

ment before an indigent person may be committed by such court to such institution.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3530.

MUNICIPALITY—TRUSTEES OF SINKING FUND MAY NOT BORROW MONEY USING INVESTMENTS IN THEIR POSSESSION AS SECURITY THEREFOR.

SYLLABUS:

The trustees of the sinking fund of a municipality may not legally borrow money using investments in their possession as security for such loan.

COLUMBUS, OHIO, November 30, 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:

“Will you kindly furnish this Department an opinion upon the question of whether sinking fund trustees of a municipality may legally borrow money using investments in their possession as security for the loan?”

I can find no statute which authorizes the sinking fund trustees of a municipality to borrow money. Section 4511, General Code, provides that the trustees shall take charge of and keep a full record, and report to council at least once a year a full detailed statement of the outstanding indebtedness of the corporation for bonds issued, and of the investments and general financial business of the city or village. Section 4514, General Code, provides for the investment of moneys received by such trustees in bonds of the United States, the State of Ohio, or of any municipal corporation, school, township or county bonds in Ohio. Sections 4515, 4516 and 4516-1, General Code, provide for the deposit of their funds.

Section 4517, General Code, reads as follows:

“The trustees of the sinking fund shall have charge of and provide for the payment of all bonds issued by the corporation and the interest maturing thereon. They shall receive from the auditor of the city or clerk of the village all taxes, assessments and moneys collected for such purposes and invest and disburse them in the manner provided by law. For the satisfaction of any obligation under their supervision, the trustees of the sinking fund may sell or use any of the securities or moneys in their possession.”

With respect to the last sentence of this section, if the word “use” refers to securities, this sentence would mean that for the satisfaction of any obligation under their supervision the trustees of the sinking fund could sell any of their

securities and pay such obligations in cash, or they could use such securities in payment of such obligations. If the trustees of the sinking fund were authorized by statute to borrow money, the meaning of the word "use" might be extended to include the right to hypothecate their securities to enable the trustees to carry out the authority granted them of borrowing money, but, in the absence of any authority to borrow, the meaning of this word, in my opinion could not be extended to granting the sinking fund trustees the authority to borrow money. Apparently, however, the word "sell" as used in this sentence refers to securities and the word "use" refers to money, for clearly the word "sell" could not be construed to refer to money as used in said sentence. Under this construction, this sentence would provide that, for the satisfaction of any obligation under their supervision, the trustees of the sinking fund may sell any of the securities or use any of the money in their possession.

To say that such trustees have the authority to borrow money, would result in authorizing them to evidence such indebtedness by the issue of bonds, notes or certificates of indebtedness. The Uniform Bond Act limits the right to issue such evidences of indebtedness to taxing authorities of subdivisions, which in the case of a municipal corporation is the legislative body. While the trustees of the sinking fund of a city constitute a board of tax commissioners, such board is in no sense a taxing authority, and I know of no statute granting the right to the trustees of the sinking fund of a city to issue evidences of indebtedness. If such trustees have no right to borrow money, it would follow, of course, that they would have no right to pledge any of the investments in their possession as security for any loan.

It is my opinion therefore that the trustees of the sinking fund of a municipality may not legally borrow money using investments in their possession as security for such loan.

Respectfully,

JOHN W. BRICKER,

Attorney General.

3531.

APPROVAL, BONDS OF VILLAGE OF SYLVANIA, LUCAS COUNTY,
OHIO—\$6,000.00.

Industrial Commission of Ohio, Columbus, Ohio.

3532.

APPROVAL, BONDS OF BARBERTON CITY SCHOOL DISTRICT, SUM-
MIT COUNTY, OHIO—\$70,000.00.

COLUMBUS, OHIO, December 1, 1934.

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