ACCOUNTS, BOARD OF: Depository interest on sinking fund diverts to “state sinking fund for public deposits,” created by chapter 33 of Acts of 1932.

February 17, 1933.

Hon. Lawrence F. Orr,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter calling attention to the provisions of section 22 of chapter 94, of the Acts of 1931, which provides for the creation of a “sinking fund” in school cities of more than 300,000 inhabitants. You submit the following question:

“Does the depository interest on this sinking fund divert to the ‘state sinking fund for public deposits,’ created by chapter 33 of the Acts of 1932?”

Section 4 of the State Sinking Fund for Public Deposit Act of 1932, provides in part as follows:

“Immediately after this act becomes effective the interest to become due on all public funds in any depository in this state deposited under and pursuant to the terms and conditions of chapter 222 of the Acts of 1907, as amended before the date this act becomes effective and the interest to become due on all public deposits in any depository in this state deposited under and pursuant to the terms and conditions of the public depository act of 1907 and all acts amendatory thereof and supplemental thereto is hereby diverted therefrom, and from the State of Indiana, the various political subdivisions thereof, and the respective funds provided for by law and shall be paid into the state treasury and kept in the fund created by this act until such fund shall have a minimum balance of three million dollars.”


Section 6 of said act provides further as follows:

“It shall be the duty of the several boards of finance and other boards created under and pursuant to the terms and conditions of the ‘public depository act of
1907 and all acts amendatory thereof and supplemental thereto' to file with the treasurer of state a list of such depositories as shall have been selected by such boards as depositories of public funds, and when so ordered by the treasurer of state, such boards shall cause the interest upon such public deposits under their jurisdiction to be paid to the proper treasurer for the benefit of the state sinking fund.” (Our italics.)


Section 16 (d) of said act defines “public deposits” as follows:

“The term ‘public deposits’ means all moneys deposited in any depository in this state under and pursuant to the terms and conditions of the ‘public depository act of 1907 and all acts amendatory thereof and supplemental thereto.’”


It is apparent from the foregoing that the test of applicability of the “state sinking fund for public deposits” act of 1932, to any particular fund, is whether said fund is required to be deposited pursuant to the Public Depository Act of 1907, and acts amendatory thereof and supplemental thereto. If the fund is required to be so deposited, then the above act of 1932 in express terms applies.

Returning now to section 22 of chapter 94 of the Acts of 1931, referred to by you, said section provides in part as follows:

“Each such school city shall annually from its special fund provide a sinking fund for the payment and retirement of any bonds of said school city in a sum equal to not less than 5 per cent of the principal of all bonds of such school city outstanding at the time such respective annual contribution to the sinking fund shall be made. The money or property at any time in such sinking fund shall be used only for the payment or retirement of the principal of bonds of said school city.

“If, in any calendar year, the principal of bonds of such school city shall mature and be paid by such school city with funds other than sinking fund money, then
to the extent of such payment no contribution need be made to said sinking fund in that calendar year.

"The money in such sinking fund may, in the discretion of the board of school commissioners of such school city, be, from time to time, used in the purchase for retirement of any bonds of said school city, or be used in the purchase for said sinking fund of bonds or negotiable obligations of the United States of America, or of the State of Indiana, or of the county or of the civil city in which said school city is located, and any bonds or obligations, other than the bonds of said school city in said sinking fund, may in the discretion of said board of school commissioners be sold from time to time, and the proceeds used by said school city in any way that money in said sinking fund might lawfully, under the provisions of this section, be used. The income of such sinking fund shall not be used for a purpose other than one for which the principal could be used agreeable to the provisions of this section. (Our italics.)


I think the above fund, insofar as it is not invested as above provided, is required to be deposited pursuant to the Public Depository Act of 1907 (Burns Annotated Indiana Statutes of 1926, section 12634), and upon the basis of what has already been said the state sinking fund for Public Deposits Act of 1932 applies to it.

It is urged, however, in view of the provision of section 22 of chapter 94, of the Acts of 1931, supra, that "the income of such sinking fund shall not be used for a purpose other than one for which the principal could be used agreeable to the provisions of this section," that to divert any part of the depository interest to the state sinking fund for public deposits would impair the obligation of the contract of the school city with holders of its bonds. I do not think so. Such diversion is for the purpose of the greater security of the principal sum, and, in my opinion, may be properly charged as a legitimate expense of its administration without impairing the obligation of such contract. Moreover, it will be observed that the term used above is "income," which, without doing vio-
lence to the language, may very properly be considered as including net income only.

In re Niland's Estate (Wis.), 143 N. W. 170;
Dulaney's Admr. v. Dulaney (Va.), 54 S. E. 40.

For the reasons above given, I think chapter 33 of the Acts of 1932, applies to the "sinking fund" created under the provisions of section 22 of chapter 94 of the Acts of 1931, and that your question, therefore, should be answered in the affirmative.

TAX COMMISSION: Imposition of penalty for failure to file schedule in non-taxable estates.

February 27, 1933.

Hon. C. B. Ullum,
Inheritance Tax Administrator,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you request an opinion as to whether courts of probate jurisdiction are required to impose a penalty for the failure of representatives of an estate to file a schedule in non-taxable estates pursuant to the provisions of section 7 of the 1931 Inheritance Tax Law.

The statute referred to, provides in part as follows:

"The court shall charge any executor, administrator, trustee, heir or party responsible, a penalty of fifty cents ($0.50) for each day said schedule is not filed within the time prescribed by this act, or within the time additionally granted by the court. The amount of penalty so chargeable shall be included in the court's decree in taxable AND NON-TAXABLE ESTATES and shall be payable to the county treasurer of the county in which the court is sitting." (Our italics and capitals.)


In my opinion, the above language clearly requires the imposition of the penalty in pending cases where the estate is non-taxable to the same extent and under the same conditions as where the estate is taxable. It should be borne in mind that the penalty is not a part of the tax imposed upon the transfer, but is a charge against the person or persons required under the law to file the schedule.