

701

1. BONDS OF A MUNICIPALITY—NO PART OF PROCEEDS FROM SALE OF GENERAL OBLIGATION BONDS MAY BE USED TO PAY NECESSARY INCIDENTAL EXPENSES—LEGAL ADVERTISING, PRINTING FINANCIAL STATEMENTS, NOTES AND BONDS, ATTORNEY FEES.
2. MUNICIPALITY MAY NOT TRANSFER FUNDS, EXCEPT UNEXPENDED BALANCE FROM ANY BOND FUND TO ANY OTHER FUND OF MUNICIPALITY—MAY NOT APPROPRIATE ANY PART OF PROCEEDS OF SALE OF ANY BOND ISSUE TO ANY FUND EXCEPT FUND FOR WHICH BONDS ISSUED—ANY ORDINANCE PROVIDING FOR SUCH TRANSFER OR APPROPRIATION IS CONTRARY TO LAW AND VOID.
3. COST OF OPINION OF BOND ATTORNEY MAY NOT BE INCLUDED AS PART OF COST OF IMPROVEMENT UPON ISSUANCE OF SPECIAL ASSESSMENT BONDS OF MUNICIPALITY.

## SYLLABUS:

1. No part of the proceeds from the sale of general obligation bonds of a municipality may be used to pay the necessary incidental expenses, such as legal advertising, printing financial statements, notes and bonds, attorney fees for preparation of legislation and transcript of proceedings or opinion of bond attorney as to the legality of the bonds, incurred in the issuance of such bonds.

2. A municipality may not transfer funds, except the unexpended balance, from any bond fund to any other fund of the municipality or appropriate any part of the proceeds of the sale of any bond issue to any fund except that for which the bonds are issued and any ordinance providing for such transfer or appropriation is contrary to law and void.

3. The cost of an approving opinion of a bond attorney may not be included as part of the cost of the improvement upon the issuance of special assessment bonds by a municipality.

Columbus, Ohio, July 7, 1949

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen:

This will acknowledge receipt of your request for my opinion which reads as follows:

"A question has arisen in connection with the expenditure of General Bond Improvement funds for certain expenses incident to the issuance, sale, and printing of said bonds, which have been authorized and issued for specific purposes.

"The examination and audit of various municipalities has disclosed the use of such General Bond Improvement funds for the following purposes, which are not specifically authorized by law:

- Printing financial statements
- Legal Advertising
- Opinion of Bond Attorneys as to legality
- Attorney fees for preparation of legislation and transcript
- Printing Bonds

"In some cases the aforesaid items are charged direct to the Bond Improvement fund created from the proceeds received from the sale of notes issued in anticipation of bonds. In other instances such expense is advanced from the General Fund and later reimbursed from the Bond Improvement fund after the bonds are sold.

"We are enclosing a copy of the letter received from our city of Columbus examiner, under date of March 26, 1949, which illustrates the latter method of reimbursing the General Fund for such expenses previously advanced.

"We are familiar with the provisions of Section 3896 G. C., setting forth what the cost of any improvement shall include, which cost is to be assessed under the authority of Chapter 5 and Sections 3812 to 3911 G. C. Also the provisions of Section 2293-11, G. C. relative to the payment of interest during construction on bonds and notes from the Bond Improvement fund, when such expense is included in the bond legislation and properly provided for.

"Section 3982-2, G. C. apparently authorizes the payment of engineering and other related expenses incident to making surveys for construction, repair, etc., of municipal public works from Bond Improvement funds.

