

illegal moneys and the persons receiving the same, and no reason is at present apparent why that policy should not be followed in the present case.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1665.

SCHOOLS—BONDS ISSUED FOR PURPOSE OF ERECTING NEW SCHOOL BUILDING—INTEREST FOLLOWS FUND—BALANCE OF SAID FUND WILL GO TO SINKING FUND.

As the statutes contain no reasonable ground from which to deduce an intent to the contrary, the general rule that interest follows the fund would govern, so that interest upon the proceeds of bonds sold for the purpose of meeting the expense of a particular improvement, will not be turned over to the sinking fund trustees nor to the contingent fund, but will be credited with the special fund created by the bond issue, and expended for the purpose of the fund. After the accomplishment of such purpose all balance of said fund will go to the sinking fund as provided in sections 3804 and 5654 G. C.

COLUMBUS, OHIO, November 26, 1920.

HON. F. M. CUNNINGHAM, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following statement of facts:

“The board of education of Franklin village school district, of Franklin, Ohio, have been receiving interest from the Franklin National Bank, upon the money deposited by said school board received from the sale of bonds for the purpose of building a new school house.

The board of education wishes to know whether it will be lawful to put said interest money, so received, into the contingent fund of said board. And if not, then in what fund should it be proper to place said money?”

Section 2295 G. C. reads in part as follows:

“All moneys from the principal on the sale of such bonds shall be credited to the fund on account of which the bonds are issued and sold.” (106 O. L., v. 492.)

“Interest is to be regarded as incidental to the debt. Principal is always debt and the debt. Interest is an accessory or incident to the principal. The principal is a fixed sum. The accessory is a constantly accruing one. The former is the basis from which the latter arises and on which it rests.” (Howe vs. Bradley, 19 Me., 36.)

“Interest * * * is considered as a necessary incident, *the natural growth of money*, and American courts incline to give it with the principal * * *.” (Woerz vs. Schumacher, 56 N. Y., 37 App. Div., 374.)

“That within thirty days after the first Monday in January, 1916,

and every two years thereafter, the board of education of any school district by resolution shall provide for the deposit of *any or all moneys* coming into the hands of its treasurer. But no bank shall receive a deposit larger than the amount of its paid in capital stock, and in no event to exceed one million dollars." (108 O. L., 20.)

Under the above section all moneys coming into the hands of the treasurer of the board of education must be deposited in a duly authorized depository, and the sections following (7605, 7606 and 7607) provide for the payment of interest to the board of education by such depository on all moneys deposited. In the case at hand it is understood that bonds were issued for the purpose of building a new school house and that the fund resulting from the sale of such bonds has been placed in a bank until final disbursement. The general principle is that interest produced by the investment or deposit of a public or trust fund follows the principal and becomes a part of the principal. There appears no specific provision of statute creating an exception to this principle in the case of interest produced by the deposit of the proceeds of a bond issue, and nothing appears in the statutes that it was the intention of the general assembly that the rule should be otherwise than herein indicated. It is found that this same question was passed upon by the attorney-general in an opinion rendered almost ten years ago (June 30, 1911). The question at that time was upon the interest received by a city from the proceeds of bonds deposited in the city depository. The rule therein announced, after a careful survey of the statutes in existence at that time, would also apply in the case of interest received by a board of education upon funds deposited as a result of the sale of bonds for a specific improvement. None of the statutes which might bear upon this question have been amended since the issuance of the opinion in 1911 to a degree that would indicate that the view announced in such opinion would be different at this time.

"The interest produced by the deposit of money derived from the sale of bonds for a specific improvement, less the premiums and accrued interest received at the time of the sale must be credited to such fund and not to the sinking fund, and must remain so credited until the object for which the bonds were issued has been achieved, at which time it must, together with any balance remaining in the principal fund, be transferred to the trustees of the sinking fund to be applied to the payment of the bonds." (Opinion A-284, Vol. I, 1911-1912, Annual Report of the Attorney-General, page 281.)

In view of the foregoing, it must be held that there is no authority for placing interest received from money deposited by a school board from the sale of improvement bonds into the contingent fund, which the board of education apparently desires.

To place the same in the contingent fund would cause this interest money to be expended for current expenses other than what was originally intended and for things which were not a part of the improvement itself. In other words, such interest money might be exhausted for contingent purposes before any disbursement was made upon the school building itself.

Section 3804 G. C. provides:

"When any unexpended balance remaining in a fund created by an issue of bonds, the whole or part of which bonds are still outstanding, unpaid and unprovided for, is no longer needed for the purpose for which

such fund was created, it shall be transferred to the trustees of the sinking fund to be applied in the payment of the bonds."

Section 5654 G. C. provides:

"The proceeds of a special tax, loan or bond issue shall not be used for any other purpose than that for which the same was levied, issued or made, except as herein provided. When there is in the treasury of any city, village, county, township or school district a surplus of the proceeds of a special tax or of the proceeds of a loan or bond issue which cannot be used, or which is not needed for the purpose for which the tax was levied, or the loan made, or the bonds issued, all of such surplus shall be transferred immediately by the officer, board, or council having charge of such surplus, to the sinking fund of such city, village, county, township or school district, and thereafter shall be subject to the uses of such sinking fund."

It is therefore the opinion of the attorney-general that as the statutes contain no reasonable ground from which to deduce an intent to the contrary, the general rule that interest follows the fund would govern, so that interest upon the proceeds of bonds sold for the purpose of meeting the expense of a particular improvement, will not be turned over to the sinking fund trustees nor to the contingent fund, but will be credited to the special fund created by the bond issue, and expended for the purpose of the fund. After the accomplishment of such purpose all balance of said fund will go to the sinking fund as provided in sections 3804 and 5654 G. C.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1666.

APPROVAL, REFUNDING BONDS, JEROMEVILLE VILLAGE SCHOOL DISTRICT IN AMOUNT OF \$10,000.

COLUMBUS, OHIO, November 27, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1667.

APPROVAL, BONDS OF BUTLER COUNTY, OHIO, IN AMOUNT OF \$67,600 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, November 27, 1920.

Industrial Commission of Ohio, Columbus, Ohio.