

Cities and Towns, Investment of Sinking Funds. Sinking Fund, Investment of by Cities and Towns.

Under the law of this state, it is not within the power of city authorities to invest moneys in a sinking fund in the improvement district warrants drawing a higher rate of interest than that provided for by Chapter 88, Laws of 1913.

August 28th, 1913.

Mr. J. E. Reese, City Clerk,
Big Timber, Montana.

Dear Sir:

I acknowledge receipt of your letter of the 20th inst., wherein you set forth a state of facts and propound a question upon which you request the opinion of this department. The law of this State does not permit the Attorney General to officially advise others than State Officers and Boards, County Attorneys, and Boards of County Commissioners. The city, having no City Attorney, should have presented this matter to some private counsel for the desired advice. However, in this instance, your request will be complied with.

It appears from your letter that you have in your hands a sinking fund of something more than Five Thousand Dollars in cash, deposited in the banks designated as City Depositories. This sinking fund is being accumulated to pay off a bonded indebtedness maturing in 1928. Your question is whether you may invest this money now in the sinking fund in Improvement District Warrants drawing six per cent interest, instead of allowing it to remain in the bank at two and a half per cent.

Investigation of this matter shows very little authority upon the subject. Two authorities simply make the statement that

“Surplus money in a municipal treasury not appropriated for immediate payments may be loaned or invested by the municipality until needed for municipal use.”

28 Cyc, 1562.

Quillan, Municipal Corporations, Sec. 2163.

An investigation of the cases upon which this statement was based, however, shows that in every case there was direct statutory authority for the loaning of such funds by the municipality. I have been unable to find any such authority in our law, and the usual rule is that municipal officers cannot exceed the power expressly granted to them by the statute creating the office. Furthermore, Chap. 88, Session Laws of 1913, being “An Act to provide for the deposit and control of all public moneys in the possession of and under the control of county, city and town treasurers” makes specific provisions for the deposit of all such moneys in banks, which deposit shall bear interest at the rate of $2\frac{1}{2}\%$ per annum. In view of the lack of any specific provision authorizing the investment of public moneys in securities by city treasurers and the express provisions of Chap. 88 providing for a certain method of handling such funds, I am of the opinion that it is

not within your power to invest your sinking fund in Improvement District Warrants, notwithstanding the obvious advantage of doing so.

Yours very truly,

J. B. POINDEXTER,

Attorney General.