10, General Code, enacted by the 87th General Assembly in House Bill No. 80, (112 O. L. 391, 395) have no application to the question which you present. Your question is as to the disposition to be made of the interest on the sinking fund or the bond retirement fund for the retirement of general county bonds or for the retirement of county sewer bonds. Section 6602-4a, General Code, makes provision for the disposition of the premium on bonds sold which had been issued to pay the cost of constructing sewers in county sewer districts and accrued interest thereon and also the interest earned on the funds realized from the sale of said bonds placed on interest under the provisions of Sections 2715 to 2745, General Code. Said section provides that such premium, accrued interest and interest earned on the funds realized from the sale of the bonds placed on interest shall be credited to the bond and interest fund established for the redemption of the bonds so sold. Section 5625-10, General Code, provides in part, that the premium and accrued interest received from the sale of bonds and interest earned on the special fund into which the proceeds of the sale of the bonds are required to be paid shall be paid into the sinking fund or the bond retirement fund of the subdivision. Neither of the sections above referred to makes any provision as to the disposition of the interest on the sinking fund or bond retirement fund.

Prior to the enactment of Sections 2976-18 to 2976-27, inclusive of the General Code, in House Bill No. 442, passed May 28, 1919, (108 O. L. Part I, 700) there were no specific provisions for the investment of monies in the sinking fund. In an opinion rendered by this department under date of June 10, 1918, addressed to you, the specific question asked by you in the above communication was answered. After discussing the various sections of the Code having reference to county sinking funds and holding that the county commissioners were not authorized to act as sinking fund trustees, the opinion continues after quoting Section 2737, General Code:

"It will be observed that this statute makes no special provision for interest on money belonging to the sinking fund or the 'county debt fund'—whichever name be employed. All interest on funds belonging to the county is to be credited to the general fund. * * *

It is my opinion, therefore, that the proceeds of levies intended to meet the principal and interest on bonds issued by the county should be placed in the county treasury to the credit of the county debt or sinking fund and there treated as other monies in the county treasury are treated, remaining in the depository drawing interest for the benefit of the general county fund until they have to be withdrawn for the purpose of meeting the principal and interest, and for no other purpose."

In the enactment of House Bill No. 442 on May 28, 1919, (108 O. L. Part I, 700) the Legislature provided for trustees of the sinking funds for counties, such trustees to be composed of the prosecuting attorney, the county auditor and the county treasurer. (Section 2976-18, General Code). Section 2976-21, General Code, provides:

"The trustees of the sinking fund shall invest all monies subject to their control in bonds of the United States, State of Ohio, or of a municipal corporation, school district, township or county of the state, and hold in reserve in cash only, such sums as may be needed for effecting the purposes of this act."

Section 2976-23, General Code, provides:

"Money shall be drawn from the county treasury for investment or disbursement by the trustees of the sinking fund by the issuance of a voucher signed by all the members of the board and directed to the county auditor, on which a warrant shall be drawn on the county treasurer, payable from the proper fund. *All monies received by such trustees shall be paid into the county treasury to the credit of the proper fund on the certificate of the county auditor.* * * * " (Italics the writer's.)

As pointed out above, and as held in the 1918 opinion above referred to, prior to the enactment of Sections 2976-18 to 2976-27, General Code, there were no provisions for trustees of sinking funds for counties, or any special provisions for the investment of such sinking funds. However, in the enactment of the sections last above referred to, and especially Sections 2976-21 and 2976-23, General Code, supra, the Legislature provided special machinery for the investment of sinking funds of counties and the disposition of the interest arising from such investment. While Section 2976-23, General Code, does not specifically mention the word "interest," I believe that the words "all monies received by such trustees" are broad enough to cover such interest. In view of the foregoing, it is my conclusion that interest arising

out of the investment of a county sinking fund should be placed in the county treasury to the credit of such fund.