"However, we are unable to find any statutory authority for the payment of expenses incurred for printing financial statements, legal advertising, bond attorneys' fees, preparation of transcripts, or printing bonds, out of the proceeds received from the sale of general obligation bonds issued for a specific purpose. To our knowledge this question has not been ruled upon by the courts, and the Bureau files with reference to Attorneys General's Opinions on said subject indicate that no opinions have been rendered of recent date. Your attention is respectfully directed to the following listed Opinions of former Attorneys General which appear to be pertinent to matters involved in our

question concerning the use of General Bond funds for such items of expense :

Attorney General's Opinion No. 525, page 358 of 1913  
Attorney General's Opinion No. 2248, page 102 of 1925  
Attorney General's Opinion No. 196, page 277 of 1929

"Inasmuch as the answer to the foregoing is of state-wide interest, may we request that you examine the enclosed correspondence including legislation enacted by the city of Columbus, and give us your formal Opinion in answer to the following question :

When General Obligation Bonds have been authorized by a city council for specific purposes and said bonds are issued and sold in conformity with all provisions of the Uniform Bond Act, may the proceeds received from the sale of such bonds lawfully be used to pay the expense incurred in connection with said bond issue for legal advertising, printing financial statements, notes and bonds, Attorney fees for preparation of legislation and transcript of proceedings, and the opinion of a Bond Attorney as to the legality of said bonds?"

The letter of your Columbus examiner, enclosed with your above quoted letter, reads as follows :

"I am enclosing a copy of ordinance 147-47, under the provisions of which reimbursement is authorized from the several General Bond Funds named therein to the General Fund for expense incurred and previously paid from the General Fund for legal opinions, advertising bond sales, printing bonds, financial statements, etc., in the amounts set forth in the ordinance.

"Pursuant to this authorization by council, these amounts were paid from the various bond funds here named to the general fund during the year 1947, as reimbursements of bond issue expense.

"I cannot find any specific authority, other than the ordinance of Council, for this practice of charging back this bond issue expense to the respective bond funds.

"The question that arises in this connection is as follows :

Can the city of Columbus, under authority of ordinance of council, reimburse the general fund from the general bond funds for the expense of legal opinions, printing bonds, advertising costs, and other printing costs, incurred in connection with the issue of bonds in any instance here enumerated in the ordinance of council?

Are these bond issue expenses properly chargeable as part of the cost of the things to be done from the bond fund money?

“The captions of the bond funds indicated in the ordinance show the purpose for which the bonds were issued.

“This practice is being followed here and I am anxious to know whether there is authority for it or whether it has been condoned only because there is some precedent for it in that the cost of advertising and printing bonds is permitted in case of special assessment projects to be charged as part of the cost of the improvement.”

Ordinance No. 147-47 of the City of Columbus, enclosed with the copy of the foregoing letter reads as follows:

“AN ORDINANCE No. 147-47—To reimburse dept. No. 21-G, General miscellaneous rotating bond fund from various bond sales during 1946 to amount of \$2,598.36.

“Whereas, during the year 1946 the city of Columbus sold various issues of bonds and the cost of obtaining legal opinions, printing of bonds and financial statements and publishing legal notices of sales of said bonds was paid out of dept. No. 21-G, general miscellaneous rotating fund, and said fund should be reimbursed from the proceeds of said sales, and

“Whereas, an emergency exists in that no funds are available in said dept. No. 21-G for printing of bonds, etc., during the year 1947 and it is immediately necessary to provide funds for said purpose; now, therefore,

“Be it ordained by the council of the city of Columbus:

“Section 1. That from the proceeds of various bond sales during the year 1946 the following amounts be and the same are hereby ordered transferred from the following enumerated funds to dept. No. 21-G, General miscellaneous rotating bond fund, for the purpose of financing various bond issues during the year 1947:

“Relief, sanitary & storm sewers fund No. 2; obtaining legal opinion, \$500, printing bonds, \$180; printing financial statement, \$6; and legal advertising, \$33.55. Total \$719.55.

“Motor vehicles & motor driven equipment fund No. 2; obtaining legal opinion, \$275; printing bonds, \$87.50; printing financial statement, \$6; and legal advertising, \$33.55. Total \$402.05.

“Fire engine houses & equipment fund No. 1; obtaining legal opinion, \$100; printing bonds, \$95; printing financial statements, \$6; and legal advertising, \$33.55. Total \$234.55.

“Sewage treatment works fund No. 2; obtaining legal opinion, \$400; printing bonds, \$182.50; and legal advertising, \$48.06. Total \$630.56.

