

CITIES OF THE FOURTH CLASS: SURPLUS WATER-
WORKS FUNDS: Surplus funds of a waterworks system of a city of the fourth class may be invested in government bonds or placed on time deposit in a depository.



May 10, 1956

Honorable Haskell Holman
State Auditor
Jefferson City, Missouri

Dear Mr. Holman:

In your recent request for an opinion from this office you stated your question as follows:

"In a recent audit of a city of the fourth class a surplus remained in the waterworks fund after the current bonds and interest obligations had been retired. Is a city of this class permitted to invest such surplus in government bonds or place on time deposit until such time these funds are needed to retire future obligations?"

Section 79.470, RSMo 1949, states that the board of aldermen of a fourth class city shall "have power to enact and make all such ordinances and rules, not inconsistent with the laws of the state, as may be expedient for maintaining the peace and good government and welfare of the city and its trade and commerce; * * *". This would seem to be a quite general grant of authority. In the event that some other section specifically, on the question here, did not preclude the investments mentioned this section would certainly suffice for the authority to make them.

Section 91.240, VAMS., reads as follows:

"There shall be selected a depository for the funds of the waterworks system in the manner as provided by section 95.280, and all moneys received from water consumers shall be deposited daily by the manager of the said waterworks system, and all to be drawn out of such depository on warrants drawn upon said depository and signed by the

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president of the board of waterworks commissioners with the seal of the board attached, countersigned by the mayor."

Section 95.280 mentioned therein, concerns cities of the third class, but, as noted, Section 91.240 makes it applicable to the fourth class cities as well.

The city council mentioned in Section 95.280 would pertain to the board of aldermen in a fourth class city. That section provides for the council or board of aldermen to select a depository within the city, after seeking sealed bids from the banks therein stating the interest they offer to pay to the city for the privilege of being made the depository for a year. Section 95.285 provides that the bank shall put up security for the deposits; Section 110.010, 1955 Cum. Supp., RSMo 1949, states what kind. Section 95.280 was written prior to the time that federal legislation precluded members of the federal reserve system and banks under the FDIC from paying interest on demand deposits, and prior to Section 362.285 of our statutes which precludes payment of interest on demand deposits in excess of that allowed by member banks of the federal reserve system or those insured under the FDIC. It is not applicable now to demand deposits because Section 110.030, RSMo 1949, says that:

"The various statutory provisions in relation to the advertisement for and receipt of bids and the award of the funds, to the best bidder or bidders * * *" for such funds "shall be applicable only if and when, at the time of said advertisement and award, it shall be lawful for banking institutions to pay interest upon demand deposits,* * *."

Sections 91.240 and 95.280 apparently are applicable if money is placed on time deposit.

There appears to be no reason why all such funds have to be put in demand deposits. For instance, there is no provision requiring it for cities as Article IV, Section 15, of the Constitution, requires it for the state funds in the hands of the Treasurer. Section 110.010 provides, among other things, that city funds that are deposited under statutes " * * * requiring the letting and deposit of the same and the furnishing of security therefor * * *" shall be secured by the deposit of the kind

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of securities listed in Section 30.270 RSMo.

The city funds in questions are "let" all right. Or if no satisfactory depository can be selected, they may be invested. (See Section 95.355, RSMo.) And if let the depository shall furnish "security therefor," as noted above. But it doesn't follow from that, that all the funds have to be placed on demand deposit.

The very fact that in certain situations some funds may be invested is an indication that the legislature did not contemplate that all of such funds be placed on demand deposits.

Certainly, Section 91.240, as well as other sections pertaining to the waterworks system contemplate that a sufficient amount will be on hand to meet the current needs. But, in the event the waterworks commissioners determine that the daily deposits, or an amount from the surplus if needed, are sufficient to meet the current needs, then we know of no provision against the city placing the surplus on time deposit.

Turning now to the question of investment in government bonds, it is noted that Section 95.355, RSMo, provides that if a satisfactory depository cannot be selected or satisfactory arrangements made, the board of aldermen are empowered and authorized to loan such moneys (meaning the various funds of fourth class cities) upon the same terms and under the same conditions as provided by law for the loaning of county and school moneys. This section is supplementary to Sections 91.240 and 95.280.

Article IX, Section 7, of the Constitution, and Section 171.010, RSMo, authorize the investment of school moneys in government bonds. Therefore, Section 95.355 authorizes the investment of the funds in question in government bonds.

CONCLUSION

In view of the above, it is the opinion of this office that the surplus remaining in the waterworks fund of a fourth class city may be invested in government bonds or may be placed on time deposits by the city.

Honorable Haskell Holman

The foregoing opinion, which I hereby approve, was prepared by my assistant, Russell S. Noblet.

Very truly yours

John M. Dalton
Attorney General

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