

Cities and Towns—Sinking Funds—Investment—Special Improvement Warrants—Bonds.

Sinking funds of cities and towns cannot be invested in special improvement warrants or bonds as they are not expressly or impliedly mentioned in section 27 of chapter 160, laws of 1931.

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

August 25, 1932.

My dear Mr. Hawkins:

I have your letter enclosing one from Mr. Warren Toole, city attorney of Great Falls, in which Mr. Toole requests that you refer to this office the matter of investing sinking and interest funds of the city in special improvement district warrants.

The authority for investing sinking funds of cities and towns is contained in section 27 of chapter 160 of the session laws of 1931. The first part of this section provides:

“Whenever there is available money in any sinking or interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more outstanding bonds of the issue or series to which such sinking fund belongs, and such bonds are not held by the State of Montana, and are not subject to redemption, the city or town treasurer, at the direction of the city or town council, 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 council may feel justified in paying, not in any case exceeding five per cent per annum (5%).”

The next paragraph provides that,

“If the Council cannot purchase any of the outstanding bonds at such reasonable price, then such available money in such sinking and interest fund shall be invested by the city or town treasurer, under the direction of the city or town council, in other bonds of the city or town, in warrants of the city or town * * *.”

In my opinion, this matter is fully covered by an opinion of the attorney general found in volume 12, Opinions of Attorney General, at page 4. The question there under consideration is whether the capital of savings banks may be invested in special improvement warrants or bonds, and also whether deposit of public funds could be secured by such warrants or bonds. The statutes in each instance are identical with the language used in section 27 excepting as to warrants.

Your attention is called to the fact that section 5249, R.C.M. 1921 designating the form of improvement district bond or warrant designates

such security as a warrant (or bond). The reasoning in that case was that a special improvement bond or warrant is the obligation of the particular improvement district against which it is issued and is not an obligation of the city or town within which the improvement district is situated, and that inasmuch as the legislature presumably knew this when it made a designation of the securities as set out in both sections 4767 and 6039, as amended, and did not expressly or impliedly include improvement district warrants or bonds, it is my opinion that such warrants or bonds cannot be used for either security for deposit or as an investment of the capital of savings banks. It is likewise my opinion that the same reasoning applies in this case to the investment of sinking funds and that they were not either expressly or impliedly included in the language of section 27.

Very truly yours,

L. A. FOOT,

Attorney General.