2901.

BANK—HAVING BOND AND COUPON REDEMPTION ACCOUNT OF MUNICIPALITY—WHEN LIABLE FOR INTEREST ON SUCH ACCOUNT.

SYLLABUS:

1. *When the bonds and coupons of a municipality are payable at a depository of such municipality, interest must be paid by such bank upon the money placed in such bond and coupon account.*

2. *Where a bond and coupon redemption account of a municipality remains at a bank after it has ceased to be a depository for such municipality, interest is not thereafter payable thereon until such bank defaults after demand for payment of funds so held.*

COLUMBUS, OHIO, February 2, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your communication which reads as follows:

> "The syllabus of Opinion No. 971, to be found at page 140, Opinions of the Attorney General for 1920, reads:
>
> 'Monies credited to a bond and coupon account by a city depository are public funds and as such draw interest.'
>
> "In the case of the *Franklin Bank* vs. *Newark*, 96 O. S., page 453, at page 456, Section 4294 G. C., is quoted, and at page 457 it is said:—
>
> 'We think it clear from the provisions of this and cognate sections of the General Code that any bank receiving funds of a municipality under the circumstances disclosed by this record, knowing the same to be funds of the municipality, becomes a trustee and must account to the municipality for the fund so deposited and all profits arising from such deposit.'
>
> Question. When bonds and coupons are payable at a designated local bank, and such bank is not the depository for the sinking or other municipal funds, is such bank liable to the municipality for interest on the bond and coupon redemption account maintained at such bank?"

An oral communication with your office develops the fact that, at the time this coupon and bond account was established with the bank in question by the trustees of the sinking fund, the bank was a depository of the municipality, but that it later ceased to be such depository. Bonds and coupons, however, which had been made payable at this bank continued to fall due at the bank after the bank ceased to be a municipal depository.

In the 1920 Opinion of the Attorney General, to which you refer, it was held that moneys credited to a bond and coupon account in a municipal depository are public funds, and, as such, draw interest. Following this opinion there can be no doubt that the bank will be liable for the interest on the funds of the bond and coupon account held in the bank during the period it remained a municipal depository.

The question then arises as to whether interest should be paid on the money in this account after the bank ceased to be a municipal depository but remained the designated place for the payment of coupons and bonds.

It is a settled doctrine of the Supreme Court of the United States that, in the absence of statutory authority to the contrary, a municipal corporation may designate in its bonds and coupons some particular bank in New York City, or elsewhere, as the place of payment.

Hainer Municipal Securities, page 382;
Meyer v. *City of Muscatine*, 1 Wall, 384;
Thompson v. *Lee*, 3 Wall, 327;
City v. *Levinson*, 9 Wall, 478;
City of Lexington v. *Butler*, 14 Wall, 282;
Lynde v. *County*, 16 Wall, 6, 13:
Board of Trustees v. *Spitzer*, 255 Fed. 136.

See also Opinions of the Attorney General 1929, page 1646.

Following the authority of the above citations, a bank may be designated for the payment of coupons and bonds of a municipality although the bank may not be a municipal depository. The authority to appoint a bank as a place at which bonds and coupons are payable, necessarily imposes an obligation on the municipality to provide funds at that place to meet the bonds and coupons when due. In fact, it is the duty of the trustees of the sinking fund or the treasurer of a subdivision to provide for the payment of bonds and interest thereon.

Section 4517, General Code, reads in part as follows:

"The trustees of the sinking fund shall have charge of and provide for the payment of all bonds issued by the corporation and the interest maturing thereon. * * * "

By the terms of Section 2295–14, General Code, like duty is imposed upon the treasurer of the subdivision to meet obligations payable from the bond retirement fund rather than the sinking fund.

In an opinion found in Opinions of the Attorney General, 1928, page 1140, my predecessor stated:

"As a general rule, in the absence of statutory provision, a party is not chargeable with interest unless there is a promise thereof, express or implied, on his part, or some default in retaining the principal, after the same becomes due and payable.

"In 33 Corpus Juris, at page 182, it is said:

"The law allows interest only on the ground of a contract express or implied for its payment, or as damages for the detention of money, or for the breach of some contract, or the violation of some duty, or where it is provided for by statute.'

"With respect to deposits in banks, the general rule of law is that interest is not payable upon such deposits in the absence of an agreement therefor until upon demand made by the depositor the bank refuses to pay the same.
State ex rel. Corwin v. *Urbans & Champaign Mutual Ins. Co.* 14 Ohio 7, 13;
Hilburn v. *Mercantile National Bank of Pueblo*, 39 Colo. 189;
Clarks, Admr. v. *Farmers Natl. Bank of Richmond*, 124 Ky. 363;
Parsons v. *Treadwell*, 50 N. H., 356;
Ex Parte Stockman, 70 So. Carl. 31;
Commercial Bank, etc. v. *Citizens Trust Co.* 153 Ky. 566.

In the situation presented by your inquiry there seems to have been no agreement as to the payment of interest on the bond and coupon redemption account maintained at the bank after the bank ceased to be a depository, and in the absence of such agreement it would seem that interest should not be payable upon such funds.

I am not unmindful of a line of cases which hold that where the funds deposited in the bank are public moneys, and where the deposit of the same is in violation of law or without statutory authority and the bank has knowledge of the public character of such funds, the relation of debtor and creditor does not arise from the transaction, but the bank, with respect to the funds deposited with it, becomes a trustee and liable for all profits accruing to such bank in the use of the funds so deposited and the public is entitled to such profits as interest on such funds and as an increment of the principal sum deposited.

Franklin Natl. Bank v. *Newark*, 96 O. S., 453;
City of Newark v. *Peoples Nat. Bank*, 15 C. C. (n. s.) 276; 90 O. S., 470;
State ex rel. Campbell v. *Natl. Bank*, 4 N. P. (n. s.) 245.

In the instant case the funds were placed in pursuance of statutory authority found in Section 4517, General Code, so the rule in such cases would not apply.

In specific answer to your inquiry, therefore, I am of the opinion that:

1. When the bonds and coupons of a municipality are payable at a depository of such municipality, interest must be paid by such bank upon the money placed in such bond and coupon account; and

2. Where a bond and coupon redemption account of a municipality remains at a bank after it has ceased to be a depository for such municipality, interest is not thereafter payable thereon until such bank defaults after demand for payment of funds so held.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2902.

VILLAGE SCHOOL DISTRICT—JOINED TO RURAL SCHOOL DISTRICT UNDER SECTION 4682-1, GENERAL CODE—DISPOSITION OF UNEXPENDED BALANCE IN VILLAGE DISTRICT CONSIDERED.

SYLLABUS:

An unexpended balance remaining in a special fund which has been maintained by a rural school district for the purpose of meeting the interest and principal requirements of bonds heretofore issued by a village school district, dissolved under Section 4682-1, *General Code, and joined with the rural school district, should, after all such bonds have been retired, be transferred to the bond retirement fund or sinking fund of the present rural school district in accordance with the provisions of paragraph* (6) *of Section* 5625-13, *General Code, unless the present district has no bonds outstanding, in which event transfer should be made to some other fund of the present district with the approval of the court of common pleas.*

COLUMBUS, OHIO, February 2, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date is as follows:

"You are respectfully requested to furnish this department with your written opinion upon the following: