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1. FUNDS—MUNICIPAL TREASURY—SECTION 5625-9, PARAGRAPHS a, d, f, g, G. C.—FUNDS REQUIRED TO BE ESTABLISHED ARE OWNED BY MUNICIPALITY IN SAME RIGHT AND CAPACITY FOR ITS OWN BENEFIT.
2. FUNDS ESTABLISHED BY SECTION 5625-9, PARAGRAPHS b, c, h, G. C. ARE EACH OWNED BY MUNICIPALITY IN A RIGHT AND CAPACITY FOR ITS OWN BENEFIT DIFFERENT FROM THAT IN WHICH OTHERS ARE OWNED—ALL OWNED IN A RIGHT AND CAPACITY DIFFERENT FROM THAT IN WHICH MUNICIPALITY OWNS ITS GENERAL FUNDS.
3. FUND ESTABLISHED BY SECTION 5625-9, PARAGRAPH e, G. C., EXCEPTION, PROCEEDS OF REFUNDING BONDS HELD IN TRUST, SECTION 2293-68 G. C., IS OWNED BY MUNICIPALITY IN SAME RIGHT AND CAPACITY IN WHICH IT OWNS GENERAL FUNDS.
4. FUNDS, USE, TRUSTEES OF MUNICIPAL LIBRARY, SECTION 4004 G. C.—CUSTODY OF MUNICIPAL TREASURER—BY VIRTUE OF SECTION 7628 G. C. OWNED BY MUNICIPALITY FOR ITS OWN BENEFIT DIFFERENT FROM OWNERSHIP OF GENERAL FUNDS AND SINKING FUND.
5. FUNDS IN CUSTODY OF MAYOR—WHERE BY LAW HE IS REQUIRED TO PAY PERIODICALLY OVER TO AND FOR SOLE USE OF ANOTHER POLITICAL SUBDIVISION ARE OWNED BY MUNICIPALITY—SAME RIGHT AND CAPACITY AS IT OWNS FUNDS IN CUSTODY OF CLERK OF MUNICIPAL COURT.

SYLLABUS :

1. The funds required to be established by paragraphs (a), (d), (f) and (g) of Section 5625-9, General Code, are owned by a municipality in the same right and capacity for its own benefit.

2. The funds required to be established by paragraphs (b), (c) and (h) of Section 5625-9, General Code, are each owned by a municipality in a right and capacity for its own benefit different from that in which the others are owned, and all of them in a right and capacity different from that in which the municipality owns its general funds.

3. The fund required to be established by paragraph (e) of Section 5625-9, General Code, with the exception of proceeds of refunding bonds required to be held in trust under the provisions of Section 2293-68, General Code, is owned by a municipality in the same right and capacity in which it owns its general funds.

4. Funds in the custody of a municipal treasurer for the use of the trustees of a municipal library organized under the provisions of Section 4004, General Code, are, by virtue of the provisions of Section 7628, General Code, owned by the municipality in a right and capacity for its own benefit different from that in which it owns its general funds and different from that in which it owns its sinking fund.

5. Funds in the custody of a mayor which he is required by law to pay periodically over to, and for the sole use of, another political subdivision are owned by the municipality in the same right and capacity as it owns funds in custody of the clerk of the municipal court of such municipality which are also required to be so paid over to such other political subdivision.

Columbus, Ohio, September 27, 1950

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen :

Your request for my opinion reads as follows :

“The examination of municipal accounts has disclosed many variations in the kind of and form of municipal funds held in depository banks, as well as a complete lack of uniformity in the classification of such deposits into separate depository accounts.

“In order to determine the amount of insurance coverage on such municipal deposits under the Federal Deposit Insurance law it is necessary to consider and analyze the provisions of that law as applied to municipal public funds deposited in banks under Ohio laws.

“The Federal Deposit Insurance law (12 U. S. C., Section 264) provides that the ‘maximum amount of the insured deposit of any depositor shall be \$5,000.00’ and that ‘in determining the amount due to any depositor there shall be added together all deposits in the bank maintained in the same capacity and the same right for his benefit either in his own name or in the names of others, * * *.’

“Sections 4298 and 4300 of the General Code fix the powers and duties of the city treasurer with reference to the receipt and disbursement of municipal funds.

“Section 4610, General Code, provides that the treasurer of the municipality shall be the custodian of the firemen’s relief and pension fund. Section 4626, General Code, provides that the treasurer of the municipality shall be the custodian of the police relief and pension fund.

