

VOLUME 31

Opinion No. 14

FIRE DISTRICTS; Funds, disposition of by county treasurer; **COUNTY TREASURER;** disposition of moneys collected for rural fire district; **FUNDS;** rural fire district, disposition of.—Section 11-2008, 11-2010, 16,2405, 16-2601, 16-2618, R.C.M. 1947.

HELD: Moneys collected by the county treasurer as special taxes for rural fire district are public moneys and therefore must be invested in accordance with the provisions of section 16-2816, R.C.M. 1947.

January 31, 1966

Mr. Arthur E. Leuthold
State Examiner
Mitchell Building
Helena, Montana

Dear Mr. Leuthold:

You have requested my opinion with regard to the following question:

"May funds of a rural fire district, such district being created pursuant to the provisions of section 11-2008, R.C.M. 1947, be invested in any type of securities by its trustees, and if so, what types?

Section 11-2008, R.C.M. 1947, authorizes the creation of fire districts by the county commissioners upon petition by the owners of land included within the proposed district. In order to finance its operation the trustees are given the power to prepare an annual budget and request a special levy therefore. Section 11-2010, R.C.M. 1947. To effectuate any request for special levies by the trustees of the fire district the board of county commissioners may:

"At the time of the annual levy of taxes the board of county commissioners may levy a special tax upon all property within such districts * * * and such tax must be collected as are other taxes. * * *" Section 11-2008, R.C.M. 1947.

Section 16-2405, R.C.M. 1947, provides that the county treasurer shall be the collector of taxes. Section 16-2601, R.C.M. 1947, states that as one of his duties the county treasurer must:

"1. Receive all moneys, belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law;"

Since section 11-2008, R.C.M. 1947, requires that the special tax for fire districts must be collected as are other taxes, it is obvious that it is the duty of the county treasurer to handle it according to the provisions of the above quoted statute.

The deposit of public moneys by the county treasurer is authorized by section 16-2618, R.C.M. 1947, which states in part:

"(1) It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent bank or banks located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the board of county commissioners in the case of a county, or of the council in the case of a city or town, may designate, and no other. The treasurer shall

take from such bank such security as the board of county commissioners, in the case of a county, or the council in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits, provided that said board of county commissioners or city or town council is hereby authorized to deposit such public moneys not necessary for immediate use by such county, city or town with any bank authorized herein above in a savings or time deposit; and provided that said board of county commissioners, or city or town council is hereby authorized to invest such public moneys not necessary for immediate use by such county, city or town, in direct obligations of the United States government, payable within not to exceed one hundred eighty (180) days from the time of such investment.

"(6) Except as provided in subsection (8) of this section, all interest paid and collected on such deposits or investments shall be credited to the general fund of the county, city or town to whose credit such funds are deposited. * * *"

Subsection (8) referred to above pertains specifically to the funds belonging to school districts.

The question would therefore seem to be whether the "special taxes" which the county commissioners are authorized to levy upon collection become "public moneys" as such term is used in section 16-2618, R.C.M. 1947. If these taxes do become "public moneys" then it is clear that the trustees of the fire district cannot invest them, but rather they must be invested in accord with the provisions of section 16-2618, R.C.M. 1947.

In the case of **State v. McGraw**, 74 Mont. 152, 158, 240 Pac. 812, the Montana Supreme Court discussed the meaning of the term "public moneys." They said:

"* * * The term 'public moneys' is defined by section 11320, Revised Codes of 1921, to include 'all moneys belonging to the state, or any city, county, town or district therein.' While this section appears in the Penal Code, 'with relation to each other, the provisions of the four Codes must be construed * * * as though all such Codes had been passed at the same moment of time, and were parts of the same statute' (sec. 5522, Rev. Codes 1921); and 'whenever the meaning of a word or phrase is defined in any part of this Code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears' (sec. 8776, Rev. Codes 1921).

"Aside from the Code definition and provisions quoted, it is generally held that it is the official character in which moneys are

received, and not the ultimate ownership, which makes them
'public moneys.' * * *"

It is my opinion therefore that since such "special taxes" become
public moneys they cannot be invested in any form of securities by
the trustees of the fire district.

Very truly yours,

FORREST H. ANDERSON
Attorney General

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