

Irrigation Districts—Bonds—Assessments—Funds.

Moneys derived from sale of lands in irrigation district, under facts stated in the opinion, in excess of delinquent taxes and assessments should be prorated among the outstanding bonds without regard to their date of maturity.

Moneys derived from the sale of such lands to the extent of assessments that were made for a fund or funds should be placed in said fund or funds for which the assessments were made and warrants which have been issued against such funds are payable therefrom.

Bond holders purchasing the lands of the district from the county are not entitled to pay part of the purchase price with the interest coupons on the bonds which they hold.

Mr. R. N. Hawkins,
Assistant State Examiner,
Helena, Montana.

April 8, 1931.

My dear Mr. Hawkins:

You have requested an opinion in connection with the Chestnut Irrigation District, as follows:

"The Chestnut Valley Irrigation District issued and sold its bonds to the amount of \$140,000.00, dated July 1, 1920. The bonds are of the denomination of \$1,000.00 each. Eighty-four of these bonds have matured and the balance will mature at the rate of \$14,000.00 per year, beginning with January 1, 1932. Interest is unpaid on these bonds to the amount of approximately \$50,000.00 and no part of the principal has been paid. The lands of the district, with the exception of a small acreage, have been sold for delinquent irrigation district and general taxes and conveyed to Cascade county by tax deeds. The county has now advertised to sell these lands on April 10, 1931.

"Warrants have been issued by the district, other than for the payment of interest on bonds, amounting to several thousand dollars and judgments against the district have been recovered upon these warrants, which judgments are unpaid. The only levies made by the district were as follows:

"(1) For interest on the bonds in years 1921 to 1927 at the rate of \$1.80 per acre and for principal of the bonds in 1927 at the rate of \$3.00 per acre;

"(2) For maintenance in 1921, 40c per acre, and in the years 1922, 1923 and 1924, 20c per acre.

"Your opinion is respectfully requested on the following questions:

"1. If the money from the sale of the lands by the county, applicable to the payment of the bonds and interest, should be more than sufficient to pay the interest due, should the excess be applied to the payment of the principal of the bonds in the order of their maturity pro rata, or upon all the bonds which have matured pro rata, or upon all of the bonds without reference to their maturity pro rata, or in the order that the bonds are registered in the records of county treasurer?

"2. Should any of the moneys arising from the sale be applied to the payment of said warrants or the judgments recovered thereon?

"3. Should any of the moneys arising from said sale be distributed or paid into the maintenance fund of said district on account of taxes or assessments levied for maintenance and unpaid?"

Upon the sale of the lands in question, if the amount received is in excess of the delinquent taxes and assessments, so much of the purchase price should be applied to the funds for which these taxes and assessments were made as will discharge the said taxes and assessments and the remainder should be by the county treasurer placed in the bond and interest fund of the district; of course, those assessments against the lands which were made for bond and interest purposes and which are realized from the sale of the lands will also be placed in said bond and interest fund so that the bondholders will have the benefit not only of the past assessments made for bond and interest purposes but the excess of the purchase price over and above what is required to pay the delinquent taxes and assessments, provided, of course, that the excess must not be larger than the amount for which the lands would have been liable for bond and interest purposes had they not been transferred by tax deeds.

Answering your first question, it is my opinion that inasmuch as the moneys which will be available for bond redemption and interest purposes arise from what would be analogous to a receiver's sale in the case of a private corporation the moneys so derived are impressed with a trust for the benefit of all of the bonds regardless of their date of maturity and the moneys derived from the sale, which are applicable to the payment of interest and the redemption of the bonds, should be prorated among the bonds without regard to their date of maturity. I think equity would treat all of the bonds as due owing to the fact that performance is put beyond possibility by the facts existing in this case.

Answering your second question, it is my opinion that if any assessments were made for a fund or funds against which these warrants were issued the moneys which will be realized for these funds on account of such assessments must be placed in the funds for which the assessments were made and the warrants would be payable out of any moneys going into that fund by reason of the sale of the lands, thus if assessments were made for the maintenance fund there should be placed in the maintenance fund the amount that will be realized on account of said assessments through the sale of these lands, which, of course, would be the full amount of the assessments because it is only the excess over what is required to pay all the taxes and assessments that can be turned over to the treasurer for the benefit of the bondholders. The warrants issued against such fund would then be payable from the funds in the maintenance fund.

This also answers your third question. I assume that there are no outstanding tax debenture certificates in the hands of assignees of the district. If there are these certificate holders would, of course, be entitled to payment of the assessments represented in their certificates, which payment would, of course, come out of the funds for which the assessments were made.

I also have a letter from county attorney Gault of Cascade county, asking certain questions concerning this same irrigation district. His inquiries are: first, if the bondholders, as a part of the purchase price, may pay any part thereof in interest coupons and bonds. In my opinion, no part of the purchase price may be paid in this manner. While the law

provides that the county treasurer is authorized to receive, in lieu of cash, interest coupons maturing within the year in payment of any tax or assessment levied for payment of interest on bonds, it is my opinion that this applies only to those cases where they are tendered as a payment of the assessment levied for payment of interest; that is, where they are offered as a payment of the assessment and not as payment for the purchase price of the lands. These bondholders, when they purchase these lands from the county, are purchasing property and are not paying assessments as those have been merged in the title which the county has. Second, "if the entire amount is required to be paid in cash, may it be done by an exchange of checks by the treasurer and bondholders?"

I do not know just what is meant by the above question. The safest procedure would be for the bondholders to pay to the county the amount of the purchase price and the treasurer would then apportion to the funds represented by the delinquent taxes and assessments that part of the purchase price which belongs to those funds and the balance within the limitation mentioned in the court's opinion in the case of *State ex rel. Malott vs. County Commissioners* should be placed in the bond and interest fund and it is out of this that the bondholders receive their interest and redemption moneys.

Third, if all of the excess over and above the amount of delinquent taxes and assessments is available to redeem all bonds, whether matured or not, up to the total amount of the entire bond issue. The excess within the limits prescribed in the court's decision aforesaid would be applicable to the redemption of all of the bonds, whether matured or not.

I have given the above matter considerable consideration but as the opinion is required April 10th, the short time in which I have had to prepare it prevents me from stating in this opinion little, if anything, more than the conclusions which I have arrived at after consulting the statutes and decisions applicable.

Very truly yours,

L. A. FOOT,
Attorney General.