

materia, that the Anatomical Board may, upon application, obtain all unclaimed bodies from such institutions as are listed in said act.

INTEREST: County's liability for interest on unloaned cemetery trust funds.

Cemetery Trust Funds: Liability of county for delinquent interest or interest on unloaned funds.

Delinquent Interest: On loans of Cemetery Trust Funds—Liability of county for same.

July 18, 1940.

Honorable C. R. Benjamin,

Member of Indiana State Board of Tax Commissioners,
Indianapolis, Indiana.

Dear Sir:

I have your inquiry concerning Sections 21-214 to 21-216, Burns' Ind. St. Ann., 1933, wherein provisions are made for county commissioners to accept bequests and donations of funds to be held in trust for the care of cemeteries.

You ask:

"1. In the case of a county with such cemetery funds in trust, and such funds loaned, and interest delinquent on such funds, is the county general fund required to pay such delinquent interest to the cemetery association before the county has collected same?

"2. In the case of a county with such cemetery funds in trust, and such funds not loaned, is the county general fund required to pay five per cent interest on such idle money to the cemetery association?"

The following language contained in the above sections of the statute requires consideration:

"All such moneys so received by the county commissioners shall be loaned by the county auditor in like manner as the common school fund is loaned and at the same rate of interest." (Sec. 21-214.)

“The auditor shall have the same powers and duties in the collection of the principal and interest, in the foreclosure of mortgage, sale of land, suit for deficiency and other necessary acts to properly protect this fund as is now made and provided by law for the collection of the principal and interest belonging to common school fund, and shall be liable on his bond for any neglect or failure with respect to said fund in the same manner as with respect to such school fund; and the county shall also be liable for the preservation of the principal and the payment of the interest on such fund in the same manner and to the same extent as it is liable with respect to the principal and interest of such school fund.” (Sec. 21-216.)

At the time of the enactment of the foregoing statute, the respective counties entrusted with common school funds were liable “for the payment of the annual interest thereon, at the rate established by law, the payment of which interest shall be full and complete every year, and shall so appear in the auditor’s report to the superintendent of public instruction; and the said superintendent shall, at any time when he discovers from the report, or otherwise, that there is a deficit in the amount collected, for want of prompt collection, or otherwise, direct the attention of the board of county commissioners and county auditor to the fact, and said board of commissioners are hereby authorized and required to provide for such deficit in their respective counties.” (Sec. 28-104, Burns’, etc., 1933; Acts 1865, ch. 1, Sec. 3, p. 3.) It has been held that the statute last cited gives effect to the liability of the respective counties for interest upon school funds in accordance with Article VIII, Sec. 6, of the Indiana Constitution which provides:

“The several counties shall be held liable for the preservation of so much of the said fund as may be entrusted to them, and for the payment of the annual interest thereon.”

In the case of Board of Commissioners of Hamilton County v. State ex rel. Michener, Attorney General, (1890) 122 Ind. 333, the Supreme Court said:

“All of the relations existing between debtor and creditor exist between the State and the several counties. The fund is entrusted to the county, and it is charged with the amount which it receives; if loss occurs the county has to make that loss good, and if the borrowers to whom the fund is loaned fail to pay the interest as it annually falls due, the county is bound to pay it, and if the money is not loaned the county is chargeable with the interest thereon and must pay it.”

Since a county's liability for interest upon cemetery funds held in trust pursuant to Sec. 21-114 *et seq.*, *supra*, is the same as its liability for interest upon the common school fund held in trust by it, the county is liable for such interest whether the fund is fully loaned, or is in part or wholly idle. The rate of interest fixed in Sec. 28-215, Burns', etc., 1933 (Acts 1933, ch. 118, Sec. 1, p. 723) by the following language:

“Each county of the state of Indiana holding in trust any parts of said funds shall be chargeable by the state, with interest at the rate of five per cent per annum on the total of such funds so held by it, on and after said April 1, 1933.”

is applicable to such cemetery funds referred to in Sec. 21-114 *et seq.* The statutes do not specify the particular fund out of which a county shall make up a deficit of principal or interest in either the common school fund or the cemetery funds involved, but the deficit is such a statute-created liability as may be paid out of any moneys contained in the general fund and unappropriated, or as will support a specific appropriation in making up the annual budget.