

1054

BONDS, COUPONS—DESTRUCTION OF WW II COMPENSATION BONDS ONLY UPON APPLICATION TO STATE RECORDS COMMISSION—§§ 149.31, 149.37 RC.

SYLLABUS:

Redeemed bonds and coupons from the World War II Compensation Fund may be destroyed only upon the application to and approval of the records commission, as provided in Sections 149.31 and 149.37 of the Revised Code.

Columbus, Ohio, September 20, 1957

Hon. Roger W. Tracy, Treasurer of State
Columbus, Ohio

Dear Sir:

I have for consideration your request for my opinion which reads as follows:

“This office, acting as Treasurer of the Commissioners of the Sinking Fund, has on hand redeemed bonds and coupons of the World War II Compensation Fund since its inception in 1948 numbering 111,890 bonds and 2,724,392 coupons, all of which have been audited or examined by the State Auditor with no findings made.

“It is my desire to have these bonds and coupons destroyed by cremation in order to free our files for the filing of more current issues of bonds, thus avoiding the purchase of additional filing equipment and the use of space urgently needed for other purposes.

“It is requested that an opinion be given by you at an early date that this procedure be legal regarding the keeping of original papers of record.

“For your information, the bonds once audited are not touched from that time by either my clerks or the Auditor of State’s examiner.”

Section 149.34 of the Revised Code prohibits the destruction of any records unless a certain procedure is followed and an application or request is made to the state records commission for authorization. It should be noted that the 102nd General Assembly enacted Amended House Bill No. 27, effective September 17, 1957, which provides the Director of Finance may establish additional procedures for the destruction of records.

Section 149.34, Revised Code, provides :

“No person having the custody of any records as defined in section 149.31 of the Revised Code, shall destroy them or dispose of them, or procure or permit their destruction or other disposition, without complying with section 149.33 of the Revised Code.

Section 149.33, Revised Code, reads :

“In accordance with the procedure set forth in this section, the state records commission may authorize the destruction or other disposition of records that are six or more years old, that do not pertain to any pending case, claim, or action, and no longer have any value, historical or otherwise.

“The commission may provide that, in lieu of their destruction, records shall be transferred to an educational institution, library, museum, or historical, research, or patriotic organization in this state, if such transfer is requested by the receiving institution or organization.

“Any state officer or official who wishes the destruction or other disposition of records in his office, department, agency, board, bureau, or commission, shall submit a written application

to the commission for that purpose. The application shall contain a detailed description of the records which the applicant wishes to have destroyed or otherwise disposed of. A copy of any such application shall be furnished by the secretary of the commission to the curator of history and archivist of the division of museum and library of the Ohio state archaeological and historical society.

“The commission shall hold meetings for the consideration and disposition of applications, at which meetings the parties making application may appear and be heard in person or by representative.

“No authorization of the commission to destroy or otherwise dispose of any records is valid unless it is agreed to by all members of the commission, reduced to written form, and signed by each member. No records shall be destroyed until the expiration of sixty days from the authorization of the commission.

“When the commission authorizes the destruction or other disposition of records, the secretary shall give written notice thereof to the curator of history and archivist of the division of museum and library of the Ohio state archaeological and historical society, who may select such of the records covered in said authority of the commission as he chooses, for removal to the museum.

“Upon the selection of records by the curator, the officer having the custody thereof shall surrender them to said curator upon receipt of a copy of the order of the commission authorizing their destruction or other disposition.

“If records authorized by the commission to be destroyed or otherwise disposed of are not selected by the curator and are not transferred to any institution or organization mentioned in the second paragraph of this section within sixty days after the commission’s authorization, they shall be turned over to the superintendent of purchase and printing to be sold for salvage or destroyed.

“The written authorization of the commission, signed by all three members, is sufficient authority to any officer having the custody of records for the transfer thereof to any organization of the type mentioned in this section or to said superintendent, notwithstanding section 149.40 of the Revised Code. No officer shall turn over any records to any organization or to said superintendent for destruction until he receives such express written authority from the commission.”

“Records” are defined in Section 149.31, Revised Code, as follows:

“As used in sections 149.31 to 149.39, inclusive, of the Revised Code, ‘records’ means originals or copies of written or

printed books, documents, correspondence, papers, maps, drawings, charts, indexes, plans, memorandums, sound recordings, and motion picture or other photographic records, which records are the property or in the custody of any department, officer, board, commission, or agency of the state.

Therefore, the question would seem to be whether these redeemed bonds or coupons are within the above definition. If they are, then, in order to destroy them, the procedure outlined in Sections 149.33 or 149.37, Revised Code, should be followed.

Black's Law Dictionary defines such coupons in the following terms, at page 424 of the Fourth Edition:

“* * * written contracts for the payment of a definite sum of money on a given day and being drawn and executed in a form and made for the purpose, that they may be separated from the bonds and other instruments to which they are usually attached,
* * *”

The definition of record is sufficiently broad to include redeemed coupons and bonds. The use of the words “written or printed * * * documents” or “papers” certainly includes redeemed bonds and coupons.

Section 149.36 of the Revised Code provides that Sections 149.31 to 149.39, Revised Code, shall not restrict authority to destroy records given by other statutes. However, I find no other authority for the destruction of these records by the Treasurer or by the Board of Commissioners of the Sinking Fund.

Section 129.06, Revised Code, does provide that canceled bonds or certificates shall be filed in the office of the Board of Commissioners of the Sinking Fund.

“Funds belonging to the sinking fund shall be applied to the payment of the principal and interest of the bonded debt of the state, and to the expenses of such payment. *When paid, bonds or certificates of the bonded debt of the state shall be canceled, and 'paid' written on the face thereof with the date of payment, which inscription shall be signed by the board of commissioners of the sinking fund.* Bonds or certificates so paid shall be taken from the proper accounts upon the individual and general stock ledgers and entered in the account of bonded debt paid, specifying the particular loan, the number and date of the certificate and bonds so paid, the amount, rate of interest, time at which it was redeemable, and in whose name it was standing when paid. *All certificates*

or bonds so paid and canceled shall be filed in the office of the board."
(Emphasis added.)

While the canceled instruments are required to be filed I am not of the opinion that they must be retained on file indefinitely as the legislature in establishing the state records commission specifically provided a procedure for the destruction of records if that procedure is followed.

Accordingly, I conclude and you are advised that the redeemed bonds and coupons from the World War II Compensation Fund may be destroyed only upon the application to and approval of the records commission, as provided in Sections 149.31 and 149.37 of the Revised Code.

Respectfully,

WILLIAM SAXBE

Attorney General