

Opinion No. 158.

**Cities & Towns—Investments—Money
Received from Cemetery Lots.
Cities and Town—Expenditures—Con-
ventions—Luncheons—Entertain-
ment—Registration Fees—An-
nual Dues in American
Water Works Asso-
ciation, Etc.**

HELD: There is nothing in the statutes preventing cities from investing money received from cemetery lots in special improvement district bonds.

Expenditures by a city or town of municipal funds for entertainment of conventions, such as the Montana Section, American Water Works Association for luncheons for visiting ladies, entertainment, printing of banquet menus, tickets, etc., for dues of city officials in the American Water Works Association or other associations having municipal problems to deal with are not authorized.

October 26, 1939.

Hon. W. A. Brown
State Examiner
The Capitol

Dear Mr. Brown:

You have requested my opinion on the following questions:

“(1) An examination at the City of Bozeman (Commission Manager

form of government) revealed that funds collected for cemetery lots were partly invested in ‘Cemetery Permanent Investments’ consisting mostly of City of Bozeman Special Improvement District Bonds, said districts being created after the effective date of the Special Improvement District Revolving Fund Act. These investments were made without approval of the State Examiner. We would appreciate your opinion whether or not it is legal for the City of Bozeman to make investments such as these; also, may cities or towns under the other forms of city government make investments in special improvement district warrants or bonds? In answering this question, kindly advise if there is any other authority of law for making city and town investments other than Chapter 37, of the 1939 laws.

“(2) Is it legal for any city or town coming under the laws of the several forms of government to expend city or town funds for expenses for entertainment of conventions, such as the Montana Section, American Water Works Association, at Bozeman, May 13th and 14th, 1938? The expenses referred to were for luncheons provided for entertainment of visiting ladies at convention, entertainment at Hotel Baxter for convention, printing of banquet menus, banquet tickets and programs.

“(3) Also would like to have your opinion whether or not it is legal for a city or town to pay from its funds fees for registration of city officials, including the mayor, commissioners or aldermen, city engineer, water superintendent, etc., and also annual dues for such members, in such associations as the American Water Works Association, or other associations having municipal problems to deal with.”

Chapter 37, Laws of 1939, amending Section 4622.1, R. C. M., 1935, applies to the investment of “bond sinking funds” and therefore would have no application to the investment of funds collected for cemetery lots. Under Section 5039.45, cities and town have power to establish and regulate cemeteries. Sections 5168-5174 provide for the control by cities and towns of public cemeteries. There is nothing therein

relating to the investment of the funds as is the case in Sections 6469-6502, as amended by Chapter 98, Laws of 1939, relating to cemetery associations, where the investment of the funds is carefully controlled. In the absence of restrictions placed upon cities and towns by legislative action, we are compelled to advise that the investment of such cemetery funds in special improvement district bonds is permissible, since it is not prohibited. See Volume 16, Opinions of the Attorney General, 121. This would apply to all cities and towns. We find no statute relating to investments of funds of cities and towns, except said Chapter 37, Laws of 1939, which we have pointed out covers bond sinking funds only. While we are not officially concerned with questions of policy in making investments, needless to say such cemetery fund should be carefully guarded.

We are unable to find any statute authorizing the expenditure of city funds for any of the things mentioned in Questions 2 and 3. The powers of cities and towns, including those operating under the commission manager form of government (Section 5409) are set forth in Chapter 383 of the Political Code of Montana, and said Section 5409. There is nothing therein expressly authorizing the expenditure of city funds for these purposes. Unless expenditures not expressly authorized are necessarily incidental to powers given by statute, we do not think they are proper.

It is our opinion that it cannot be satisfactorily proved that these expenditures are legitimately or necessarily incidental to the powers expressly granted.