County Treasurer—Interest Coupons on Funding Bonds.

A county treasurer would not be personally liable for paying interest coupons on funding county bonds where there are sufficient funds to pay same, and there is no question as to the genuineness of the bonds and coupons or of the title of the person presenting same for payment.

July 16th, 1917.

Mr. E. C. Kurtz,
County Attorney,
Hamilton, Montana.

Dear Sir:

You have requested my opinion upon the question of whether or not a county treasurer would be personally liable for the payment of interest coupons detached from refunding county bonds, which bonds have been illegally issued by the county commissioners on account of their failure to submit the question of the issuance of such bonds to the electors of the county, within the holding of our Supreme Court in the case of Edward v. Lewis and Clark County.

An interest coupon is defined in Abbott Public Securities, Section 181 as "a written promise by the maker of the security to which it may be or was originally attached to pay one of the installments of interest due upon the principal."

Section 2913 of the Revised Codes is as follows:

> "The county treasurer must pay the interest upon the bonds authorized to be issued under the provisions of this article when the same become due, on the presentation to him of the proper coupons therefor; and all bonds and coupons which may be paid by the county treasurer must be returned by the treasurer to the county clerk at his next settlement after such payment; and the county clerk must cancel said bonds and coupons in the manner provided by law for the cancellation of county warrants."

It occurs to me, therefore, that it is mandatory upon the county treasurer, upon the presentation to him of one of these coupons, to pay the same, provided there is sufficient money in the sinking fund and he is satisfied as to the genuineness of the coupon and that the same has been regularly issued by the proper county officials, they having the authority to issue the bond and coupon in the first instance. It is a ministerial duty upon the part of the county treasurer. The act does not cease to be ministerial because he may have to satisfy himself that the state of facts exist under which it is his duty to pay the coupon. 29 Cyc. 1443.

The language of the above section of the Codes is mandatory and no discretion is lodged with the county treasurer. See New Haven v. Fresenius, 75 Conn. 145, 151, 52 Atl. 823. It is a ministerial duty imposed upon him by the legislature, and the appropriate process to

compel performance is mandamus. See Chelten Tr. Co. v. Blankenburg. 241 P. St. 394, 397, 88 Atl. 664.

It was held in City of Huron v. Meyers, 13 S. D. 420, 423, 83 N. W. 553, that where the treasurer of the city has paid interest coupons in good faith, and turned them over to the city which still retains them, he is entitled to be credited for the amount so paid in an action by the city against him to recover money alleged to have been collected by him as treasurer and not paid over. The holdings of this case was used as the text in 28 Cyc. 471.

In People v. Hudson, 109 Ill. App. on page 7 the court says:

> "The claims having been duly audited and ordered paid by the city council, the mayor was under no legal or moral obligation to overrule their decision, and might rely upon the action of the council and obey its order as he did, and for this he is not liable, unless he acted in bad faith, fraudulently or corruptly."

The above language is adopted in 28 Cyc. 475.

> "No recovery can be had by the city upon the bond of the treasurer if he pays a warrant which is valid on its face, but which in point of fact was issued for a claim for which the municipality is not legally liable. The treasurer is not obliged to overrule the judgment of the city council or other officer issuing the warrant."
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> Dillon on Municipal Corporations, Sec. 864.

In the City of East St. Louis v. Flannigan, 69 Ill. App. 167, 175, cited in the foot note in Dillon, the court says:

> "Must the treasurer know more than the city about its own affairs, and may the city hold him to account for not correcting its errors?"

In Barron v. Kaufman, (Ky.) 115 S. W. 787, at 789, the court used the following language:

> "He does not have to attend the council meeting to see if all the members are there, and if not, why not, and sit in judgment upon their dereliction. He is not a superior officer in any sense to the council or either board. He is an executive officer, an accountant. He keeps the books and accounts straight—not the members of the council. He is not an overseer who countermands. He is a servant of the city, who keeps things straight and in order. He does not go before to see what shall or shall not be one. He follows after, arranging in order what has been done, and if anything has not been done in shipshape order, he refers it back to the proper authorities to do it right. His official duties being of this character, he is not liable for the payment of warrants which he countersigns, if the council acts within the scope of the law, and apparently conforms to the statutes in allowing the demand, and if the claim has been passed upon favorably by the council's auditing committee, and the necessary appropriation is made to meet it. When a claim is certified to him in ample and usual form,

not illegal upon its face, he may, without personal liability, sign the warrant for its payment."

The above case is cited in McQuillan on Municipal Corporations, section 540.

If these county funding bonds have been properly executed by the proper county officials and have been duly registered in the office of the county treasurer, and contain a recital that all acts, conditions and things required to be done precedent to the issuance of the bonds have been duly and regularly done, the county treasurer is not bound to look behind the authority of the officials who executed the bonds, and the presentation of an interest coupon is equivalent to the presentation of a warrant properly drawn by the county officials which it is his duty to pay. A coupon is an order or warrant of the county officials for the payment of interest upon a bond and unless that order has been countermanded by the county commissioners, there can be no personal liability upon his part for paying the same. He is justified in relying upon the order of the county commissioners without knowledge of any illegal action on their part. It is stated in 29 Cyc, 1442, as follows:

> "By the greater weight of authority a ministerial officer is protected by his warrant, which he is in duty bound to execute, even if he knows that it has been irregularly or improperly issued."

I am, therefore, of the opinion that if an interest coupon detached from the bond which upon its face appears regular and valid is presented to the county treasurer for payment, there being in his possession sufficient funds to pay same, there being no question as to the genuineness of the signatures upon the bond and coupons and the title of the owner presenting the same for payment, the county treasurer would not be personally liable for paying such coupon when the same is duly presented.

Respectfully,

S. C. FORD,

Attorney General.