“Parks, playgrounds, etc., fund No. 6: obtaining legal opinion, \$75; printing bonds, \$62.50; printing financial statements, \$18; and legal advertising, \$50.76. Total \$206.26.

“Parks, playgrounds, etc., fund No. 7; obtaining legal opinion, \$85; printing bonds, \$58.50; printing financial statements, \$15.43; and legal advertising, \$84.48. Total \$243.41.

“Parks, playgrounds, etc., fund No. 8: obtaining legal opinion, \$25; printing bonds, \$52.50; and legal advertising, \$84.48. Total \$161.98.

“Sec. 2. That for the reason stated in the preamble hereto, which is hereby made a part hereof, this ordinance is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval by the mayor.”

In addition to the foregoing, this will acknowledge receipt of your supplemental request for my opinion relative to related questions presented in your original request reading as follows:

“We are enclosing a copy of the letter received from our State Examiner located at Lima, Ohio, raising a question pertaining to the legality of paying the cost of an approving opinion by a reputable firm of bond attorneys out of the special assessment improvement fund as a part of the cost of the project to be assessed under authority of Section 3896, G. C.”

The letter of your Lima examiner, enclosed with your supplemental request reads as follows:

“A question has arisen here concerning the composition of costs that may be assessed against benefited property owners who have petitioned for the improvement.

“The item in question is the cost of an approving opinion by a reputable firm of bond attorneys.

“The city solicitor thinks that it is assessable as a necessary expenditure under the provisions of Section 3896 G. C.

“As the city engineering department is now engaged in preparing assessments on a sizeable number of completed special improvements, said official and the city solicitor have requested our advice in the matter.

“Accordingly may we inquire if the charge by a reputable firm of bond attorneys for approving the legality of an issue of

special assessment bonds is a proper item of cost of the improvement to be assessed against the property benefited by the improvement?"

By way of summary of the questions which you present by the foregoing requests and for the purpose of discussing them separately, I will state them separately as follows:

1. May a part of the proceeds received from the sale of general obligation bonds, issued by a municipality, be used to pay the expense of advertising, printing financial statements, printing notes or bonds, attorney fees for preparation of legislation and transcript of proceedings leading up to the issuance of the bonds or the approving opinion of a bond attorney?
2. May a part of the special assessment improvement fund of a municipality be used to pay the fees of a bond attorney for an approving opinion as to the legality of the bonds issued in anticipation of such special assessments?

Pertinent to the discussion of both of these questions are Sections 2293-29, 5625-9 and 5625-10 of the General Code. Section 2293-29 is a part of the Uniform Bond Act and that portion of said section relevant to your questions reads as follows:

"\* \* \* The money from the principal, on the sale of such bonds or notes, shall be credited to the fund on account of which the bonds or notes are issued and sold *and used only for the purpose set out in the resolution or ordinance of the taxing authority, and all moneys from premiums and accrued interest, shall be paid into the sinking fund or bond retirement fund* from which said bonds or notes are to be redeemed. \* \* \*"

(Emphasis added.)

Sections 5625-9 and 5625-10 are contained in the Uniform Budget Act and the pertinent parts of these sections read as follows:

Section 5625-9. "Each subdivision shall establish the following funds: \* \* \*

"(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. \* \* \*”

Section 5625-10.

\* \* \* 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 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. \* \* \*

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

The only authority for the transfer of public monies from one fund to another by any taxing authority, except for poor relief, is provided for by Sections 5625-13 and 5625-13a of the General Code, which reads as follows:

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 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.

“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, paragraphs (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.”

(Emphasis added.)



A "subdivision" is defined by Section 5625-1 of the General Code to mean "any county, school district, except the county school district, municipal corporation or township in the state" and a "taxing authority" or "bond issuing authority" is defined by the same section to mean "in the case of any county, the county commissioners; in the case of a municipal corporation, the council or the legislative authority of such municipal corporation; in the case of a school district, the board of education; and in the case of a township, the township trustees."

