ACCOUNTS, STATE BOARD OF: Barrett Law Bonds, whether holders thereof may collect interest after maturity.

July 21, 1936.

Hon. William P. Cosgrove,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter calling attention to Chapter 317 of the Acts of 1935 and requesting an official opinion in answer to the following question:

"Are the holders of Barrett Law Bonds entitled to collect interest on bonds matured when such interest is collected by the City Treasurer?"

The question submitted requires a construction of certain portions of both Sections 1 and 2 of the above Act and particularly a construction of the following language appearing in Section 2 thereof:

"The interest so collected, in all cities except cities of the first class (,) shall be set aside as a separate fund to cover the necessary expense provided for in Section 3 hereof: Provided, however, That any excess of such fund, over and above the amount required to cover the necessary expense provided for in Section 3 hereof, shall become a part of the fund for the payment of the bonds issued on account of such assessments respectively, together with the interest on such bonds: Provided, further, That in cities of the first class all of the interest so collected shall become a part of the fund for the payments of the bonds issued or (on) account of such assessments respectively together with interest on such bonds." (Our italics.)


The above language, however, in and of itself presents no particular difficulty of construction, the ambiguity arising principally, if not entirely, from the following language later in said section, namely:
“In no event, however, shall payments of delinquent assessments, or instalments thereof, be accepted without the payment of interest thereon after delinquency to the date when paid, as now provided by law, and such interest shall become a part of the particular fund for the payment of the bonds issued on account of such assessments.” (Our italics.)


It is apparent at once that the above quoted provisions are not consistent with each other. The first requires the interest collected in all cities except cities of the first class to be set aside as a separate fund to cover the necessary expense provided for in the previous Section. The later quoted provision provides that the interest shall become a part of the particular fund for the payment of the bonds issued on account of the assessments. It has been suggested that the word “interest” in the first quoted provision should be read “penalty,” but my investigation fails to reveal any basis for such a construction. The language used is evidently an amendment of similar language used in Section 6 of the 1931 Act on the same subject, being the Section which is amended by Section 2 of the 1935 Act. It so happens that Section 6 of the 1931 Act contains two provisions which are almost identical, requiring the interest to become a part of the fund for the payment of the bonds. When the legislature in 1935 came to amend Section 6 of the 1931 Act the first part of the amendment being the part first above quoted dealt with the first provision concerning interest and left the second provision untouched. The two provisions as they existed in the 1931 Act were entirely consistent. They meant the same thing, the latter being a repetition of the former. When the Section was amended in 1935, however, the inconsistency came into being by the amendment of the first provision, at the same time leaving the second unchanged.

There is a general rule of construction that where there is an irreconcilable conflict between two provisions of the same Act, the later provision, having regard to its position in the Act, will control the earlier one, but this rule is only a rule of construction for the purpose of arriving at the intention of the legislature which, after all, is the desired end to be attained in the construction of ambiguous language in a statute.
The rule is based upon the theory that the latest language in point of position is the latest expression of the legislative will, but that rule cannot be given effect, in my opinion, to overturn the very evident intention of the legislature which was to make a change in the particular provision with which it was dealing. The thought which I have in mind is referred to in the case of Curless vs. Watson, 54 Ind. App. 110, at page 124, where the Court said:

"Where provisions of a former Act are adopted and incorporated into a new Act, and such provisions are in irreconcilable conflict with the other provisions newly framed the latter will control."

See also State ex rel. vs. Heidorn, 74 Mo. 410.

In this particular case, the later language was simply copied from the original Act as it had been enacted in 1931. The newly framed provision is the amendment introduced by the provision first above quoted as to which under the rule above stated the newly framed provision would take precedence over that which had been left unchanged. In my opinion, therefore, the clear and explicit language of the Section requires that your question be answered in the negative except as to any excess of the fund as is not required to cover the necessary expenses provided in Section 1 of Chapter 317, supra.

I think it may be doubtful, however, as to whether this provision can be given effect excepting prospectively as to new issues of Barrett Law Bonds. The 1931 Act apparently placed this interest in its entirety into the fund for the payment of bonds. That provision became a part of the bondholders' contract whose obligation the legislature was prevented from impairing.