

DRAINAGE DISTRICT FUNDS:

Drainage District funds may not be invested in United States securities or any other securities.

July 26, 1945



Honorable Theo. R. Schneider
Prosecuting Attorney
Bates County
Butler, Missouri

Dear Mr. Schneider:

This will acknowledge your letter of June 28, requesting an opinion from this Department whether a drainage district may invest surplus funds temporarily in United States securities.

Your letter states:

"Drainage District No. 1 of Bates County, Missouri has accumulated surplus funds which have been derived from taxation and were raised for maintenance purposes but which funds they have been unable to use because of the current labor shortage. The question has arisen whether or not such surplus funds can be invested in United States securities until such time as the labor situation eases and the money can be used for the maintenance purposes for which the taxes were levied.

"I would appreciate an opinion of your department concerning such an investment."

Chapter 79, consisting of Articles 1 to 12, inclusive, constitutes the law of this State respecting drainage districts.

Section 12348 of Article 1, Chapter 79, providing for a treasurer for a drainage district, and setting forth his duties states in part, as follows:

"The secretary of the board of supervisors in any drainage district shall hold the office of treasurer of such district, except as otherwise provided herein, and he shall receive and receipt for all the drainage taxes collected by the county collector or collectors of revenue, and he shall also receive and receipt for the proceeds of all tax sales made under the provisions of this article. * * * *
* * * * *
Said treasurer shall keep all funds received by him from any source whatever deposited at all times in some bank, banks or trust company to be designated by the board of supervisors. All interest accruing on such funds shall, when paid, be credited to the district. It shall be the duty of the board of supervisors to audit or have audited the books of said treasurer of said district each year and make report thereof to the landowners at the annual meeting and publish a statement within thirty days thereafter, showing the amount of money received, the amount paid out during such year, and the amount in the treasury at the beginning and end of the year, and file a copy of such statement in the office of the county clerk of each county containing land embraced in the district. The aforesaid treasurer of the district shall pay out funds of the district only on warrants issued by the district, said warrants to be signed by the president of the board of supervisors and attested by the signature of the secretary and treasurer. * * * "

Careful inspection and reading of the twelve articles of said Chapter 79, fail to disclose any authority giving the board of supervisors or the treasurer of any

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drainage district the right to pay out the funds of such drainage district otherwise than is provided in said Section 12348. Said Section requires the treasurer to keep all funds, received by him from any source whatever, deposited at all times in some bank, banks or trust company to be designated by the board of supervisors. That part of said Section is mandatory, and such funds may not be used for any purpose except in the discharge of the obligations of the district in its regular course of business.

Respecting the duties and authority, in their custody of and accountability for the funds of the district, of supervisors, or commissioners as they are sometimes called, and other officers of a drainage district, 19 C. J., page 632, states the following text:

"The duties of drainage commissioners and other officers are such as are prescribed by statute. Drainage officers are required to account for funds collected and distributed by them. The treasurer of the district is the custodian of its funds, and is authorized to pay them out only upon warrants issued by the directors of the district.
* * * "

The same volume, 19 C. J., page 761, respecting the disposition of a drainage district fund, in the following text states:

"Statutory provisions as to the disposition of funds derived from assessments must be complied with. Such funds cannot be diverted from the purpose for which the assessment was levied, and drainage officers are liable for misapplication thereof.
* * * "

Drainage district funds are regarded, as are all other public moneys, by the lawmakers and the courts as trust funds. The strictness with which the courts have said public officers must be held to an account in their custody and disbursement of public funds has been often expressed by our Supreme Court, with respect to school funds. By analogy, the decisions of our Supreme Court

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respecting the handling of school funds would apply in like manner to the handling of drainage district funds.

In the case of Saline County et al. v. Thorp et al., 88 S.W. (2d) 183, l.c. 186, on this question our Supreme Court said:

"* * * It must be remembered that this is a case where public officers were acting for a governmental subdivision of the state, a county, in relation to funds held in trust for the public for school purposes. Nothing is better settled than that, under such circumstances, such officers are not acting as they would as individuals with their own property, but as special trustees with every limited authority, and that every one dealing with them must take notice of those limitations. Montgomery County v. Auchley, 103 Mo. 492, 15 S.W. 626."