“Sections 4511, 4514, 4517 and 4518, General Code, fix the custody of and responsibility for the proper receipt and safe-keeping, and disbursement of municipal sinking fund moneys in a board of Sinking Fund Trustees, created under authority of Section 4507, General Code. Section 2295-14, General Code, provides that when the sinking fund trustees are abolished the custody of all funds received for debt retirement shall be vested in the municipal treasurer who shall keep a separate fund known as the bond payment fund.

“Section 5625-9, General Code, provides for the establishment of certain funds in the municipal treasury. Section 2296-15a, General Code, provides the manner in which municipal public funds on deposit in a depository bank shall be secured, and reads in part as follows :

“ ‘The treasurer, before making any deposit in a public depository pursuant to an award made under this act, shall require the institution designated as a public depository to pledge to and deposit with him, as security for the repayment of all public moneys to be deposited in the public depository during the period of designation pursuant to the award, eligible securities of aggregate market value equal to the excess of the amount of public moneys to be at the time so deposited, over and above such portion or amount thereof as shall at such time be insured by the federal deposit insurance corporation or by any other agency or instrumentality of the federal government. * * *’

“In view of the foregoing statutory provisions of Ohio law, and the provisions of Federal law governing the Federal Deposit Insurance Corporation, we submit the following questions for your consideration, and respectfully request that you give us your formal Opinion in answer thereto :

“1. Where the treasurer of a municipal corporation has the custody of public moneys belonging to various funds established pursuant to the authority of Section 5625-9, General Code, paragraphs (a) (b) (c) (d) (e) (f) (g) and (h), and such moneys are deposited pursuant to the provisions of the Uniform Depository Act (Sections 2296-1 to 2296-25, G. C., inclusive), in a depository bank which is a member of the Federal Deposit Insurance Corporation, to

the credit of one common account, how much deposit insurance is available to the municipality under the provisions of the Federal Deposit Insurance laws?

"2. Do the funds established under paragraphs (g) and (h) of Section 5625-9, General Code, constitute municipal funds held in a different right or capacity from other municipal funds within the meaning of the Federal Deposit Insurance law, 12 U. S. C., Section 264?

"(a) The following statement is presented for the purpose of illustrating our questions:

City of _____
 John Doe, Treasurer

"FUNDS ON DEPOSIT:

	General Operating	\$150,000.00
	Auto License, State M&R.....	50,000.00
	Gas Tax, State.....	50,000.00
	Parking Meter	10,000.00
	Street Improvement	20,000.00
	Poor Relief	10,000.00
	Bond Retirement	100,000.00
		<hr/>
"1.	Total Governmental Funds.....	\$390,000.00
	Water Rental—Utility	\$100,000.00
	Sewer Rental—Utility	50,000.00
	Electric Light—Utility	200,000.00
	Utility Consumers' Guaranty Deposits	20,000.00
		<hr/>
"2.	Total Utility Funds.....	\$370,000.00
		<hr/>
	Total City Treasury Funds.....	\$760,000.00
"3.	John Doe, Treasurer: Firemen's Relief and Pension Fund of the City of _____	25,000.00
"4.	John Doe, Treasurer: Police Relief and Pension Fund of the City of _____	25,000.00
"5.	Sam Smith, Clerk-Treasurer of Board of Trustees, Municipal Library of City of _____	10,000.00
"6.	Henry Brown, Mayor City of _____	5,000.00
"7.	Jas. Smith, Clerk of Municipal Court, City of _____ Criminal Branch	10,000.00
	Civil Branch	10,000.00
	Trusteeship Branch	5,000.00
		25,000.00

“(b) It will be noted that all of the city treasury funds, in the total amount of \$760,000.00 are held in the custody of the city treasurer under authority of Sections 4298 and 4300, General Code. However, \$390,000.00 of the total deposits belonging to the city of _____ are for use of the city in a *governmental* capacity, whereas \$370,000.00 of the total deposits are for use by the city in a *proprietary* capacity.

“These moneys belonging to the Police and Firemen’s Pension funds of the city of _____ are held in the custody of the city treasurer under authority of Sections 4626 and 4610, General Code, respectively. Would it make any difference as to the amount of Federal Deposit insurance available for the protection of city funds if the treasurer of the city of _____ deposited said city funds into separate accounts in the depository bank, classified as to ‘custodial capacity’ and ‘rights’ as follows:

- “1. General Governmental Accounts.....\$390,000.00
- “2. Utility Accounts—Proprietary 370,000.00
- “3. Firemen’s Relief and Pension Fund..... 25,000.00
- “4. Police Relief and Pension Fund..... 25,000.00

“3. Where municipal Sinking Funds and Library Funds are held in the custody of the respective municipal boards of trustees duly appointed and properly organized in the manner provided by law, such funds when deposited in a depository bank apparently constitute municipal funds, each maintained in a separate right and capacity.

“Assuming that such Sinking Fund and Library Fund are deposited in the same banking institution as the regular municipal treasury funds, are each of the said accounts entitled to \$5,000.00 insurance coverage in addition to that provided for the general city account?

“4. Funds deposited by the Mayor of a city and the Clerk of a Municipal Court in a depository bank include undistributed moneys due other taxing subdivisions, therefore, such funds are maintained by the aforesaid municipal officers respectively in a different right and capacity than other municipal funds.

“Assuming that such Mayor’s and Municipal Court funds are deposited in the same banking institution as other municipal Funds, is each of the aforesaid funds entitled to the maximum protection of \$5,000.00 Federal Deposit insurance provided under Federal Deposit insurance laws?

“Enclosed herewith are copies of correspondence with the Federal Deposit Insurance Corporation, together with a copy of their circular explaining Federal Deposit Insurance laws, which we believe will be informative in connection with our request for

an Opinion interpreting the application of such Federal Deposit insurance to public funds.”

Along with the request quoted above you have supplied copies of letters you have exchanged with the Federal Deposit Insurance Corporation on this subject. In a letter addressed to you by the Associate General Counsel of Federal Deposit Insurance Corporation, I note the following statement:

“* * * However, since the question of ownership of various funds of public units involves an interpretation of the applicable state law and decisions, any question of the ownership and of the right and capacity in which such funds are held by the public unit should be submitted to the attorney for the public unit or to the State’s Attorney General for his opinion. * * *”

Although this opinion will be limited in scope to a discussion of applicable state statutes and decisions on the question of ownership of municipal funds, it is necessary first to observe the pertinent provisions of federal statutes and the federal decisions in cases in which such statutes were under scrutiny.

Title 12, Section 264 (c) (13), U. S. Code, reads as follows:

“(13) The term ‘insured deposit’ means the net amount due to any deposit or deposits in an insured bank (after deducting offsets) less any part thereof which is in excess of \$5,000. Such net amount shall be determined according to such regulations as the board of directors may prescribe, and in determining the amount due to any depositor there shall be added together all deposits in the bank maintained in the same capacity and the same right for his benefit either in his own name or in the names of others, except trust funds which shall be insured as provided in paragraph (9) of subsection (h) of this section.”

Section 330.3, Title 12, Code of Federal Regulations, 1949 Edition, adopted by the board of directors of Federal Deposit Insurance Corporation as authorized by the statute quoted above, reads as follows:

“The owner of any portion of a deposit appearing on the records of a closed bank under the name of a public official, state, county, city, or other political subdivision will be recognized for all purposes of claim for insured deposits to the same extent as if his name and interest were disclosed on the records of the bank: *Provided*, That the interest of such owner in the deposit is disclosed on the records maintained by such public official, state, county, city, or other political subdivision and, *Provided further*, That such records have been maintained in good faith and in the regular course of business.”

In a pamphlet supplied to you by the Associate General Counsel of Federal Deposit Insurance Corporation the following explanatory material is included with reference to the definition of "insured deposit" as that term is used in Title 12, Section 264, U. S. Code:

"These provisions mean that where a depositor has more than one deposit in an insured bank and the deposits are held in different rights or capacities, the funds are not added together but are separately insured in the right or capacity in which they are held to the said maximum of \$5,000. For instance, depositors may hold funds in the following rights and capacities and each of the accounts would be separately insured to the maximum of \$5,000 as shown below:

"RIGHT AND/OR CAPACITY	<i>Maximum Insurance</i>
1. John Doe	\$5,000
2. Mary Doe	\$5,000
3. John Doe and Mary Doe, Joint account with right of survivorship	\$5,000
4. John Doe, Mary Doe, and Richard Roe, Joint account with right of survivorship	\$5,000 ¹
5. John Doe and Mary Doe, Community funds.....	\$5,000 ²
6. John Doe, Executor of Estate of (Name) deceased.....	\$5,000
7. John Doe, Administrator of Estate of (Name) deceased	\$5,000
8. John Doe, Trustee of (Name) estate	\$5,000 ³
9. John Doe and Richard Roe, a Co-Partnership.....	5,000"

Footnotes are supplied in this pamphlet with reference to the fourth, fifth and eighth items listed above as follows:

"1. If the account is without right of survivorship, that is, one held in tenancy in common, the share of each owner therein is insured to the maximum of \$5,000, but, if either of the owners has a personal account, the share of each owner in the common account will be added to the personal account of the owner and the aggregate insured to the maximum of \$5,000.

"2. This is applicable only in community property states.

"3. This must be a bona fide trust—one which is recognized under the state law as being a valid enforceable trust. Tentative trusts, so-called Totten Trusts, are regarded for insurance purposes as the personally owned funds of the depositor-trustee."

In considering the meaning of the expression "in the same capacity and the same right for his benefit," as used in Title 12, Section 264, U. S.

Code, the court held in *Billings County v. Federal Deposit Insurance Corporation* (DC-ND), 71 Fed. Supp. 696, that county general funds were held in a different right and capacity from that in which the county sinking fund was held, and that the two accounts representing these funds were each insured to a maximum of \$5,000.00.

In *Phair v. Federal Deposit Insurance Corporation* (DC-NJ) 74 Fed. Supp. 693, it was held that where executor-trustees had placed a part of the corpus of a trust in one account and the funds representing income from the trust estate in another account, such funds were held in the same right and capacity and, therefore, constituted but one insurable account.

In *Federal Deposit Insurance Corporations v. Cassady*, 106 Fed. (2d) 784, three of the headnotes read as follows:

“I. Municipal corporations

A city or town holds legal title to sinking fund in trust for bondholders and judgment creditors.”

“II. Waters and water courses

Meter deposit collected from users of municipal water to guarantee return of meter does not become property of town, but is held in trust for and belongs to property owner who secures use of meter by making the deposit.”

“12. Banks and banking

Under Oklahoma law, a municipality's sinking fund, paving fund, firemen's pension fund, meter fund, and general fund, all of which were deposited in same bank by municipality's treasurer and controlled by him, constituted distinct deposits on each of which federal deposit corporation, upon bank's failure, was liable up to \$5,000, as against contention, that all of the deposits constituted one deposit and that corporation was liable only to the extent of \$5,000 on the combined deposits. 11 Okl. St. Ann. §§ 126, 151, 331 et seq., 372, 373, 376, 1017; 36 Okl. St. Ann. § 104; 62 Okl. St. Ann. § 541; Federal Reserve Act § 12B (a, 1, y), as added by Act June 16, 1933, § 8, 48 Stat. 168, as amended, 12 U. S. C. A. § 264.”

In this same case the following statements are found on page 792:

“1. The sinking fund, held for the benefit of the holders of such bonds and such judgment liens, constitutes a separate trust fund for such owners and holders in such capacity in a separate right.

“2. The paving fund, held for the benefit of the holders of such paving or improvement bonds, constitutes a separate trust fund for such owners and holders in such capacity in a separate right.

"3. The firemen's fund for the firemen's relief and pensions constitutes a trust fund held in such separate capacity and distinct right or agency.

"4. The meter fund, made up of deposits in trust for specific purpose, constitutes a separate trust held for such owners in such separate right and capacity."

It is thus to be observed that the term, "same right and capacity," as used in Title 12, Section 264, U. S. Code, has been construed administratively and by the federal courts to permit segregation, for insurance purposes, of those funds (a) in which the depositor has only a *part* ownership by virtue of his special relationship with others, as in the case of partnership funds, community funds, joint ownership with the right of survivorship and the like, and (b) those of which the depositor is not the absolute owner but rather by virtue of contractual or statutory provision, is the temporary custodian with less than full legal and equitable ownership.

In view of the provision in Article VIII, Section 6 of the Ohio Constitution against loaning the credit of a municipality to any private concern, it is believed that rarely, if ever, a municipality would be able to claim additional insurance coverage of its bank deposits on the theory of a "part ownership" of particular funds. In this connection the first branch of the syllabus in *Alter v. Cincinnati*, 56 O. S. 47, reads as follows:

"Under section six of article eight of the constitution, a city is prohibited from raising money for, or loaning its credit to, or in aid of, any company, corporation, or association; and thereby a city is prohibited from owning part of a property which is owned in part by another, so that the parts owned by both, when taken together, constitute but one property."

Accordingly, it would appear that only in those cases where the municipality holds funds under a contractual or statutory custodial arrangement with less than full legal and equitable ownership would it be possible under current federal administrative rulings, and under controlling federal decisions, to segregate such funds from its general funds for purposes of federal deposit insurance.

Our question thus becomes one of examination of the several types of authorized municipal funds listed in your inquiry to determine which of them, under Ohio law, are owned or held by the municipality with less than full legal and equitable title as distinguished from funds which the municipality owns absolutely.

