

“(c) In bonds, notes, certificates or other valid obligations of any state or territory of the United States which for five (5) years prior to the date of such investment has promptly paid the principal and interest on its bond and other legal obligations in lawful money of the United States.”

Burns' Indiana Statutes Annotated (1933),
June, 1942, Cumulative Pocket Supplement,
Section 18-2124.

A careful reading of the above quoted section makes it very clear that such bonds do not fall within the descriptions as set forth in the above section, and they, therefore, could not be eligible for investment of such excess funds by a domestic building and loan association.

STATE BOARD FOR DEPOSITORS: Funds bequeathed to civil municipal corporations with the restriction that only income can be used—whether same should be deposited as public funds under Chapter 3 of the Acts of 1937.

October 20, 1942.

Mr. Ross Teckemeyer, Secretary,
State Board for Depositories,
238 State House,
Indianapolis, Indiana.

Dear Mr. Teckemeyer:

I have before me your letter requesting an official opinion in answer to the following questions:

“1. Do funds bequeathed to a civil corporation, where only the income can be used, become public funds under the terms of Chapter 3, Acts of 1937, an act concerning public funds?

“2. Can a board or commission hold such funds in its own name or should the funds be deposited in the name of the proper treasurer of the municipality?”

Section 1 of Chapter 3 of the Acts of 1937 defines the term "public funds" as follows:

"The term 'public funds' means and includes all funds coming into the possession of the treasurer of state, treasurer of the board of trustees of any state benevolent, penal or educational institution, and all funds coming into the possession of any state officer by virtue of such office, and all funds coming into the possession of any local officer by virtue of such office, *but shall not mean nor include funds coming into the possession of any public officer which ARE NOT IMPRESSED WITH A PUBLIC INTEREST NOR DESIGNED FOR A PUBLIC USE.*" (Our italics and capitals.)

Acts of 1937, page 8.

"Local officer" is defined by the same section of the Act to mean:

"* * * any person or persons elected or appointed to any office in any municipal corporation in the State of Indiana and includes all boards, commissions, departments, institutions, and other bodies established by law to function as a part of the government of any such municipal corporation, but the term shall not include any state officer."

Acts of 1937, page 8.

Whether the funds come into the possession of the board of park commissioners or the treasurer of the city to which they are bequeathed, it seems to me that they are clearly within the terms, quoting from the definition of "public funds," of "all funds coming into the possession of any local officer by virtue of such office." However, in quoting from the definition of "public funds" I have capitalized certain language for the purpose of emphasis and for further analysis. It is said in the statute that the term "public funds" shall not mean nor include "funds coming into the possession of any public officer which are not impressed with a public interest nor designed for a public use." The question immediately suggests itself as to whether it is intended by the language last

quoted to bring funds impressed with a public interest within the definition of "public funds," even though not designed for a public use, or whether funds impressed with a public interest coming into the hands of a local officer are not to be considered as "public funds" unless they are designed for a public use. This becomes a rather important question in determining whether the funds described in your question are "public funds" because such funds clearly are "impressed with a public interest" but are not "designed for a public use" in the sense that any of the principal can be used. The language used, it seems to me, is somewhat ambiguous but it seems to me that it is intended to define two categories which would describe funds which might come into the possession of a local officer and yet would not be "public funds"—such categories being first, funds coming into the possession of a local officer which "are not impressed with a public interest" and second, funds coming into the possession of a local officer which are not "designed for a public use."

There is another consideration, however, which, I think, has a very definite bearing upon the question as to whether the bequests are to be deposited under the terms of Chapter 3 of the Acts of 1937, or whether they may be invested in such a manner as to yield an income.

Your first question assumes the case of a bequest to a civil corporation, none of the principal of which can be used by such corporation. It seems obvious that the testator, in making the bequest, could not have intended that the fund thus bequeathed was to be handled in such a way that no income could be realized from it because, as assumed in your question, the only benefit to be derived by the corporation is income. The question, therefore, becomes broader than the simple question as to whether such funds are "public funds." It reaches to the further question as to whether the intent of the testator can be thwarted or whether some method has been provided for carrying out the obvious intention. I think the answer to this is found in the provisions of Section 48-1407 of Burns' Indiana Statutes Annotated (1933), which provides as follows:

"The common council of every city shall have power to enact ordinances for the following purposes: * * *

“Sixth. To receive gifts, donations, bequests, and public trusts and to agree to conditions and terms accompanying the same and bind the corporation to carry them out.”

This provision of the laws governing municipal corporations was not repealed by the Depository Act and, I think irrespective of whether the funds involved are “public funds” or not, the above provision should be construed with the Depository Act so as to leave it in full force and effect as applied to gifts, donations, bequests and public trusts.

It is true that the will, copy of which has been furnished me, does not set up a definite procedure, but I think there is sufficient in it as applied to Subdivision Sixth of Section 48-1407, *supra*, as to authorize the city to receive the gift and to invest it in such a way as to yield an income, which is the only part of the bequest which it can use.

Your first question is answered accordingly.

As to your second question, I do not find anything in the statute which definitely determines who should be the custodian of such a fund. However, it seems to me that the treasurer ordinarily should be the party in whose name the funds should be deposited pending investment—the deposit to be for the use and benefit of the Board charged by the will with the administration of the fund.

STATE BOARD OF ACCOUNTS: Servicemen's Dependents' Allowance—Whether clerks may charge for certified copies of records involved in same.

October 20, 1942.

Mr. Otto K. Jensen,
Chief Examiner,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Mr. Jensen:

This is in reply to your request for an opinion upon the following question: