

Sinking Funds—Investment—State Examiner—Funds.

Section 30 of chapter 188, laws of 1931, construed with chapter 86, laws of 1923, and section 27 of chapter 160, laws

of 1931, with respect to investment of surplus sinking funds.

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

January 22, 1932.

My dear Mr. Hawkins:

You have requested an opinion with reference to investment of county, city and town sinking funds. Your first question is:

“Does chapter 188, section 30 of the 1931 laws repeal all or any parts of chapter 86 of the 1923 laws? If all parts of said chapter 86, 1923 laws, are not repealed by chapter 188, section 30 of the 1931 laws, what kinds of investments are there that must be invested under the provisions of chapter 86 of the 1923 laws and be approved by the state examiner?”

Your second question is:

“By what legal calculations can one determine ‘warrants of the county or any other county of the state’ to be due and payable at least thirty days before the date when the bonds of the county of such series or issue will become redeemable, as required by chapter 188, section 30 of the 1931 laws?”

And third:

“Have any acts or parts of acts repealed chapter 144 of the 1927 laws?”

And fourth:

“Does chapter 160, section 27 of the 1931 laws repeal all or any parts of chapter 86 of the 1923 laws? If all parts of said chapter 86, 1923 laws are not repealed by chapter 160, section 27 of the 1931 laws, what kinds of investments are there that must be invested under the provisions of chapter 86 of the 1923 laws and be approved by the state examiner?”

Chapter 86 of the laws of 1923, which I shall refer to hereafter as chapter 86, is a general act providing for the investment of sinking funds of counties, cities and towns and prescribing the kinds of securities in which such funds shall be invested. The order of investment of such surplus sinking funds is: first, United States government bonds or securities; second, state bonds and securities; third, county and city bonds; and, fourth, **or other bonds or securities which are supported by general taxation** except irrigation bonds.

Chapter 188 is an act relating wholly to county bonds, their issuance, sale and procedure for the sale, issuance and repayment and repeal of certain sections and chapters of the statutes, but does not mention chapter 86. It is a general rule in regard to statutory construction that where a special act is in conflict with a general act that the special act controls in so far as it is in conflict with the general act.

Section 30 of chapter 188 provides that whenever there is a surplus in any sinking fund over and above the amount required for the payment of principal and interest becoming due on the next interest payment date, and it is sufficient to redeem one or more outstanding bonds to which

it is applicable, where such bonds are not yet redeemable, the county treasurer at the direction of the board of county commissioners shall purchase such bond or bonds of such issue or series, if this can be done, at not more than par and accrued interest, or at such reasonable premium as the board may feel justified in paying, not in any case exceeding five per centum. Then the board must direct the county treasurer to invest the sinking fund in, first, other bonds of the county, in warrants of the county or any other county of the state, in bonds or warrants of the state, or in bonds or treasury certificates of the United States, provided, however, that such sinking and interest funds shall only be invested in such securities as will become due and payable at least thirty days before the date when the bonds of the county of such series or issue will become redeemable.

It is to be observed that this later act changes the order of investment and includes investments not mentioned in chapter 86. Under chapter 188 surplus sinking funds must be first used to redeem all bonds that have matured according to their terms or all bonds which are held by the state of Montana, whether they have matured or not. (Section 29 of chapter 188.) Chapter 188 does not authorize investments in city bonds, which is authorized by chapter 86, and it does not authorize investment in county bonds other than the bonds of the county itself, and it does not authorize investment in "other bonds or securities which are supported by general taxation."

None of the investments authorized by chapter 188 are required to be approved by the state examiner. It is therefore my opinion that it is the first duty of the county officers to follow the provisions of section 30 of chapter 188 in making investments of sinking funds, and that they can also invest in other securities mentioned in chapter 86 and not mentioned in chapter 188 providing the state examiner first approves the investment.

What has been said with reference to chapter 188 in its relation to chapter 86 applies equally to chapter 160 of the session laws of 1931. Chapter 160 is also a special act relating to the issuance of bonds by incorporated cities and towns and providing the procedure in connection therewith and for the investment of the sinking fund. It also repeals certain other sections and chapters of the code but does not expressly repeal chapter 86.

Section 27 of this act provides for investment of the sinking fund in much the same manner as does section 30 of chapter 188. Chapter 160 first requires the redemption of all bonds that have matured in cases where they are not held by the state and the redemption of all bonds held by the state whether they have matured or not by giving notice and following the procedure prescribed in section 26. If the bonds have not matured and are not held by the state of Montana it then requires the city council to purchase said outstanding bonds of the series or issue to which the sinking fund belongs if this can be done at not more than par and accrued interest, or at such reasonable premium as the council may feel justified in paying, not in any case exceeding five per centum. If this cannot be done the available money shall be invested by the city or

town treasurer under the direction of the council in, first, other bonds of the city or town, second, in warrants of the city or town, third, in warrants issued by any county of the state, fourth, in bonds or warrants of the state, and, fifth, in bonds or treasury certificates of the United States, and contains the same proviso with respect to requiring investments in such securities as will become due and payable at least thirty days before the date when the bonds of such series will become redeemable. The act does not authorize the investment in county bonds or in bonds or securities which are supported by general taxation.

It is therefore my opinion that as to chapter 160 its provisions should be followed in redeeming bonds and investments of the surplus sinking fund, and that it is also authority to invest in the securities mentioned in chapter 86 which are not mentioned in chapter 160 provided that such investment is first approved by the state examiner.

Answering your third question as to whether chapter 144, session laws of 1927, has been repealed, I do not find where it has been either expressly or impliedly repealed. It relates to an entirely different subject than does chapter 86 and 188 or 160. It is therefore not in conflict, in my opinion, with any of these chapters. It is entitled: "An Act to Authorize County Commissioners to Invest Moneys Under the Control of the County in County Warrants and Prescribing the duties of the County Commissioners, County Clerk and County Treasurer in Connection Therewith," but the act, itself, does not mention sinking funds. Section 1 authorizes the investment of any special fund subject to deposit, which, in the judgment of the board of county commissioners, would be advantageous to invest in county warrants. It could not be construed to apply to sinking funds, not only by reason of the fact that it does not particularly mention them, but also by reason of the fact that it would conflict with the provisions of other chapters relative to other investments mentioned, particularly in the chapters and sections before mentioned.

Answering your third question, I am unable to advise you of any way in which it can be determined that warrants of the county or of any other county of the state are due and payable at least thirty days before the date when the bonds of the sinking fund which has been invested in them become redeemable. Warrants are always due and payable immediately upon their issuance. They have no future payment date. The only provision of law with respect to them is that if there is no fund available out of which they can be paid they shall be registered and paid in the order of their registration. This provision was in the statute before any authorization was made for investment in warrants and was clearly intended to apply to investments in bonds or other securities that had a due date.

The only conclusion that can be arrived at in this matter is that no investment should be made in such warrants unless it is manifestly apparent that there will be funds to pay them in ample time to take up the bonds at their maturity.

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