

2854.

CONSERVANCY DISTRICT—DIRECTORS MAY INVEST SURPLUS FUNDS IN BONDS ISSUED BY SUCH DISTRICT.

SYLLABUS:

The directors of a conservancy district may lawfully invest the surplus funds of such district in bonds issued by such district, paying the fair market price therefor.

COLUMBUS, OHIO, June 23, 1934.

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

GENTLEMEN:—I acknowledge receipt of your communication in which you ask the following question:

“May the Directors of the Miami Conservancy District legally invest surplus cash in bonds issued by the District, purchasing such bonds at a premium, the bonds to be held as investments until maturity?”

Section 6828-42, General Code, provides that the moneys of a conservancy district shall consist of three separate funds:

“* * *

(1) Preliminary Fund, by which is meant the proceeds of the ad valorem tax authorized by this act and such advancements as may be made from the general county funds as provided in section 43 of this act (G. C. §6828-43); (2) Bond Fund, by which is meant the proceeds of levies made against the special assessments of benefits equalized and confirmed under the provisions of this act; and (3) Maintenance Fund, which is a special assessment to be levied annually for the purpose of upkeep, administration and current expenses as hereinafter provided.
* * *”

These funds are to be placed in the custody of the district treasurer, except that in case of the bond fund, section 6828-47, General Code, reads in part as follows:

“* * * provided, if it should be deemed more expedient to the board of directors, as to moneys derived from the sale of bonds issued or from any other source, said board may by resolution, select some suitable bank or banks or other depository, which depository shall give good and sufficient bond, as temporary or assistant treasurer or treasurers, to hold and disburse said moneys on the orders of the board as the work progresses, until such fund is exhausted or transferred to the treasurer by order of the said board of directors. * * *”

I find no statutory provision expressly authorizing any investment of surplus funds of a conservancy district, and ordinarily the rule is that a public officer has only such powers as are expressly conferred and such as are

implied from those expressly conferred. However, Section 6828-6, General Code, provides that such a district shall be a political subdivision of the state and "a body corporate with all the powers of a corporation, shall have perpetual existence, with power to sue and be sued to incur debts, liabilities and obligations; to exercise the right of eminent domain and of taxation and assessment as herein provided; to issue bonds and to do and perform all acts herein expressly authorized and all acts necessary and proper for the carrying out of the purposes for which the district was created, and for executing the powers with which it is invested." Of course, the board of directors is the agency through which the district acts. Section 6828-74, General Code, provides that the act shall be liberally construed to effect the control and conservation and drainage of the waters of the state. In referring to these statutes, an opinion found in Opinions of the Attorney General for 1922, page 700, reads as follows:

"The general rule of law with which the Bureau is familiar, being called upon to apply it almost daily in the discharge of its functions, is that a grant of power to a public officer or board must be strictly construed, and that the maxim 'The expression of one thing is the exclusion of all others' is to be rigidly applied to such statutes. Under such a rule there is, of course, some room for implication, as it is almost impossible, literally speaking, to create an express power or duty without also conferring some slight degree of implied power.

In the case of the conservancy act, however, the rule and the exception as they exist in ordinary cases are precisely reversed. By the express declarations of the statutes above quoted the powers of a conservancy district as such are not to be limited to those expressly granted, but are to include also the power to perform all acts necessary and proper for the carrying out of the purposes for which the district was created. As if to make the point even clearer, it is also declared that the act as a whole shall receive a liberal interpretation and not a strict one."

With reference to surplus funds, Section 6828-57, General Code, reads in part as follows:

"* * * Any surplus funds in the treasury of the district may be used for retiring bonds, reducing the rate of assessment or for accomplishing any other of the legitimate objects of the district. * *"
The letter of the Conservancy District reads in part as follows:

"The District has funds not immediately required for other purposes which may from time to time be invested in its own bonds.

With the banking situation as it now is the rate of interest on time deposits would approximate two per cent.

The investment of Conservancy funds in its own bonds at a premium would approximate 4½ per cent. This, you will see, creates a very definite source of additional income on Conservancy funds, which at the present time is very desirable."

In view of the broad powers granted to the directors of a conservancy district, and in view of the broad language of Section 6828-57, General Code.

as to the use of surplus funds, I am unable to say that the use of such funds for investment in the bonds of such district, thereby saving interest for itself, is not accomplishing a legitimate object of the district. Surely, the financing of the district for the purpose of carrying out the work of conservation therein is one of the legitimate objects of such district. The price to be paid for such bonds is within the discretion of the directors and the payment of the fair market price therefor would not be an abuse of such discretion, even if such price is more than their par value.

Consequently, I am of the opinion that the directors of a conservancy district may lawfully invest the surplus funds of such district in bonds issued by such district paying the fair market price therefor.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2855.

APPROVAL, NOTES OF BRIGHTON TOWNSHIP RURAL SCHOOL DISTRICT, LORAIN COUNTY, OHIO—\$4,400 00.

COLUMBUS, OHIO, June 23, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2856.

BANK—BI-MONTHLY REPORTS UNDER SECTION 710-32a, GENERAL CODE, APPLIES TO NATIONAL BANKS AND FOREIGN TRUST COMPANIES DOING BUSINESS WITHIN STATE.

SYLLABUS:

Section 710-32a, General Code, requiring bi-monthly reports from trust companies and banks doing a trust business, applies to national banks located in this state, and to foreign trust companies doing business within its borders, as well as to banks organized under the laws of Ohio.

COLUMBUS, OHIO, June 25, 1934.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—I have your request for my opinion as to whether banks other than those organized under the laws of this state, viz., national banking associations, located in this state, and foreign trust companies doing business in this state, are required to file bi-monthly reports, setting forth uninvested trust funds, as required by Section 710-32a, General Code.