Section 4506, et seq., General Code, provides for the creation of a municipal sinking fund and for the manner in which such fund must be administered. Section 4517, General Code, reads as follows:

“The trustees of the sinking fund shall have charge of and provide for the payment of all bonds issued by the corporation and the interest maturing thereon. They shall receive from the auditor of the city or clerk of the village all taxes, assessments and moneys collected for such purposes and invest and disburse them in the manner provided by law. For the satisfaction of any obligation under their supervision, the trustees of the sinking fund may sell or use any of the securities or moneys in their possession.”

From the foregoing it clearly appears that the monies in the sinking fund are held by the municipality in a special right and capacity, not for the benefit of the municipality, but for the benefit of the bondholders; and that funds so segregated and in the custody and under the control of the treasurer of the municipality (to whom the powers and functions of the sinking fund trustees have been transferred by Section 2295-14, General Code), are owned by the municipality in a special right and capacity different from that in which its general funds are owned.

It is assumed that the “Utility Consumers’ Guaranty Deposits” fund, mentioned in your inquiry, represents the total of cash deposits made by consumers to guarantee performance by them of their contracts with the municipal utility. If so, then such sums so deposited are clearly in the nature of pledges which are held by the municipality as bailee. It is assumed also that under this arrangement these sums are returnable to the consumer concerned when he ceases to be a consumer and has completed his agreement with the utility. In such event there can be no doubt that the municipality has only a special ownership in such fund and so “owns” it in a right and capacity which is separate and distinct from that in which it holds funds owned by it absolutely.

With respect to the firemen’s pension fund and the police pension fund, the municipal treasurer is merely custodian. Sections 4610 and 4626, General Code, read as follows:

Section 4610

“The treasurer of the municipality shall be the custodian of the firemen’s relief and pension fund, and shall pay it out upon the proper order of the trustees thereof. The treasurer shall execute a bond in such sum and form as is satisfactory to the

trustees, conditioned for the faithful performance of his duties with respect to the fund.”

Section 4626

“The treasurer of the municipality shall be the custodian of the police relief and pension fund, and shall pay it out upon the proper order of the trustees thereof. The treasurer shall execute a bond in such sum and form as is satisfactory to the trustees, conditioned for the faithful performance of his duties with respect to the fund.”

The statutory provisions relating to the authorized purposes for which these funds may be expended, and making retired firemen and policemen the beneficiaries in such funds, clearly indicate that such funds are held by the municipality as trustee only.

Funds held by a municipal treasurer as custodian of funds controlled by the trustees of a municipal library organized pursuant to Section 4004, General Code, cannot be considered funds of the municipality for the reason that such trustees are, under the provisions of Section 7628, General Code, bodies politic and corporate. This section reads as follows:

“The boards of library trustees appointed pursuant to the provisions of sections 2454-1, 3405, 4004, 4840-1 and 7643-2 of the General Code shall be bodies politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property and of exercising such other powers and privileges as are conferred upon them by law.”

I have no difficulty in concluding that such library funds are owned in a special right and capacity different from that in which the municipality owns its general funds.

Funds in the custody of the Mayor of a municipality are clearly of two distinct classes, viz., those which are owned by the municipality and those which the statute requires to be paid over periodically to other political subdivisions. The applicable statute on this point is Section 4270, General Code, which reads as follows:

“All fines and forfeitures in ordinance cases and all fees collected by the mayor, or which in any manner come into his hands, due such mayor or to a marshal, chief of police or other officer of the municipality and any other fees and expenses which have been advanced out of the municipal treasury, and all money received by such mayor for the use of the municipality, shall be by him paid into the treasury of the municipality on the first Monday of each month. At the first regular meeting of council in each

and every month, he shall submit a full statement of all money received, from whom and for what purposes received and when paid into the treasury. Except as otherwise provided by law, all fines and forfeitures collected by him in state cases together with all fees and expenses collected, which have been advanced out of the county treasury, shall be by him paid over to the county treasury on the first business day of each month."

From the language above it is clear that those funds which the mayor is required to pay into the municipal treasury are the property of the municipality as soon as they come into the mayor's possession and are not owned by such municipality in any right or capacity different from that in which it owns its general funds.

As to those funds which the mayor is bound to pay to other subdivisions, however, it is equally clear that the mayor holds them as custodian for such other political subdivisions and that equitable ownership is in them rather than in the municipality. Accordingly, such funds can be said to be "owned" by the municipality in a special right or capacity.

