

**OPINION NO. 782****Syllabus:**

Interest earned on the investment of funds received from the sale of bonds issued by a board of education must, as directed by Section 5705.10, Revised Code, be used for the purposes for which such bonds were issued and may not be transferred to the general fund of the subdivision; transfers from the special bond fund may be made as provided in Section 5705.14, Revised Code.

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**To: Homer B. Gall, Jr., Athens County Pros. Atty., Athens, Ohio**  
**By: William B. Saxbe, Attorney General, January 14, 1964**

Your request for my opinion reads:

"I would like your opinion based on the following set of facts:

"During the year 1958 one of the school boards here in Athens County set up a building fund for the purpose of construction and purchase of equipment for buildings. Bonds were sold during 1958 and the proceeds were invested in Treasury Bonds part of which were due in 30 days and part of which were due in 90 days. Interest from these was deposited in a bank and the board has now accumulated

approximately \$30,000.00 in interest. The board has no Sinking Fund and all bonded indebtedness has not been paid. The question is whether the board would be authorized under Section 5705.14 to transfer the interest acquired under the Treasury Bills and which has accumulated since being deposited in a savings account to the General Fund to be used for current expenditures."

Section 5705.10, Revised Code, as amended in 127 Ohio Laws, 545, effective August 27, 1957, reads in part:

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"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, and any interest earned on money in such special fund shall be used for the purposes for which the indebtedness was authorized. The premium and accrued interest received from such sale shall be paid into the sinking fund or the bond retirement fund of the subdivision. \* \* \*

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(Emphasis added)

Underscoring has been supplied in this quotation from the statute to show the new language which came into this section of the law in 1957. Prior to that time the section directed as follows:

"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."

In Opinion No. 6198, Opinions of the Attorney General for 1956, page 39, the Attorney General, interpreting the law as it then existed, held as follows:

"Under the provisions of Section 5705.10, Revised Code, interest earned on money of a school district derived from the sale of bonds, whether deposited in a public depository as provided in Section 135.01 et seq., Revised Code, or invested in securities as authorized

by Section 135.12, Revised Code, should be paid into the sinking fund or bond retirement fund of the district."

This opinion was considered in Opinion No. 1365, Opinions of the Attorney General for 1957, page 701, and I reached this conclusion, as shown by the first paragraph of the syllabus:

"1. Section 5705.10, Revised Code, as amended by the 102nd General Assembly, effective August 27, 1957, has by implication amended that portion of Section 135.12, Revised Code, pertaining to disposition of interest earned on moneys in any fund the proceeds of which were realized from the sale of bonds, notes or certificates of indebtedness, and any such interest earned by deposit or investment of such fund derived by the sale of bonds, notes or certificates of indebtedness should be used for the purpose for which such indebtedness was authorized. Opinion No. 6198, Opinions of the Attorney General for 1956, p. 39, and Opinion No. 1137, Opinions of the Attorney General for 1949, p. 775, distinguished."

Section 135.12, Revised Code, has been amended since 1957, but there has been no change in the language which directs that interest on investments authorized by that section shall be collected by the treasurer and credited to the general fund of the state or subdivision. My conclusion at this time is the same as that expressed as follows in Opinion No. 1365, supra, at page 705:

"There is nothing in the general language of Section 135.12, supra, that indicates an express intention to repeal the special provision of Section 5705.10, supra, relative to the disposition of interest earned on the proceeds of sale of bonds."

Although I believe that the foregoing is dispositive of your inquiry, some attention should be given to Sections 5705.09 and 5705.14, Revised Code. Section 5705.09, Revised Code, directs that each subdivision shall establish certain funds; these funds include the following: "(E) A special

bond fund for each bond issue."

Section 5705.14, Revised Code, reads in part:

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

"(A) The unexpended balance 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."

You have stated in your letter that there is still indebtedness for bonds issued, and it is, therefore, unnecessary to consider transfers which may be made after all such obligations have been paid.

It is, therefore, my opinion and you are advised that interest earned on the investment of funds received from the sale of bonds issued by a board of education must, as directed by Section 5705.10, Revised Code, be used for the purposes for which such bonds were issued and may not be transferred to the general fund of the subdivision; transfers from the special bond fund may be made as provided in Section 5705.14, Revised Code.