

**School Bonds—Transfer of Moneys in the Sinking Fund to Other Funds.**

The Board of School Trustees has no authority to use the sinking fund for the purpose of paying current expenses and the County Treasurer would not be authorized to transfer this fund to the general fund.

Louis E. Haven, Esq.,  
County Attorney,  
Hardin, Montana.

My dear Mr. Haven:

You have submitted to this office the question as to whether it is legal for the County Treasurer to transfer money in the sinking fund of a school district to the general fund of the district, with directions to pay the money so transferred back into the sinking fund when taxes are collected. In other words, must the sinking fund remain intact, or can same be used temporarily by Boards of Education, pending collection of taxes?

You cite Section 2020 of Chapter 76 of the Laws of 1913, which provides:

"The county commissioners, at the time of making the levy of taxes for county purposes, must levy a tax for that year upon the taxable property in such district, for the interest and redemption of said bonds, and such tax must not be less than sufficient to pay the interest of said bonds for that year, and such portion of the principal as is to become due during such years and in any event must be high enough to raise annually for the first half of the term said bonds have to run, a sufficient sum to pay the interest thereon, and during the balance of the term, high enough to pay such annual interest, and to pay annually, a portion of the principal of said bonds, equal to a sum produced by taking the whole amount of said bonds outstanding and dividing it by the number of years said bonds have to run and all moneys so levied, when collected, must be paid into the county treasury to the credit of such district, kept in a separate fund *and be used for the payment of principal and interest on said bonds, and for no other purpose.*"

Subdivision 1 of said section provides:

"Provided, that the board may with the surplus of such sinking fund, when the same shall be One Thousand (\$1000.00) Dollars or more, purchase any of the outstanding bonds issued by the Board. \* \* \*"

Subdivision 2 provides:

"If for any reason such bonds cannot be purchased as hereinbefore specified, such sinking fund shall be invested by the treasurer under the direction of the board of trustees, at

such times as the board shall direct, in interest-bearing bonds of the United States or of the State of Montana, which shall be purchased at the lowest market price. Interest accruing upon such bonds shall be invested in the same manner and for the same purpose as a sinking fund. Such bonds shall be held by the treasurer until the principal of any bonds issued by the board of trustees shall become due, and shall be sold at the highest market price, and the proceeds applied to the payment of bonds; \* \* \*

It is a well-established rule of law that a tax levied for a specific purpose is a trust fund and cannot be used for any other purpose, except as permitted by statute. The statute prescribes how the fund shall be invested while accumulating and by implication it could not be otherwise invested.

In 37 Cyc., page 1593, the following rule is laid down with reference to rights of bond and other creditors:

"Where the law provides that money raised by the taxation of particular property in a municipality shall be held by the county treasurer as a sinking fund for the redemption of bonds issued by that municipality in aid of a railroad, the money so raised is appropriated to the specific purpose mentioned and cannot be diverted to any other, and the obligation resting on the treasurer may be enforced by the municipality by appropriate action; and such obligation resting upon the treasurer may, it seems, be enforced even by a holder of the municipal aid bonds."

"The fact that the predecessors of the present county treasurer failed to make the appropriation of the railroad taxes required by law, and paid them over to their successor in office, will not excuse the present treasurer from making the appropriation."

Spaulding v. Arnold, 125 N. Y. 194, 26 N. E. 295.

"And it is the duty of the treasurer to set aside and invest the money in question, as the law directs, although by doing so a deficiency is left in other funds and he will not have money enough to pay the obligations of the county to the state."

Clark v. Sheldon, 106 N. Y. 104, 12 N. E. 341.

If the money is diverted by the county treasurer, by the payment of state taxes and ordinary county expenses, it may be recovered by the town from the county.

See, also:

Crowinshield v. Cayuga County, 124 N. Y. 583, 27 N. E. 242;  
Board of Education v. City of Newport, 191 S. W. 871;  
Winchester v. Board of Education, 206 S. W. 492;  
Miami Bank v. Board, 80 So. 307;  
McKinnon v. State, 70 So. 557;  
35 Cyc. 1047.

The conclusion from the foregoing is that the Board of School Trustees has no authority to use the sinking fund for the purpose of paying current expenses, and that the County Treasurer would not be authorized to make the transfer of this fund to the general fund.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.