

**Counties — Cities and Towns — Sinking Funds — Investments.**

A county or city in making investments of bond sinking funds under Chapter 86, Laws of 1923, may purchase securities above par if by doing so they secure the greatest return on the investment that is compatible with the safety of the funds invested and the certainty of the prompt redemption of the securities purchased at their maturity. Where more than par is paid for the securities the officers must at all times be able to justify the purchase under the rule above stated.

G. M. Robertson, Esq.,  
State Bank Examiner,  
Helena, Montana.

March 10, 1930.

My dear Mr. Robertson:

You have requested an opinion on the question whether a county or

city in making investments of bond sinking funds under Chapter 86, Laws of 1923, may pay more than par value of the securities purchased with said funds.

The object of the law in permitting these funds to be invested is to enable them to earn interest during the time they remain on hand awaiting the time when the bonds for the redemption of which they were raised become redeemable, and thus offset in whole or in part the interest that accrues upon the outstanding bonds during the same period. The law contemplates that any moneys invested under said chapter shall be made available for the use of the county or city when they are needed for the redemption of their obligations, by a redemption of the securities purchased with the sinking funds, as it is provided that such securities at the time of purchase must be due and payable ninety days before the bonds of the county or city become due and payable.

If the securities so purchased with the sinking funds are purchased at a price above par, upon redemption the city or county would, of course, receive less principal than was paid for them, and the sinking fund insofar as the principal is concerned, would be depleted to the extent of the difference between par and the price above par at which they were purchased. However, this does not necessarily mean that the sinking fund would suffer a loss to that extent. Of two available investments, one at par bearing a certain rate of interest, and the other at above par bearing a greater rate of interest, neither produces a greater or lesser return upon the investment than the other, if the total return of principal and interest in each case during the period between the purchase of the securities and the date of their redemption is the same. Where, however, two securities are available, each bearing the same rate of interest, it is obvious that the purchase of one above par would produce a lesser return of principal and interest at redemption than one purchased at par.

Nothing is said in the statute as to what rate of interest shall be secured upon the investments made. The first concern is, of course, the safety of the investment.

It is therefore my opinion that it is the duty of the officers having the power of investment to secure the greatest return upon the investment that is compatible with the safety of the funds invested and the certainty of the prompt redemption of the securities purchased at their maturity. If this result is attained by a purchase of securities above par, I see no reason why such purchase may not be made. However, in my opinion, the officers making such an investment must at all times be able to justify the purchase under the rule above stated.

Very truly yours,  
L. A. FOOT,  
Attorney General.