It is assumed that the account listed in your illustration as being maintained by a clerk of a municipal court under the designation "Trustee Branch" is one of those which are specifically required by Section 5625-9(h), General Code, and that no funds are held therein except those held in trust pending the order of such court directing payment of them for the benefit of their equitable owners. In such event there is no doubt that such funds are "owned" by the municipality in a right and capacity different from that in which it owns its general funds.

Coming now to consider your specific inquiries, it is observed that your first question is principally concerned with an interpretation of Section 5625-9, General Code, which reads 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, or of 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 for any lawful purpose.”

The nature of the funds so established is better understood by an examination of the sources of the revenues which are distributed to such funds, the statutory limitations on the use of the monies in such funds and on the transfers permitted among such funds. The applicable statutes, Sections 5625-10, 5625-13 and 5625-13a read as follows:

Section 5625-10

“All revenue derived from the general levy for current expense within the ten mill limitation; from any general levy for current expense authorized by vote 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.

“All revenue derived from general or special levies for debt charges, whether within or without the ten mill limitation, which is levied for the debt charges on serial bonds or on notes or certificates of indebtedness having a life less than five years, shall be paid into the bond retirement fund; and all such revenue which is levied for the debt charges on all other bonds, notes or certificates of indebtedness shall be paid into the sinking fund.

“All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.

“All revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose.

“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 the bond retirement fund of the subdivision.

“If a permanent improvement of the subdivision is sold the amount received for the same shall be paid into the sinking fund or the bond retirement fund of the subdivision, or into a special fund for the construction or acquisition of a permanent improvement or improvements; provided that the proceeds from the sale of a public utility shall be paid into the sinking fund or bond retirement fund to the extent necessary to provide for the retirement of the outstanding indebtedness incurred in the construction or acquisition of such utility. Proceeds from the sale of property other than a permanent improvement shall be paid into the fund from which such property was acquired or is maintained, or if there be no such fund, into the general fund.

“Money paid into any fund shall be used only for the purposes for which such fund is established.”

Section 5625-13

“No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as hereinafter provided :

“a. The unexpended balances in a bond fund that is no longer needed for the purpose for which such fund was created shall be transferred to the sinking fund or bond retirement fund from which such bonds are payable.

“b. The unexpended balance in any specific permanent improvement fund other than a bond fund, after the payment of all obligations incurred in the acquisition of such improvement, shall be transferred to the sinking fund or bond retirement fund of the subdivision; provided that if such money is not required to meet the obligations payable from such funds, it may be transferred to a special fund for the acquisition of a permanent improvement or improvements or, with the approval of the court of common pleas of the county wherein such subdivision is located, to the general fund of the subdivision.

“c. The unexpended balance in the sinking fund or bond retirement fund of a subdivision, after all indebtedness, interest and other obligations for the payment of which such fund exists have been paid and retired, shall be transferred in the case of the sinking fund to the bond retirement fund and in the case of the bond retirement fund to the sinking fund; provided that if such transfer is impossible by reason of the non-existence of the fund herein designated to receive the transfer, such unexpended balance, with the approval of the court of common pleas of the county wherein such subdivision is located, may be transferred to any other fund of the subdivision.

“d. Unless otherwise provided by law, the unexpended balance in any special fund, other than an improvement fund, existing in accordance with section 5625-9, paragraph(s) (d), (f), or (g) or section 5625-11 of the General Code, may be transferred to the general fund or to the sinking fund or bond retirement fund after the termination of the activity, service or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund.

“e. Moneys may be transferred from the general fund to the sinking fund or the bond retirement fund to meet a deficiency in either of the latter funds.

“f. Moneys appropriated therefor may be transferred from the general fund of a subdivision to a fund authorized by sections 5625-11 or 5625-12 of the General Code or to the proper fund of a district authority.

“Except in the case of transfers in accordance with paragraphs (e) and (f) of this section, transfers herein authorized shall only be made by resolution of the taxing authority passed with the affirmative vote of two-thirds of the members thereof.”

Section 5625-13a

“In addition to the transfers authorized in section 5625-13, the taxing authority of any political subdivision may, in the manner hereinafter provided, transfer from one fund to another any public funds under its supervision except the proceeds or balances of loans, bond issues, or special levies for the payment thereof, and except the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose or purposes, and except the proceeds or balances of any license fees imposed by law for a specified purpose or purposes.”

