

SCHOOL BONDS: Section 165.110, Mo. Cum. Supp. 1955, provides that
BUILDING FUND: the money received from the sale of building bonds
INTEREST FUND: should be placed in the building fund, whether the
money received in exchange for the bonds is the par
value of the bonds, below par, or above par.



September 13, 1956

Honorable Haskell Holman
State Auditor
Jefferson City, Missouri

Dear Mr. Holman:

This is in answer to your request for our opinion on the following question:

"Do you interpret the provisions of Section 165.110, RSMo 1949, to mean that the proceeds from the sale of bonds shall include accrued interest, and to be placed to the credit of the building fund, or should such receipts be credited to the interest fund?"

Thereafter you submitted to us additional facts which were pertinent to the opinion request, supra. They were that the bonds referred to in your opinion request were issued and dated March 1, and began to draw interest the same day. The par value of the bonds was \$750,000.00. On April 21, the same year, a purchaser bought the bonds. He paid, in addition to the \$750,000.00, the sum of \$2,236.10, representing interest that had accrued on said bonds from the date of issue to the date of sale and delivery. This extra \$2,236.10, which was above the par value of the bonds, was credited to the building fund.

There is no authority directly in point upon which to reply in formulating an answer to your particular question. However, we have thoroughly researched the matter and have studied the applicable statutes, and it is our opinion that the money was properly credited to the building fund.

Section 165.110, paragraph 3, Mo. Cum. Supp. 1955, provides in part as follows:

"3. * * * All money derived * * * from sale of bonds, shall be placed to the credit of the building fund. * * *"

Section 108.180, RSMo 1949, provides in part as follows:

"When any bonds shall have been issued * * * the proceeds from the sale thereof * * * shall be kept separate and apart from all other funds of such governmental unit, * * * provided, that

Honorable Haskell Holman

in no case shall the proceeds derived from the sale of any such bonds be used for any purpose other than that for which such bonds were issued, * * *."

It appears to be the intention of the legislature that any and all money which comes to the school district as a direct result of, and in connection with the sale of school bonds, shall be considered as money derived from the sale of bonds and as a part of the proceeds of the sale of the bonds. It is to be credited to the building fund and used only for the purposes for which the bonds were issued.

Generally, "proceeds from the sale of bonds" are regarded as including all moneys derived from the sale. When a purchaser buys bonds, whether he pays par, below par, or above par for the bonds, the money he gives in exchange for the bonds is all "proceeds from the sale of bonds." Thus, in our case, this extra \$2,236.10, which was above the par value of the bonds, was properly credited to the building fund as it was a part of the "proceeds from the sale of bonds." It was merely part of the purchase price of the bonds. The purchaser bought the bonds for a total price, which in our case, reflected the accrued interest. Other jurisdictions have reached a similar result.

In an opinion written by E. W. Anderson, Assistant Attorney General of the State of Washington, to the Honorable C. W. Clausen, Supervisor of Municipal Corporations, Olympia, Washington, on August 12, 1927, it was held that a premium received by a school district from the purchaser of certain school bonds, in connection with the purchase of those bonds, was a part of the proceeds derived from the sale of the bonds and should be credited to the building fund. There was a statute involved which is very similar to the present Missouri statute, and which provided that the county treasurer should place all money derived from the sale of bonds to the credit of the building fund of the district. The Attorney General of Washington considered the premium as being money derived from the sale of bonds and as a result thereof--a part of the building fund.

In *City of Oakland v. Williams*, 107 Cal. App. 340, 290 P. 1044 (1930), the petitioners sought to compel the respondents to transfer to the Oakland Harbor Improvement Fund from the Oakland Harbor Interest Fund the amount of the premiums realized in the sale of Oakland Harbor Improvement bonds. A statute provided for the issuance and sale of the bonds and required the proceeds from the sale of the bonds to be placed in the municipal treasury to the credit of the proper fund, and to be used exclusively for the purposes and objects mentioned in the ordinance authorizing the bond issue. The court concluded that when bonds are sold for more than their par value, the entire purchase price, including the premiums,

Honorable Haskell Holman

constitutes the proceeds from the sale of the bonds. After making a survey of the applicable statutes, the court, at page 1046, stated:

"We are satisfied that the language of the Act of 1901 above quoted clearly and unequivocally requires the proceeds from the sale of bonds issued under it, including any premium, to be placed in the construction fund and not to be used for interest and redemption payments at least until the purposes and objects for which the bonds were issued have been fully accomplished."

From the above authority, it is our opinion that the money herein involved was properly credited to the building fund.

CONCLUSION

It is therefore the opinion of this office that Section 165.110 Mo. Cum. Supp. 1955, provides that the money received from the sale of building bonds should be placed in the building fund; and this is so whether the money received in exchange for the bonds is the par value of the bonds, below par, or above par.

The foregoing opinion, which I hereby approve, was prepared by my Assistants, Richard Dahms and George E. Schaaf.

Yours very truly,

John M. Dalton
Attorney General

RD/bi/sm
GES/bi