

ment or measure to be referred, and a summary of same to the attorney general for examination. If in the opinion of the attorney general the summary is a fair and truthful statement of the proposed law, constitutional amendment or measure to be referred, he shall so certify. * * * *"

The measure to be referred which is attached to the aforesaid petition of one hundred electors, is Amended Senate Bill No. 342, passed by the legislature June 25, 1931, and filed in the office of the Secretary of State, Columbus, Ohio, July 16, 1931. The summary of this measure reads as follows:

"The measure to be referred, Amended Senate Bill No. 342, passed June 25, 1931, repeals an earlier act of the 89th General Assembly, passed April 10, 1931, providing for certificates of Title to Motor Vehicles. This measure to be referred substantially restores the old law heretofore in effect, providing for Bills of Sale for Motor Vehicles. The earlier act of April 10, 1931, and the act of June 25, 1931, both contain substantially similar provisions regarding the Registration and Licensing of Motor Vehicles."

I am of the opinion that the foregoing is a fair and truthful statement of the measure to be referred and accordingly submit for uses provided by law, the following certification:

"I, Gilbert Bettman, Attorney General of the State of Ohio, pursuant to the duties imposed upon me under the provisions of Section 4785-175, General Code, hereby certify that the foregoing summary is a fair and truthful statement of Amended Senate Bill No. 342, passed by the 89th General Assembly, June 25, 1931.

Gilbert Bettman, Attorney General."

Respectfully,

GILBERT BETTMAN,
Attorney General.

3488.

NOTES—ISSUED IN ANTICIPATION OF BOND ISSUE—NOT PAID AT MATURITY—PREMIUM AND ACCRUED INTEREST FROM BOND SALE APPLICABLE FOR PAST DUE INTEREST.

SYLLABUS:

When notes issued in anticipation of the issuance of bonds are not paid at maturity on account of such bonds being issued and sold subsequent thereto, premium and accrued interest received from the sale of such bonds may be used to pay past due interest on such notes.

COLUMBUS, OHIO, August 7, 1931.

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

GENTLEMEN:—Your letter of recent date is as follows:

"Section 5625-10, G. C., provides that the premium and accrued interest received from bond sales and the depository interest earned on the proceeds of bond sales, be paid into the sinking or bond retirement fund.

In opinion to this Department, No. 966 on page 1485 of the 1929 Opinions, you held that—

‘Premium and accrued interest, received from the sale of notes issued in anticipation of the sale of either general or special assessment bonds should be paid into the sinking or bond retirement fund of the subdivision.’

Section 2293-29, G. C., is quoted in part as follows:

‘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 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 are to be redeemed. If anticipatory notes have been issued, the moneys remaining from the proceeds of sale of such notes, and money from the sale of bonds shall be used for the purpose of paying such anticipatory notes.’

Considering the above citations, will you kindly give us your opinion on the following question:

If notes are issued for the construction of certain improvements in anticipation of the issuance of bonds which bonds are issued in anticipation of the collection of assessments and the interest calculated on the notes during the construction period is sufficient to a certain date but by reason of the fact that the bonds are not sold until a later date such interest is not sufficient to pay all of the interest on the notes, can the accrued interest on the bonds which is placed in the bond retirement fund to pay off the bonds and coupons when due, be used to pay the additional interest on the notes?”

You only inquire as to the application of accrued interest from the sale of bonds under the circumstances which you present. For the purposes of this opinion, however, I shall consider both premium and accrued interest for the reasons hereinafter shown. You also limit your inquiry to the case of special assessment bonds. Special assessment bonds and general tax bonds are in the same category under the law in so far as your question is concerned and I shall therefore not distinguish between the two.

The opinion of this office to which you refer holds that notwithstanding the fact that Section 2293-29, General Code, requires the payment into the sinking fund or bond retirement fund of premium and accrued interest received from the sale of notes or bonds, when such premium and accrued interest is received from the sale of notes, upon the maturity of such notes it should be paid back from the bond retirement fund for the purpose of paying the notes. The language of the opinion upon this point is as follows:

“While the premium and accrued interest may not be deposited in the construction fund under Section 2293-29, General Code, as is money from the principal on the sale of notes, it is nevertheless money received from the sale of notes. It being expressly provided, therefore, in Section 2293-29 that the moneys remaining from the proceeds of the sale of such notes shall be used for the purpose of paying such notes, it must necessarily follow that accrued interest and premium, which, at the time of sale, was paid into the bond retirement fund, must, at the time of the sale of bonds, be paid back from the bond retirement fund for the purpose of paying the notes.”

I think the reasoning of this opinion is in part applicable to your present question. Premium and accrued interest received from the sale of bonds is nevertheless money from the sale of bonds, and Section 2293-29, General Code, which you quote, provides that "Money from the sale of bonds shall be used for the purpose of paying such anticipatory notes." Obviously, if bonds are issued and sold at the time of the maturity of the notes, premium and accrued interest received from such sale not being required for the payment of the notes, must be paid into the bond retirement fund and used for the payment of the bonds. But I think it is clear that the language of Section 2293-29, requiring *all* money from the sale of bonds to be used for the payment of such notes, authorizes the prior application of all such moneys to this purpose in the event circumstances require it.

It may be observed that if bonds were issued at the same rate of interest as that borne by the anticipatory notes, it would only be necessary to use the accrued interest for the purpose of paying the past due interest on the notes, but if bonds are issued at a lower rate, as is usually the case, a portion of the premium would be required to pay this past due interest on the notes and, I think, would be properly applicable to this purpose. In the last analysis, the application of premium and accrued interest from the sale of bonds to the payment of past due interest on anticipatory notes in the event bonds have not been issued and sold until after the maturity of the notes, is in effect applying this money to the same purpose as provided by the legislature, viz. the redemption of the bonds, this for the reason that the amount which would have been needed to redeem the bonds, had they been issued on time, is proportionately reduced on account of the bonds having been sold later than contemplated. The only resultant loss which might occur would be the difference between the interest rate on the notes and the interest rate on the bonds for the past due period, when bonds are sold at a lower rate.

Specifically answering your question, it is my opinion that when notes issued in anticipation of the issuance of bonds are not paid at maturity on account of such bonds being issued and sold subsequent thereto, premium and accrued interest received from the sale of such bonds may be used to pay past due interest on such notes.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3489.

STATE HIGHWAY—LOCATED IN MUNICIPALITY—DUTY OF COUNTY TO ERECT AND MAINTAIN APPROACHES AND GUARD RAILS TO BRIDGES THEREON.

SYLLABUS:

Erection of approaches to bridges discussed.

COLUMBUS, OHIO, August 7, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication in which you present the following inquiry:

"A bridge exists within a municipal corporation, the approaches of which are very steep. In the fall of 1929, a machine left the road and