In Opinion No. 1464, Opinions of the Attorney General for 1947, it was held that transfers under authority of Section 5625-13a, General Code, of monies from the sinking fund or the bond retirement fund were subject to the limitations of paragraph c of Section 5625-13, General Code. This opinion reads in part as follows:

“Authority to transfer money from the bond retirement fund to another fund of the subdivision, is contained in paragraph c of Section 5625-13, General Code, and this authority is strictly confined to the unexpended balance that remains in that fund after all indebtedness and obligations against the fund have been paid. When all of those obligations have been paid it is then provided and required by paragraph c that the balance, if any, shall be transferred to the sinking fund, if the subdivision has such a fund, and the only exception to this requirement is contained in the proviso. Paragraph c of Section 5625-13, reads as follows:

“The unexpended balance in the sinking fund or bond retirement fund of a subdivision, after all indebtedness, interest and other obligations for the payment of which such fund exists, have been paid and retired, shall be transferred in the case of the sinking fund to the bond retirement fund and in the case of the bond retirement fund to the sinking fund; provided that if such transfer is impossible by reason of the non-existence of the fund herein designated to receive the transfer, such unexpended balance, with the approval of the court of common pleas of the county wherein such subdivision is located, may be transferred to any other fund of the subdivision.’

“You are therefore advised that the transfer of moneys from the bond retirement fund of the county to another fund for the purpose of acquiring land and buildings under Section 4065-1 et seq., General Code, is subject to the provisions of paragraph c of Section 5625-13, General Code.”

From a consideration of these statutory provisions as construed by my predecessor, with which construction I agree, it clearly appears that funds held in either a sinking fund or a bond retirement fund are not available, so long as any bonded indebtedness exists, for any municipal purpose whatever but are to be used solely to pay interest on such indebtedness or to retire outstanding obligations. This is the more clearly seen when it is recalled that the *proceeds* from the sale of the outstanding bonds have already been expended for a particular "municipal purpose" and that the revenues coming into the sinking fund or bond retirement fund cannot be considered to be held by the municipality for such municipal purpose. For these reasons I conclude that any funds held in a municipal treasury in the sinking fund or in the bond retirement fund are owned by the municipality in a right or capacity separate and distinct from that in which it owns its general funds.

Before concluding the consideration of bond retirement funds it should be observed that such monies as are received as proceeds of certain refunding bonds are required by law to be held in trust for the sole purpose of payment of the principal and interest of the refunded bonds. On this point Section 2293-68, General Code, reads as follows:

"Any bonds or notes authorized by this act to be funded or refunded may be funded or refunded, notwithstanding that provision for their payment shall have been made in any budget or tax ordinance theretofore adopted, or that funds or revenues remaining uncollected have by law been appropriated to their payment. The funds to be realized from such sources or from the collection of such funds or revenues shall, however, by resolution adopted by the governing body of the subdivision prior to the issuance of refunding bonds, be pledged to the payment of such refunding bonds, and such pledges shall thereafter be deemed a contract between such subdivision and the holders of said bonds. Such funds or revenues so pledged shall, when received, be deposited forthwith in a trust fund which shall be established by the governing body of such subdivision and shall be used for no other purpose except for the payment of the principal of, or interest on refunding bonds issued pursuant to this act."

It is clear from the foregoing that such monies, whether held in a special trust fund or in the bond retirement fund, are held in a right and capacity different from that in which the general funds of a municipality are held.

As to the special funds required to be maintained by paragraph (d), Section 5625-9, General Code, I find nothing in the law which would

indicate that monies therein are owned by the municipality in any special right or capacity different from that in which its general funds are owned. While it is true that the legislative action by which such special levies are authorized virtually always limits the use of the revenues thereby realized to specific purposes it must be observed that such purposes are strictly municipal purposes; and that no person or entity other than the municipality has any legal or equitable right to a share of such revenues.

Further, it should be observed that the provisions of Section 5, Article XII, Ohio Constitution, would not be applicable to such special funds so as to affect the right and capacity in which they are held by the municipality. This section reads as follows:

“No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied.”

In considering the application of this provision to the levy of taxes for local purposes, the Supreme Court of Ohio, in *Cleveland v. Zangerle*, 127 O. S. 91, said:

“We are of the opinion that the provisions of Am. Sub. Senate bill No. 239 are not violative of Article XII, Section 5 of the state Constitution. In other states having similar constitutional provisions, their courts, with substantial unanimity, have held that such a constitutional provision pertains to the levying and distribution of general taxes for state purposes and not to taxes levied and distributed for local purposes. We have heretofore held in the *Friedlander case*, *supra*, that the original Intangible Tax Law, in respect to its distributive features, did not levy and distribute the proceeds of these taxes for state purposes.”