The Supreme Court made the same ruling in the case of Montgomery County v. Auchley, 103 Mo. 492, l.c. 502, where the Court said:

"* * * The solution of this question will depend largely upon the power of the county courts in regard to school funds. That they are simply trustees of these funds will not be disputed. All powers they possess in regard to them are derived from the statutes. * * * "

In the case of Lamar Township v. City of Lamar, 261 Mo. 171, l.c. 189, respecting the rights and duties of public officers in their custody and disbursement of public funds, our Supreme Court said:

"Officers are creatures of the law, whose duties are usually fully provided for by statute. In a way they are agents, but they are never general agents, in the sense that they are hampered by neither custom nor law and in the sense that they are absolutely free to follow

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their own volition. Persons dealing with them do so always with full knowledge of the limitations of their agency and of the laws which, prescribing their duties, hedge them about. They are trustees as to the public money which comes to their hands. The rules which govern this trust are the law pursuant to which the money is paid to them and the law by which they in turn pay it out. * * * "

In the case of State ex rel. vs. Hackman, et al., 276 Mo. 110, l.c. 116, our Supreme Court on the same point, said:

"* * * For it is fundamental that no officer in this State can pay out the money of the State except pursuant to statutory authority authorizing and warranting such payment. * * * "

In the case of Cantley vs. Little River Drainage District, 2 S. W. (2d) 607, our Supreme Court was considering a case where the Little River Drainage District had loaned its funds, without any statutory authority so to do, to a bank. The bank failed, and was liquidated by S. L. Cantley, Commissioner of Finance of the State of Missouri. The Commissioner of Finance filed this suit in two counts, one in replevin to recover certain notes that the bank had pledged to secure the funds it had borrowed from the drainage district.

The second count asserted a cause of action for money had and received.

The suit was based upon the assertion that the bank was without authority to pledge the notes as collateral because the drainage district had no statutory authority to lend its funds to the bank.

The Court did not directly hold that the Little River Drainage District had no statutory authority to lend its funds to the bank in question, but the effect of the holding of the Court in the case is that in lending the district's funds to the bank it acted ultra vires; that the

bank could not take advantage of it because the drainage district had fully executed the contract of the loan, and that the bank was estopped to plead ultra vires on the part of the drainage district. The Court in discussing the case, l.c. 612, declined to make a definite holding whether the district had the right to lend its funds or not, but the Court did say the following:

"* * * But it is not necessary to discuss the right of the district to loan their funds and take security therefor, because the bank, receiving the loan and using the money, could not well say that the district could not make a loan.

"We conclude that this transaction was a loan to the bank, and a loan negotiated and made by such bank through its board of directors, and that the notes held by the drainage district were hypothecated by the bank through its board of directors, and the bank, as well as the state commissioner of finance, is bound by the contract of loan made with the drainage district. In other words, the commissioner of finance cannot disavow a legal and binding contract made by the bank before its failure.

"What we have said, supra, disposes of the case. However, there is another theory of the law which just as effectively disposes of the case. That the bank got the benefit of the funds of the drainage district is uncontroverted. The contract was fully executed by the drainage district, and in such case, ultra vires, even if pleaded, cannot be successfully invoked. * * * "

It is, we think, fair to assume that the Court would have declared outright that the drainage district named had no right to lend its funds, had the district not been at such great disadvantage with the bank. That, we think, is the spirit and the result expressed and intended by the Court in its decision.

The terms of Section 12348, supra, positively

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require all of the funds of a drainage district to be kept at all times in the depository selected by the supervisors, and permits such funds to be paid out only as specified in said section. This Section, we believe, standing alone, would be a bar to a drainage district in lending its funds, or in investing its funds in United States securities or any other kind of securities.

So, also do we think that the ultimate holding in the Cantley case, supra, is a conclusive disapproval by our Supreme Court upon the act of a drainage district in lending its funds. If the decision does so hold, and we believe it does, it would also prohibit a drainage district from investing its funds in United States securities. There is no statutory authority given to the officers of a drainage district to invest its funds, surplus or otherwise, in securities of any kind. Such authority must be provided by statute before such investment would be lawful.

CONCLUSION.

It is, therefore, the opinion of this Department that Drainage District No. 1 of Bates County, Missouri, having accumulated surplus funds which have been derived from taxation, and raised for maintenance purposes, but which funds they have been unable to use because of the current labor shortage, has no statutory authority so to do, and may not invest such surplus in United States securities until such time as the labor situation eases and the money can be used for maintenance purposes for which the taxes were levied, nor for any other period of time, nor for any other purpose whatsoever, except as specified in said Chapter 79, R.S. Mo. 1939.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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