

Opinion No. 87

State Lands and Investments—Permanent School Fund—Interest and Income Fund—Constitutional Law.

Held: The refund made as a result of payment at the face value of bonds when the market price is at a lower figure does not constitute income, but is in fact a return of principal.

May 22, 1952

Mr. W. P. Pilgeram
Commissioner of State Lands &
Investments
State Capitol Building
Helena, Montana

Dear Mr. Pilgeram:

You have requested my opinion concerning the transfer of the refund realized from the purchase of U. S. Government bonds. You advise me that \$1,00,000 face value of bonds were purchased and warrants in that amount were issued, but the bonds were selling below par and a refund was received in the sum of \$35,937.50. You state the investment was made for the perma-

ment school fund. You ask if the refund should be returned to the permanent school fund or be transferred to interest and income fund and be used for the support of the schools in the next fiscal year.

The duty to protect the principal of the public school fund is stated in Section 3, Article XI of the Montana Constitution:

"Such public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested, so far as possible, in public securities within the state, including school district bonds, issued for erection of school buildings, under the restrictions to be provided by law."

The true purchase price of the bonds was the market value at the date of purchase and the refund in no way can be considered income. An analogous situation occurs in determining taxable income under the income tax law. In 27 Am. Jur. 335, the text states:

"The mere purchase of property even if at less than its true value, does not result in taxable income."

To immediately credit the refund to the interest and income fund would not be justified as the increase in value of the bonds will be realized at the time of sale prior to maturity, if the market price has increased, or at the time of payment of the bonds at their face value, whether payment be made at maturity or prior to maturity. In any event the mere purchase of bonds at less than their face value does not result in income fixed in amount at the difference between the purchase price and the par value of the securities.

It is, therefore, my opinion that the refund made as a result of payment at the face value of bonds when the market price is at a lower figure does not constitute income, but is in fact a return of principal.

Very truly yours,
ARNOLD H. OLSEN
Attorney General