As to funds required to be maintained by paragraph (e), Section 5625-9, General Code, assuming that they include only the proceeds of an initial bond issue, the same reasoning as outlined above with reference to special funds for special levies would apply. However, if any of the monies therein represent the proceeds of certain refunding bonds, such funds would be trust funds under the provisions of Section 2298-63, General Code, as noted above, and so held in a special right and capacity.

The same rule applied to special funds for special levies, and special bond funds for each bond issue, would apply also, in my opinion, to the funds required to be maintained by paragraph (f), Section 5625-9, General Code. It seems clear that all of the funds named in paragraphs (d), (e) and (f), Section 5625-9, *supra*, are required to be maintained principally

for the purpose of convenience in determining the sums at any moment available for use for the several particular municipal purposes involved; and not because the municipality owns such monies in any special right or capacity.

With respect to the special utility funds established by paragraph (g), Section 5625-9, General Code, with the exception of the consumers guaranty fund discussed earlier herein, it appears that such funds are the absolute property of the municipality. While it is true that such funds are owned in a proprietary capacity rather than in a governmental capacity, that distinction is one relating to municipal powers rather than to the right or capacity of ownership. An analogous situation is that in which an individual is engaged simultaneously in two or more business enterprises of both of which he is the sole owner. Funds of such enterprises, although segregated in separate bank accounts by the owner to correspond to his dual occupational capacity, would obviously be held by him in the same right and capacity.

Moreover, monies in this fund may be as freely transferred to other funds for municipal purposes under authority of Section 5625-13a, General Code, as any monies in other funds, derived from other sources. In this connection the first paragraph of the syllabus in *Niles v. Union Ice Co.*, 133 O. S. 169, reads as follows:

“The provisions of Section 5625-13a, General Code, relate to the transfer of funds of a political subdivision, whether tax-derived or not, and include, in their authorization to transfer, funds derived from the maintenance and operation of an electric light and power system, but do not apply to waterworks funds by reason of the provisions of Section 3959, General Code. (Paragraph 2 of the syllabus in the case of *City of Lakewood v. Rees*, 132 Ohio St., 399, modified in part.)”

Trust funds maintained by a municipality under authority of paragraph (h), Section 5625-9, General Code, for obvious reasons must be considered to be owned by such municipality in a right and capacity distinct from that in which it owns its general funds.

From the foregoing it follows, in answer to your first question, that the funds provided for in Section 5625-9, General Code, should be considered as separate insurable accounts consisting of the funds authorized by paragraphs (b), (c) and (h) as three or more insurable accounts, depending upon the number of separate trusts included in the fund established under paragraph (h), and an additional insurable account consisting of all other funds authorized by this section.

The foregoing will answer your second question also and further consideration of it is therefore not necessary.

For reasons stated hereinbefore in the discussion of sinking funds and funds held by trustees of municipal libraries, your third question must be answered in the affirmative.

With reference to your fourth question, it is assumed that you have in mind a situation in which both the Mayor and Clerk of a municipal court have custody of funds which the statute requires them to transfer periodically to the same political subdivision. In such case it would appear to be of no importance that funds held by the municipality, the equitable ownership of which is in another political subdivision, are so held in the custody of one or two officers of the municipality. The right or capacity in which the *municipality* holds the funds is the same in either case. Accordingly your fourth question must be answered in the negative.

1. The funds required to be established by paragraphs (a), (d), (f) and (g) of Section 5625-9, General Code, are owned by a municipality in the same right and capacity for its own benefit.

2. The funds required to be established by paragraphs (b), (c) and (h) of Section 5625-9, General Code, are each owned by a municipality in a right and capacity for its own benefit different from that in which the others are owned, and all of them in a right and capacity different from that in which the municipality owns its general funds.

3. The fund required to be established by paragraph (e) of Section 5625-9, General Code, with the exception of proceeds of refunding bonds required to be held in trust under the provisions of Section 2293-68, General Code, is owned by a municipality in the same right and capacity in which it owns its general funds.

4. Funds in the custody of a municipal treasurer for the use of the trustees of a municipal library organized under the provisions of Section 4004, General Code, are, by virtue of the provisions of Section 7628, General Code, owned by the municipality in a right and capacity for its own benefit different from that in which it owns its general funds and different from that in which it owns its sinking funds.

5. Funds in the custody of a mayor which he is required by law to pay periodically over to, and for the sole use of, another political subdivision are owned by the municipality in the same right and capacity as

it owns funds in custody of the clerk of the municipal court of such municipality which are also required to be so paid over to such other political subdivision.

Respectfully,

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