

1202

COUNTY COMMISSIONER MAY INVEST IN ACTIVE COUNTY FUNDS IN BONDS OR OTHER OBLIGATIONS OF THE UNITED STATES, WHEN—§§321.44, 135.12, 135.141, 18990AG 1958, PARAGRAPH 3 OF THE SYLLABUS, 860 OAG 1959, PARAGRAPH 4 OVERRULED.

SYLLABUS:

1. Section 321.44, Revised Code, is a special statute dealing with the authority of a board of county commissioners to invest inactive county funds in bonds or other obligations of the United States and, as such, constitutes an exception to the provisions of Sections 135.12 and 135.141, Revised Code, so far as such sections apply to the investment of inactive county funds in direct obligations of the United States by a board of county commissioners.

2. Pursuant to Section 321.44, Revised Code, a board of county commissioners may invest inactive county funds in bonds or other obligations of the United States and such a board is not required to follow either the provisions of Section 135.12, Revised Code, nor the provisions of Section 135.41, Revised Code, in making such deposits. (Paragraph 3 of the syllabus of Opinion No. 1899, Opinions of the Attorney General for 1958, page 188, and that part of paragraph 4 of Opinion No. 860, Opinions of the Attorney General for 1959, issued on October 9, 1959, relating to investments in direct obligations of the United States, overruled.)

Columbus, Ohio, March 18, 1960

Hon. James W. Freeman, Prosecuting Attorney
Coshocton County, Coshocton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“On October 9, 1959 I received your formal opinion No. 860 relative to designations of public depositories and the investment of inactive funds.

“Since receiving your opinion I have had several telephone calls from other prosecutors throughout the state and they have called to my attention Section 321.44 R.C. and the recently amended Section 135.141 R.C. Was the writer of Opinion No. 860 mindful of these two sections at the time the opinion was written? I am certain that a number of prosecuting attorneys, county treasurers and county commissioners would appreciate a re-examination of this opinion in the light of the afore-mentioned sections.”

In short, your question asks whether the provisions of Section 135.12, Revised Code, as regarding the investing of excess public moneys by the county treasurer in direct obligations of the United States, are superseded by the provisions of Section 135.141, Revised Code, or by the provisions of Section 321.44, Revised Code, or by the provisions of both such sections.

Section 135.12, Revised Code, reads in pertinent part as follows:

“* * *

“If, after compliance with sections 135.01 to 135.23, inclusive, of the Revised Code, requiring the deposit of public moneys in public depositories, the amount of public moneys of the state or of a subdivision is in excess of the aggregate amount of such deposits, and the board finds that such excess cannot be deposited in public depositories because of the limitations of such sections, such board may order the treasurer to invest any part of such excess in bonds, notes, certificates of indebtedness, treasury bills, or other securities, issued by and constituting direct obligations of the United States, or obligations of the state of Ohio issued pursuant to the authority of Section 2e, Article VIII, Ohio Constitution, provided that only such obligations as will mature or are redeemable at the option of the holder within two years from the date of purchase shall be eligible securities for such investments. Any order of the board directing the treasurer to invest public moneys shall specifically state the amount of public moneys to be invested and shall specifically describe the securities to be acquired.

“* * *”

“Board” as used in Section 135.12, *supra*, means a “governing board” as defined in Section 135.01, Revised Code, and includes a board of county commissioners along with the state board of deposit, board of education, municipal corporation, legislative authority, etc. Thus, under said Section 135.12 *supra*, the county treasurer could invest excess public

moneys in obligations of the United States only when after compliance with Sections 135.01 to 135.23, inclusive, Revised Code, the amount of public moneys belonging to the county exceeds the maximum limitations of its eligible public depositories.

Section 135.141, Revised Code, referred to in your letter, reads as follows:

“Following the receipt of bids from eligible institutions as provided in section 135.08 of the Revised Code and notwithstanding the provisions of section 135.09 of the Revised Code, if the proper governing board in its discretion finds that any part of public moneys that could become inactive deposits should be invested otherwise, such board may order the treasurer to invest any part of such excess in bonds, notes, certificates of indebtedness, treasury bills, or other securities issued by and constituting direct obligations of the United States, but only such obligations as will mature or are redeemable at the option of the holder within two years from the date of purchase shall be eligible securities for such investments. Any order of the board directing the treasurer to invest public moneys shall specifically state the amount of public moneys to be invested and shall specifically describe the securities to be acquired.

