

BOND ISSUES:
PARK BOARD:
STATE TREASURER:
INTEREST:

Interest earned from deposit or investment of sinking funds established in connection with the State Park Revenue Bonds should be credited to said sinking funds and not to General Revenue.

OPINION NO. 84

May 24, 1965



Mr. Lee C. Fine
Director of Parks
Jefferson Building
Jefferson City, Missouri

Dear Mr. Fine:

This is in response to your opinion request which reads as follows:

"I would like your opinion on the following: Sections 253.210 and 253.230 RSMo Cum. Supp. 1963 authorize the State Park Board to issue revenue bonds for the construction of certain projects in state parks. Bonds have been issued for several of these projects. The bond agreements require that we maintain reserve and depreciation funds. Can you please advise me whether the interest earned on these funds must be deposited to general revenue or whether they may be made a part of the reserve or depreciation funds?"

We have examined the resolution of the State Park Board authorizing the issuance of the revenue bonds in question. The resolution provides for the creation of several funds, including a "Bond Reserve Account" and a "Depreciation Account."

Section 14 of the resolution provides that:

"Moneys held in the 'Bond Reserve Account' and in the 'Depreciation Account' shall be invested by the State Treasurer in bonds or other direct obligations of the United States Government becoming due within 10 years from date of purchase. All interest on any investments held in any fund or account shall accrue to and become a part of such fund or account."

The resolution of the Park Board constitutes an agreement between the Board and the purchasers of the bonds by which the Board promises to perform certain acts in return for the purchase of the bonds. It can be seen that as a part of this agreement, the Board has covenanted that all interest earned on idle funds held pursuant to the resolution will be made a part of such funds.

This is in keeping with the general principle of law as stated by the Texas Court of Civil Appeals in *Lawson v. Baker*, 220 S.W. 260, 272, that:

"Interest, according to all the authorities, is an accretion to the principal fund earning it, and, unless lawfully separated therefrom, becomes a part thereof."

See also *Pomona School District v. Payne* (California District Court of Appeals), 50 P. 2d 822, 825.

With regard to funds held by the state, the same principle is set out in 81 C.J.S., States, § 155 (a), page 1192:

"Interest earned by a deposit of special funds is an increment accruing thereto, and not to the general funds of the state."

From the foregoing, it is clear that the general rule is that interest earned on the deposit or investment of what are generally termed "sinking funds" held in connection with a bond issue should be credited to the sinking funds and not to the State General Revenue Account.

The question remains whether this general rule is modified in Missouri by the operation of Section 30.240, RSMo 1959, which provides that all yield, interest, etc., derived from the deposit or investment of "state moneys" shall be credited by the State Treasurer to the General Revenue Account.

In the case of *Petition of the Board of Public Buildings, Mo.*, 363 S.W. 2d 598, the Supreme Court dealt with revenue bonds of the State Board of Public Buildings issued for the purpose of constructing a state office building in Kansas City. The court held that revenues accruing as rentals paid by the various state agencies occupying the office building were a separate trust fund to be held and used solely for the purpose of repaying the bond holders and were, therefore, not "state moneys" except as contrasted with "private funds" and that it was proper to place such funds in the custody of the State Treasurer as custodian but such moneys were not a part of the state treasury funds.

In the present case, the Park Board resolution authorizing the bond issue provides that revenues earned by the project are to be used to establish a "Bond Reserve Account" and a "Depreciation Account" as well as to make principal and interest payments. The resolution provides that not less than \$1,800.00 per month shall be paid into the Bond Reserve Account until said account shall aggregate \$42,000.00, and that this sum shall be held in trust to prevent any default on principal and interest payments. Similarly, an aggregate sum of \$12,000.00 is to be paid into the Depreciation Account for the purpose of maintaining the project in order to keep it in efficient and successful operation.

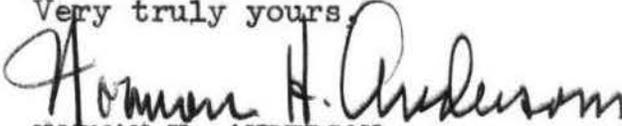
Since this money represents earnings of the project, it does not constitute "state money" under the decision of the Supreme Court in the Public Buildings case. Therefore, the provisions of Section 30.240 do not apply and the yield earned on the deposit or investment of funds in the Bond Reserve Account and the Depreciation Account should be credited to said accounts and not to General Revenue.

CONCLUSION

It is, therefore, our opinion that all interest earned through the deposit or investment of money in special funds established in connection with the issuance of State Park Revenue Bonds should be credited to such special funds.

The foregoing opinion, which I hereby approve, was prepared by my assistant, James J. Murphy.

Very truly yours,


NORMAN H. ANDERSON
Attorney General