From the foregoing statutory provisions it is obvious that a municipal corporation may not transfer funds, except the unexpended balance, from any bond fund to any other fund and that the proceeds of the sale of any bond issue may not be appropriated to any fund except that for which the bonds are issued. It follows, therefore, that Ordinance No. 147-47 of the City of Columbus is contrary to law and void.

The Uniform Bond Act provides for the issuance of securities by the various political subdivisions and taxing authorities of the state for certain general purposes and prescribes a uniform procedure to be followed in their issuance. There are in addition numerous special acts authorizing the issuance of bonds or other securities for particular purposes. However, all general obligation bonds, regardless of purpose, issued by any subdivision must conform and be governed by the provisions of this act.

The Uniform Tax Levy Law, commonly called the Uniform Budget Act, provides a uniform method of levying taxes and the budgetary procedure to be followed in the handling of public funds. Public officers in their handling of public monies are bound by the provisions of this act.

As quoted above, the Uniform Bond Act provides that the proceeds from the principal on the sale of bonds or notes shall be credited to the fund for which they are issued and used only for the purpose set out in the issuing resolution or ordinance, and that the premium and accrued interest shall be paid into the sinking fund or retirement fund. Similarly, the budget act provides that the proceeds from the sale of bonds, except premium and accrued interest, shall be paid into a special fund for the purpose of the issue and that the premium and accrued interest and interest earned on the special fund shall be paid into the sinking fund or bond retirement fund. In addition, the budget act, as set forth in the above quoted portions of Section 5625-10 of the General Code provides that money paid into any fund shall be used only for the purposes for which such fund is established.

Sinking funds for the redemption of bond issues by political subdivisions of the state are required by Section 11 of Article XII of the Constitution of Ohio. The purpose of such fund, as indicated in said section, is for the payment of interest during their term and the final redemption at maturity of all bonds issued by any such subdivision. It is apparent from the constitutional requirement regarding sinking funds and the mandatory provisions of both the Uniform Bond Act and the Uniform Budget Act that the premium and accrued interest from the sale of general obligation bonds may only be used for the payment of interest on and redemption of the bonds issued by the subdivision.

The remaining question to be determined, therefore, is whether or not advertising and printing expenses or attorney fees may be considered as a part of the purpose of the issue so as to become proper expenditures from the special bond fund into which the principal from the sale of the bonds must be paid. There appears to be no inference in any of the sections relating to the issuance of general obligation bonds by a municipality nor in the Uniform Bond Act from which incidental expenses of the proceedings to issue such bonds may be considered part of the cost and expense of the improvement. While both Opinions of the Attorney General for the years 1913 and 1925 referred to in your letter were written prior to the enactment of the Uniform Bond Act, the reasoning used in both of said opinions relative to the subject of incidental expenses would in no way be affected by any of the provisions of that act. The 1925 opinion held that attorney fees for preparing the legislation for a bond issue may not be paid from the proceeds of the sale of bonds issued for specific purposes. The 1913 opinion held that the expenses for advertising the sale of bonds should be met from the appropriation for legal advertising for the city generally, which should be paid from the general fund. I am in accordance with the reasoning expressed in the two above mentioned opinions relating to the expense incident to the issuance of general obligation bonds of a municipality. Although these opinions related to attorney fees and legal advertising expenses, it is my opinion that the reasons upon which said opinions were based would apply equally to all of the matters of incidental expense which you have listed in your inquiry.

In direct answer to your first question, I am, therefore, of the opinion that a municipality may not use any of the proceeds received from the sale of general obligation bonds to pay the expense incurred for legal

advertising, printing financial statements, notes and bonds, attorney fees for preparation of legislation and transcript of proceedings or opinion of a bond attorney as to the legality of the bonds which are necessary and incidental to the issuance of such bonds.

In considering your second question it is to be noted that Section 2293-24 of the General Code provides for the issuance of bonds in anticipation of the collection of special assessment taxes. This section provides, among other things, that upon the issuance of such bonds the assessments as paid shall be applied to the liquidation of the bonds.

