

CITIES OF THE  
THIRD CLASS:

Sinking funds cannot be invested in United  
States Bonds.

May 6, 1943



Hon. John B. Busch  
City Attorney  
Washington, Missouri

Dear Mr. Busch:

Under date of April 27, 1943, you wrote this office  
requesting an opinion as follows:

"The City of Washington is desirous  
of investing some of the money it has  
on hand in several bond sinking funds  
in United States War Bonds. It is the  
cities plan to purchase War Bonds which  
would mature before the money would be  
needed to retire the bonds issued by  
the city, and from whose sinking fund the  
money would be taken. The money neces-  
sary to retire the bonds issued by the  
city would be available at the time they  
mature.

"As Washington is a City of the third  
class, I would very much appreciate an  
opinion from you, advising whether the  
proposed purchase of War Bonds would be  
legal."

In answering this request it is necessary to call at-  
tention to several sections of the statutes. Section 6945  
R. S. Mo., 1939, makes specific provisions for the invest-  
ment of sinking funds of cities of the third class and is as  
follows:

"Whenever there shall be in the trea-  
sury any money belonging to any sinking  
fund of any city of the third class

which cannot be applied to the payment of existing debts for which such fund has been levied and collected, the city council may provide by ordinance for loaning the same at the highest rate of interest that can be obtained, not exceeding eight nor less than six per cent per annum, payable annually, the same to be loaned upon improved real estate in the county in which such city is situated, and for such time as such money cannot be applied to the payment of the debt for which it was levied and collected; no loan shall be for more than fifty per cent of the value of the property given as security, and shall be secured by a deed of trust on the same, and any such lands so taken as security shall be free from all liens or encumbrances. In addition to the security above provided for, the city may require a bond with good and sufficient securities, and no loan shall be made to any person not an inhabitant of the county in which such city is situated, nor shall any person be accepted as security who is not at the time a resident of the county in which such city is situated, and who does not own property equal in value to the sum for which he is security and free from all debts and encumbrance, and exempt from execution and attachment. Before any loan is made on such real estate security, the party applying therefor shall file with the city clerk a complete abstract of title to the land offered as security, and no loan shall be made on any land to which the title is not good. All bonds executed by persons receiving such loans shall be made payable to the city, and shall specify the time when the principal is payable, also state the rate of interest and the time when payable; that in default of payment when due, or failure by principal in the bond to give additional security when the circumstances shall require it, both the principal

and all accrued interest shall become immediately due and payable, and that all interest not punctually paid shall become as principal and bear the same rate of interest as the principal. The city council shall have power from time to time to require additional security to be given on said bond when, in their judgment, it is deemed necessary. If such security shall not be given within ten days after an order to that effect is made by the council, and a copy of said order served upon the borrower, and in all cases where default is made in the payment of the interest, the council shall proceed to enforce the payment of the same according to law; all of which shall be fully provided for by ordinance."

In addition to this section there are Sections 3287 and 3288 which are respectively as follows:

"Whenever the county court, municipal authorities or board of directors of a school district shall decide that it would be more for the interest of the county, city, town, village, township or school district to invest the sinking fund aforesaid in state or United States bonds as aforesaid, instead of county, city, town, village, township or school district bonds, it shall order the treasurer to purchase such bonds as it may designate, who shall thereupon purchase, as soon as possible, as many of such bonds as the funds in his hands will permit, at the lowest and best rates obtainable, and not exceeding the limits to be fixed by such county court, municipal authorities or board of directors; and all such bonds, when purchased, shall be deposited with the treasury of the county, city, town, village, township or school district, or, when there is no treasurer of any such village or township, then

then with the treasurer of the county, to be kept until ordered to be disposed of as hereinafter provided."

(Section 3238)

"Whenever the county court or municipal authorities of any county, city, town, village or township, or the directors of any school district, shall deem it to the best interests of such county, city, village, township or school district to sell the United States, state, county, township, city, village or school district bonds which they may hold, and to invest the proceeds in other bonds, they shall order the treasurer to make the sale and purchase, limiting him as to the prices of both sale and purchase, and the treasurer shall thereupon make such sale and purchase agreeably to the terms and limitations of such order."

These are the sections of the statutes pertinent to your inquiry, the special statute treating specifically and in detail with the investment of sinking funds of cities of the third class and the general section authorizing the investment of sinking funds of countys, cities, villages, towns, townships and school districts in State or United States Bonds.

In construing the statutes, the primary object is to determine the intention of the law makers in enacting the laws under consideration. Running these several sections back, we find that what is now Section 6945 was first enacted as Section 81 (page 80) of a bill enacted by the General Assembly in 1893, Laws of 1893, page 65. The title of this bill was:

"An act to repeal Article 4, of chapter 30, R. S. Mo., 1889, with all amendments thereof, said article being entitled, 'cities of the third class', and to enact in lieu thereof a new article providing for the government of cities of the third class."

At the time of the enactment of this Article and what is now Section 6945, what are now Sections 3827, 3828 herein set out were existing laws and were Sections 841 and 842, R. S. Mo., 1889.

Article 4, chapter 30, R. S. Mo., 1889 treating of cities of the third class which was repealed by the act of 1893, contained no provision concerning the investment of sinking funds of cities of the third class.

Further, in determining the meaning of the statute the history of the act may be considered. *Whitehead vs. Insurance Company*, 60 S. W. (2d) 65. The later special section, having been enacted directing the manner of investing sinking funds of cities of the third class, clearly shows the intention of the Legislature to restrict the investment of such funds to the manner provided in this special act.

When a situation exists where there is one section of the law treating of a matter generally and another section treating of the same matter in detail, the section treating of the subject matter in detail will be considered an exception to the general law. *State ex inf., McKittrick vs. Carolene Products Co.*, 144 S. W. (2d) 153 l. c. 156, 346 Mo., 1049:

"Now, in regard to the senate bill, Section 12413, we have already found that it is very similar to Section 12408, with the exception that it does not name emulsified cream. It is our duty to keep the legislative intent in mind, if it can be ascertained, and the whole act, or such portions thereof as are *pari materia* should be construed together. *Holder v. Elms Hotel Co.*, *supra*.

"Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to

the extent of any necessary repugnancy between them the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.' Quoted with approval in the case of State ex rel. Buchanan County v. Fulks, 296 Mo. 614, 247 S. W. 129, loc.cit. 132.

"Sections 12408 and 12413 are general statutes dealing with milk to which has been added fat or oil other than milk fat. Section 12409 deals with the same subject in a more minute and definite way, and being special it will prevail over Sections 12408 and 12413. Considering the statutes dealing with this subject as a whole, we conclude the intent of the Legislature was to prohibit the sale of filled milk, and that filled milk is only that milk to which has been added fat or oil other than milk fat 'so that the resulting product is in imitation or semblance of milk, cream or skim milk,' and that if the product does not come within the statutory definition of filled milk it can be lawfully sold in this state."

This principle of law is so well established it is not considered necessary to cite other authorities.

#### CONCLUSION

The Legislature having prescribed in detail by a special statute, the manner in which sinking funds of cities of the third class may be invested in real estate loans, there is no law which would authorize the investing of such funds in United States bonds.

APPROVED:

Respectfully submitted,

ROY MCKITTRICK  
Attorney General

W. O. Jackson  
Assistant Attorney General