“Nothing in this section contained shall limit the powers of any county or municipal corporation to invest funds pursuant to sections 321.44, 731.56, 731.57 and 731.58 of the Revised Code.”

This section was enacted by Amended Substitute House Bill No. 88 of the 103rd General Assembly, effective July 28, 1959, and appears to allow a proper governing board, which would include a board of county commissioners, to invest money that could become inactive deposits in direct obligations of the United States, and to ignore the procedure of Section 135.12 *supra*, for depositing inactive funds in public depositories.

Section 135.141, Revised Code, is however rather confusing in that the first sentence refers to an order to the treasurer to invest any part of “such excess.” What these words mean is not clear since they have no antecedent in the section. While it is possible that “such excess” refers to the excess over the aggregate amount of deposits made in public depositories as provided in the third paragraph of Section 135.12, *supra*, such an interpretation would have the effect of invalidating Section 135.141, *supra*, as deposits in direct obligations of the United States would then have to follow the procedure of said Section 135.12.

To answer the particular question at hand, however, I do not deem it necessary to resolve the question posed by the wording of Section

135.141, *supra*, as the provisions of Section 321.44, Revised Code, appear to govern the authority of a board of county commissioners to invest in direct obligations of the United States. Said Section 321.44 reads in part as follows:

“The board of county commissioners in each county may, by resolution adopted and recorded, invest so much of the funds received by the county as are not required to meet current expenses, in bonds or other interest bearing obligations of the United States or those for the payment of principal and interest of which the faith of the United States is pledged, provided the maturity of the bonds is not later than three years after the date of the investment.

“No such investment shall be made at a price in excess of the current market value of such bonds or other interest bearing obligations.

“* * *”

It will be noted that Section 321.44, Revised Code, deals specifically with the authority of a board of county commissioners to invest in obligations of the United States. It will further be noted that both Section 135.12, *supra*, and Section 135.141, *supra*, are general provisions of law so far as they relate to investments in obligations of the United States, and both sections do include such investments on order of a board of county commissioners.

The rule is clear in Ohio that a special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subjects as well as the specific subject matter which might otherwise be included under the general provision. In this regard it is stated by Stewart, J. in case of *Fisher Bros. v. Bowers*, 166 Ohio St., 191, at page 196:

“We have held so many times that it has become axiomatic that a special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subject matter as well as the specific subject matter. *State, ex rel. Steller et al., Trustees, v. Zangerle, Aud.*, 100 Ohio St., 414, 126 N.E., 413; *State, ex rel. Elliott Co., v. Connar, Supt.*, 123 Ohio St., 310, 175 N.E., 200; *Acme Engineering Co. v. Jones, Admr.*, 150 Ohio St., 423, 83 N.E. (2d), 202; *Johnson v. United Enterprises, Inc., ante*, 149.”

Accordingly, under Section 321.44, Revised Code, a board of county commissioners may invest inactive county funds in bonds or other direct

obligations of the United States and is not required to follow either the provisions of Section 135.12, Revised Code, nor the provisions of Section 135.141, Revised Code, in making such deposits.

I am aware that this conclusion is in conflict with that of the third paragraph of the syllabus of Opinion No. 1899, Opinions of the Attorney General for 1958, page 188, and with that part of the fourth paragraph of Opinion No. 860, Opinions of the Attorney General for 1959, issued on October 9, 1959, relating to investments in direct obligations of the United States. Neither of these opinions, however, considered the effect of the provisions of Section 321.44, *supra*, and are, to the extent noted, overruled.

In answer to your request, therefore, it is my opinion and you are advised:

1. Section 321.44, Revised Code, is a special statute dealing with the authority of a board of county commissioners to invest inactive county funds in bonds or other obligations of the United States and, as such, constitutes an exception to the provisions of Sections 135.12 and 135.141, Revised Code, so far as such sections apply to the investment of inactive county funds in direct obligations of the United States by a board of county commissioners.

2. Pursuant to Section 321.44, Revised Code, a board of county commissioners may invest inactive county funds in bonds or other obligations of the United States and such a board is not required to follow either the provisions of Section 135.12, Revised Code, nor the provisions of Section 135.141, Revised Code, in making such deposits. (Paragraph 3 of the syllabus of Opinion No. 1899, Opinions of the Attorney General for 1958, page 188, and that part of paragraph 4 of Opinion No. 860, Opinions of the Attorney General for 1959, issued on October 9, 1959, relating to investments in direct obligations of the United States, overruled.)

Respectfully,

MARK MCELROY
Attorney General