Section 3896 of the General Code, referred to in the letter of your Lima investigator, directs what shall be considered as part of the cost of any improvement to be financed by special assessments. This section reads as follows:

“The cost of any improvement contemplated in this chapter shall include the purchase money of real estate, or any interest therein, when acquired by purchase, or the value thereof as found by the jury, when appropriated, the costs and expenses of the proceeding, the damages assessed in favor of any owner of adjoining lands and interest thereon, the costs and expenses of the assessment, the expense of the preliminary and other surveys, and of printing, publishing the notices and ordinances required, including notice of assessment, and serving notices on property owners, the cost of construction, interest on bonds, where bonds have been issued in anticipation of the collection of assessments, and any other necessary expenditure.”

The foregoing section after enumerating specific items which may be included as part of the cost of such improvement provides for the inclusion of “any other necessary expenditure.” Whether or not the cost of the opinion of a bond attorney as to the validity of special assessment bonds issued by the subdivision may be included in the cost of the improvement will depend upon the intent and meaning of these last four words of the foregoing section of the General Code. It will be noted that all of the items specifically authorized to be included pertain directly to acts which are required prerequisites to the making of the improvement, the assessment of the taxes to pay for the same and the issuance of evidences of indebtedness for the immediate financing thereof, including the interest charges thereon. It is observed that the last phrase of the section limits the additional unspecified expenditures which may be included as part of the cost of such improvements to “necessary expenditures.” It is my

opinion that the limitation thus placed upon the additional unspecified expenditures was intended to permit the inclusion of the cost of any such improvement only to those items which would be necessarily prerequisite to the full accomplishment of the acquisition or construction of the same, including the issuance of evidences of indebtedness to finance said improvement and the assessment of taxes to pay such indebtedness.

While it is the customary procedure in the sale of municipal obligations that a bond attorney's opinion as to their validity and legal effect accompany the bonds or notes when sold, it is not in my opinion a necessary element in the issuance of such bonds or notes. Certainly the opinion does not add to the validity or become a necessary prerequisite to the issuance of valid obligations of a municipality.

It must be borne in mind that special assessments as distinguished from general taxes are levied with reference to the peculiar and special benefit accruing to particular property by reason of the expenditure of the money raised by the special levy. It has been uniformly held in Ohio that the imposition of special assessments for the cost of public improvements is based upon the taxing power. *Sessions v. Crunkilton*, 20 O. S. 349; *Chamberlin v. Cleveland*, 34 O. S. 551. Statutes conferring power to levy special assessments, like other taxing statutes, are generally subject to the rule of strict construction. *Pretzinger v. Sunderland*, 63 O. S. 132, 57 N. E. 1097; *Mallo v. Dover*, 36 O. App. 84, 172 N. E. 841, 29 O. L. Rep. 327, 7 O. L. Abs. 620. In discussing what may be included in an assessment, 36 O. Jur. p. 934, contains the following statement:

“The general rule that statutes conferring power to levy special assessments are to be strictly construed is applicable with respect to the items which may be included in the assessment. It is also established, as a general rule, in view of the fact that assessments are based upon benefits, that the cost of particular items of construction, in connection with the making of an improvement, which confer no benefit on the property to be assessed for the cost of the improvement, cannot be included in the assessment.”

It is difficult to perceive how an opinion of a bond attorney would confer any benefit upon the property owners adjacent to the improvement or upon the improvement itself. Such an opinion would in no way lend validity to proceedings that might otherwise be invalid. It may be conceded that prospective purchasers of bonds would be more readily available if such opinion accompanied the instruments upon sale thereof, but

in the last analysis it would be my opinion that the real benefit of such opinion would inure to the purchaser rather than the municipality issuing the bonds or the property owners whose property was to be benefited from the improvement.

In direct answer to your second question, it is my opinion that the expense of an approving opinion by a bond attorney may not be included as part of the cost of the improvement upon the issuance of special assessment bonds by a municipality.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.