

Section 77 provides that in the event of the payment of city bonds, the warrant required "for the payment of such bonds, *with accrued interest and exchange,*" shall be drawn by the president upon the depository. (Our italics.)

It is my opinion that the word "interest," used in the above provisions of the law, refers to the payment of the coupons which is the interest on bonds. The interest coupons are as much of an indebtedness of the city, when due, as is the principal of the bonds.

Your question is, therefore, answered in the affirmative.

AUDITOR OF STATE: Procedure for refunds by State of taxes erroneously collected.

July 29, 1937.

Hon. Laurence F. Sullivan,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Mr. Sullivan:

I have before me your letter relative to the payment of a claim for a refund of taxes by David Posner, et al., of Lake County, Indiana. Accompanying your letter is a copy of a letter by the auditor of Lake County, reading in part as follows:

"On May 2, 1936, the Board of County Commissioners allowed a claim for refund to David Posner and 29 others in the amount of \$42,851.19. This claim was allowed after a Lake Superior Court judgment had been granted in that amount to the claimants.

"This claim for refund has been in the courts of Indiana since 1925. At the time the taxes were paid, action was taken against the treasurer to halt distribution of the money paid. However, the money was distributed in the settlement of that year. The Supreme Court of Indiana has finally held that the assessment was erroneous and a Lake Superior Court has granted judgment in the amount of the claim filed. This judgment is over a year old and last week the same court mandated me to pay same."

The letter of the auditor states further that:

"I shall make the deduction of your share (\$5,404.52) from this settlement on the basis of the 1935 rate."

I assume from the foregoing that the county auditor has paid the refund claim in full and is deducting the State's share from his settlement. The payment of the full amount apparently was made because of a court order mandating the auditor to make payment in full.

You request an opinion as to whether this is the proper procedure and as to whether the claim is a valid claim.

I think it is quite clear that this procedure is not the procedure provided by the statute. My predecessor had the same question under consideration and in an opinion rendered to you on August 4th, 1936, went quite fully into the subject.

Opinions of Attorney General, 1936, page 276.

It was pointed out in that opinion that the statutory procedure required the presentation of the claim for refund to the board of commissioners whose duty it is to order the amount so proved to have been wrongfully paid "to be refunded to said payer from the county treasury, so far as the same was assessed and paid for county taxes," and the county auditor was required to "draw his warrant therefor," and the county treasurer was required to "pay the same out of any money not otherwise appropriated."

Burns Indiana Statutes, Annotated (1933), section 64-2819.

The succeeding section, section 64-2820 of Burns Indiana Statutes, Annotated (1933), sets up the procedure authorizing the auditor of state to refund the State's portion. The section provides as follows:

"In all cases where a portion of the amount so wrongfully assessed and paid shall have been for State purposes, and shall have been paid into the state treasury, it shall be the duty of the said board of commissioners to certify to the auditor of state the amount so proven to have been wrongfully paid, under the seal of said board of commissioners, and the auditor of state shall, thereupon, audit the same as a claim against

the treasury, and the treasurer of state shall pay the same, out of any money not otherwise appropriated: Provided, however, That nothing in this Act shall affect present litigation: Provided, however, That such certificate shall be filed within five (5) years from time of payment of such wrongfully assessed tax."

It will be observed from the foregoing that it is not contemplated that the county auditor shall pay the full amount of the taxes erroneously collected, but shall pay the same only so far as they were assessed and paid for county taxes. As to the States' portion, that amount is to be certified by the board of commissioners to the state auditor and is to be paid by him.

While the statute does not go into detail as to the type of receipt which is to be given to the auditor of state, clearly, I think, the auditor would be entitled to require the presentation of a verified claim and a receipt as in the case of other disbursements made by the auditor.

That was the gist of the previous opinion and I adhere to that opinion.

This particular case apparently has been complicated by the fact that the auditor under a mandate of the court has paid the full amount of the refund, including the State's portion, and is now claiming the right to make the deduction.

There is, in my opinion, no authority for such a procedure and the question arises as to whether anything can be done about it. The claimants have been paid in full; they, therefore, have no further claim. The county auditor, under the statute and according to its literal terms, has no right to the deduction, and yet there is apparent justice in his claim.

If the several claims, composing the total, are all valid claims, it seems to me, as a practical matter, that the county auditor should furnish the executed vouchers of all the claimants showing the amount paid by him and showing that the litigation as to each claim was pending prior to 1929. Upon the filing of such papers it may be that you would be authorized to allow the deduction in the settlement, but the procedure followed by the county auditor, in my opinion, is clearly wrong and contrary to the intent of the statutes above referred to.