The conclusion above reached applies only to interest arising out of investments made by trustees of the county sinking fund, under the provisions of Section 2976-21, supra. As to any monies in the county treasury credited to the sinking fund which have not been so invested by the trustees of such sinking fund, the conclusions reached in the 1918 opinion above referred to still apply. In other words, as to any monies in the county sinking fund which have not been invested by the trustees of the sinking fund, but which have been deposited by the county treasurer in the county depository or depositories, in accordance with Sections 2715 to 2745, inclusive, General Code, the interest on such monies must be credited to the general fund of the county, as provided by Section 2737, General Code.

Boards of sinking fund trustees, as such, were abolished by the enactment of Section 2295-14, General Code, on April 29, 1921 (109 O. L. 336, 347) excepting as to bonds theretofore issued. This section was amended on March 4, 1923, (110 O. L. 456, 460) and, as so amended, reads:

“The board of sinking fund trustees of any county or municipality or the board of sinking fund commissioners of any school district shall continue to exercise the powers provided in Sections 2976-18 to 2976-27 inclusive, 4511 to 4522 inclusive, 3932 and 7613 to 7619 inclusive of the General Code and all other provisions of law relating to its powers, until all outstanding bonds of such county, municipality or school district issued previous to January 1, 1922, shall have been paid; and thereupon it 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 or school district, and all monies, securities and other assets then in the custody and possession of such board shall be transferred and delivered to such treasurer. Thereafter all said monies, securities and assets and all monies received by the county, municipality or school district for the payment of the interest and principal of its bonds or other funded debts and all inheritance taxes and all other taxes and revenues which were theretofore payable, by virtue of provision 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, subject to the provisions of law relating to transfer to other funds, said funds shall be applied by him to the purposes for which the sinking fund had theretofore been applicable.”

It is clear, from a reading of the above section, that sinking funds and sinking fund trustees no longer have any existence except as to outstanding bonds issued prior to January 1, 1922. As to bonds issued after that date, said section provides that all funds which were formerly payable into the sinking fund shall be paid to the treasurer (in this case, county treasurer) and by him placed in a separate fund known as the “bond payment fund.”

I find no provisions of law specifically directing or authorizing the county treasurer to invest the monies in the bond payment fund or the bond retirement fund, as the same is denominated, since the enactment of Section 5625-9, General Code, (112 O. L. 391, 395) in any other manner than is provided for the deposit of other

county funds. In other words, the bond payment fund or the bond retirement fund must be deposited in the same manner as other county funds, as directed in Sections 2715 to 2745, General Code, of which group of sections Section 2737, General Code, a part of which is quoted in your communication, is a part. Section 2737, General Code, specifically provides that all interest arising from the deposit of funds belonging specifically to the county shall be credited to the general fund of the county by the county treasurer.

The conclusions above reached apply to all sinking funds or bond payment or bond retirement funds established for the redemption or payment of all county bonds, regardless of whether such bonds are general bonds or are issued in anticipation of the collection of assessments under the sanitary sewer laws.

Answering your questions specifically, it is my opinion that :

1. Interest arising out of the investment of monies in the county sinking fund by the trustees of the sinking fund, under authority of Section 2976-21, General Code, should be placed in the county treasury and credited to said sinking fund.

2. Interest earned on the deposit of monies in the county sinking fund, which have not been invested by the trustees of the sinking fund under authority of Section 2976-21, General Code, should be credited to the general fund of the county, in accordance with Section 2737, General Code.

3. Interest on the bond payment fund or bond retirement fund of a county should be credited to the general fund of the county in accordance with Section 2737, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1900.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
WILLIAMS COUNTY.

COLUMBUS, OHIO, March 26, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

1901.

DISAPPROVAL, BONDS OF MONTGOMERY COUNTY—\$57,000.00.

COLUMBUS, OHIO, March 27, 1928.

Re: Bonds of Montgomery County, \$57,000.00.

Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—I have examined the transcripts of the proceedings of the board of county commissioners and other officers of Montgomery County relative to ten