

Irrigation Districts—Sinking Funds—Funds—Interest Coupons—Warrants.

Warrants issued in payment of interest coupons of irrigation district bonds, when registered, should be paid out of the levy for bond interest purposes before subsequently issued interest coupons are paid.

C. L. Harris, Esq.,
County Attorney,
Hysham, Montana.

January 19, 1926.

My dear Mr. Harris:

You have requested an opinion from this office upon the following statement of facts:

The Yellowstone irrigation district has a bond interest fund against which there are several thousand dollars of registered warrants. This

district also has outstanding a great many interest coupons. There is not sufficient money with which to pay the warrants. The questions involved are:

1. Whether the warrants take precedence over interest coupons.
2. Should the county treasurer pay interest coupons, when presented, out of the bond interest fund, regardless of the registered warrants?

Section 7249, R. C. M. 1921 provides in part as follows:

"The county treasurer to whom district funds or securities are intrusted shall be liable on his bond for the safe keeping of said funds and securities, and such funds shall be properly divided into the respective funds for which district taxes or assessments were levied; that is to say, United States contract fund; bond principal and interest fund; sinking fund to redeem bonds; maintenance fund; construction fund; and general fund. The construction fund shall be available for the payment of the purchase price of all works, water rights, or other property purchased by or for the district, and all expenses incident thereto; as well as for the payment of the cost of construction of works, including cost of engineering, superintendence, and other expenses incident thereto. All warrants issued for preliminary and organization expenses and all administrative expenses shall be paid from the general fund. 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, * * *."

I assume from your question that the warrants in this case were drawn under the provisions of the latter part of section 7232, and were issued in payment of interest coupons. This section provides in part:

"In the event that for any reason any special tax or assessment hereinabove provided for cannot or shall not be levied and collected in time to meet any interest falling due on any bonds issued hereunder, then the board of commissioners shall have the power and authority, and it shall be their duty, to provide for and pay such interest when due, either out of any of the funds in hand in the treasury of the district not otherwise appropriated, or by warrants (which may bear interest at a rate not to exceed six per centum per annum) drawn against the next district tax or assessment levied or *to be levied*."

The tax "to be levied" (here referred to) is the tax which is spoken of in the fore part of section 7232 where it provides "for the annual levy and collection of a special tax or assessment upon all the lands included in the district and subject to taxation and assessment, as aforesaid, sufficient in amount to meet the interest on said bonds promptly when and as the same accrues, and to discharge the principal thereof at their maturity."

It is my opinion that the warrants drawn against such fund and issued in payment of interest coupons should be paid in preference to interest coupons subsequent in time since the subsequent interest coupons could be paid out of other funds not otherwise appropriated, but if there were no other funds out of which they could be paid then it would be unfair to give them preference payment out of the interest fund where warrants had already been registered against such fund in payment of prior interest coupons. It follows that the county treasurer has no right to pay interest coupons before the registered warrants have been paid.

Very truly yours,

L. A. FOOT,
Attorney General.