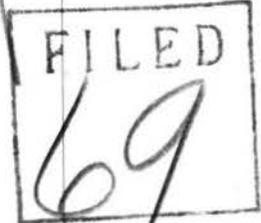


TAXATION: Surplus in sinking fund must be applied to retirement of bonds and cannot be placed in general revenue until indebtedness is paid.

February 6, 1940

Mr. Eldon W. Palmer
County Clerk
Butler County
Poplar Bluff, Missouri



Dear Sir:

We are in receipt of your request for an opinion, dated February 2, 1940, which reads as follows:

"In the year 1928 this County voted a bond issue for the construction of our Court House and Jail Building, each year the County Court has made a levy at the May Term of Court to retire the bonds and interest due for that year.

For the year 1939 levy has produced \$6,000.00 more than is necessary to pay the bonds and interest due, and the Court wants your opinion on the matter of using this fund to take care of other necessary obligations, other than paying bonds and interest. If this is a surplus before all bonds are paid, the last ones being due in the year 1948. * * * * *

Our Prosecuting Attorney is out of the City at this time, but our Court is desirous of an opinion on this matter immediately."

There is an express statutory provision providing for the care and allocation of all money derived by tax levy for the retirement of bonded indebtedness and the payment of interest thereon. Section 2896, R. S. Mo. 1929, reads as follows:

"When any bonds shall have been voted or may hereafter be voted, as provided under the Constitution of the state, for the incurring of any indebtedness by any town, city, township, county, drainage, levee, county or school district, the proceeds from the sale thereof, and all moneys derived by tax levy for interest and sinking fund, as provided under the Constitution, shall be kept by the authorities of such town, city, township, county, drainage, levee, county or school district having control of said funds, separate and apart from any and all other funds of said town, city township, county, drainage, levee, county or school district, so that there shall be no commingling of said funds with any other funds of said town, city, township, county, drainage, levee, county or school district. The proceeds of any bonds or the sinking fund or the interest collected by reason thereof that may be held by any town, city, township, county, drainage, levee, county or school district, shall, upon the passage of this section, if commingled with other funds of said town, city, township, county, drainage, levee, county or school district, be separated and deposited in a separate fund from any and all other funds. In no case shall the proceeds from the sale of any bonds so sold be used for any other purpose than for the purpose for which said bonds were voted, nor shall the sinking fund or interest collected to meet the interest on said bonds be used for any other purpose than to meet the principal and interest of said bonds."

This section provides in definite terms that all tax money for the purpose of retiring a bonded indebtedness must be kept separate and apart from any and all other funds of the county. The following section, 2897, R. S. Mo. 1929, provides a punishment of a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1000.00) or imprisonment in the county jail for not exceeding one year, or by both such fine and imprisonment, for all authorities of any county or subdivision who violate the mandate of the foregoing section.

Section 2900, R. S. Mo. 1929, provides for the investment of any surplus sinking fund in state or United States bonds which must be deposited with the county treasurer.

Section 2903, R. S. Mo. 1929, reads in part as follows:

"* * * * * Provided, that any state or United States bonds or money that may be left over after the extinction of all such county, city, town, village, township or school district indebtedness shall be paid into the general revenue fund of such county, city, town, village, township or school district."

In view of the foregoing statutory provision, it is the opinion of this department that any surplus provided by the tax levy for the retirement of bonded indebtedness and interest thereon must be kept in a separate fund or invested in bonds of the state or United States and, under no consideration, may such surplus be commingled with other funds until all the bonds are retired.

Respectfully submitted,

ROBERT L. HYDER
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General
RLH:VC