

ACCOUNTS, STATE BOARD OF: Barrett Law Bonds, priority of payment rights acquired by prior presentation of such bonds.

January 5, 1937.

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

Dear Sir:

I have before me your letter requesting an official opinion relative to the priority rights for payment of Barrett Law Bonds as between the holders thereof and arising out of the following statement of facts, viz.:

A certain series of bonds matured on August 1, 1936. "A" presented his bonds in person to the clerk-treasurer of the town on the morning of August 1, 1936, and "B" sent his bonds for collection to a bank located in the town which presented the bonds for collection on August 4, 1936. All the bonds were properly indorsed by the clerk-treasurer showing date of presentation and that the bonds were not paid on account of want of funds. Both parties requested the clerk-treasurer to make a record of the foregoing, together with the name and address of the holder at the time the bonds were presented. "A" contends that his bonds should be paid when funds are available and prior to the bonds held by "B".

The question is:

Is "A" right in his contention?

The question of the proper disbursement of Barrett Law collections under the above circumstances is involved in considerable difficulty, owing to the numerous changes which from time to time have been made in the law with respect thereto. Since you refer to the 1931 Act in your letter, I am assuming that the bonds in question were issued after the taking effect of that Act, and what is said herein is to be construed as applying to bonds so issued.

Section 4 of that Act provides in part as follows:

"* * * Such bonds shall bear interest from such date until the maturity thereof, in case funds are on hand at the maturity date with which to pay the same;

otherwise, such bonds shall bear interest from the date thereof until funds are available sufficient to pay the face value thereof, together with the accrued interest thereon. Interest shall likewise be paid on the interest coupons attached to said bonds, in the event funds are not on hand at the time of the maturity of such coupons to pay the same, and the rate of such interest after the maturity date of such bonds and coupons shall be the same as the rate of interest provided for in the bonds to be paid prior to maturity. No interest shall be paid on any such bonds or coupons after the maturity date thereof, except from the date on which they are first presented for payment and stamped 'not paid for want of funds.'"

"It shall be the duty of the proper officer, as herein designated, to stamp on every such bond and coupon presented for payment the date of such presentation and a statement as to whether the same was paid or not on account of want of funds. *Upon request of the holders of any matured bond or coupon, it shall be the duty of the officer charged with the payment thereof to make a record thereof, together with the name and address of the holder, and to notify such holder by mail immediately when funds are available to pay the same. Such notices shall be sent in the order in which requests for notices have been made.*" (Our italics.)

Acts of 1931, page 410.

In arriving at an answer to your question, I think the above section should be considered in connection with section 48-2713 of Burns Indiana Statutes Annotated (1933), which provides in part as follows:

"* * * When the assessment roll for the cost of the work of improving any street or alley or any other public improvement in any city of this state shall have been finally approved at any time between the first day of July of any year and the thirty-first day of December of the same year, in cases where property-owners affected have elected to pay assessments in installments, the first installment of the principal of such assessment, together with the accrued interest thereon, shall be payable on the first Monday of May

next succeeding, and the first of any series of bonds issued for the payment of any such improvements shall be payable on the first day of June next succeeding and the interest thereon shall be calculated accordingly. All subsequent payments of installments of principal and interest and the redemption of bonds and interest coupons shall be made at the regular time of payment thereof as now provided by law. All bonds hereafter issued in anticipation of assessments made on account of public improvements, in cases where the property-owners affected shall have elected to pay the cost of such improvements in installments as now provided by law, shall be issued in anticipation of the aggregate amount of such assessments for each particular improvement *and not against the individual assessment of each property-owner* so electing to pay in installments. Such bonds shall be issued in denominations not exceeding five hundred dollars (\$500) each and shall be issued in ten (10) equal series, one (1) series payable each year beginning as herein provided." (Our italics.)

Burns Indiana Statutes Annotated (1933) Sec. 48-2713.

I refer to the above provision because I think it throws some light upon the question as to the funds to which the bond holder may look for the payment of his bonds. It will be noted that the provision is that the bonds "shall be issued in anticipation of the *aggregate amount* of such assessments for each particular improvement." (Our italics.) The above language, standing alone, would indicate that every bond holder holding a bond issued as a result of any particular improvement would have the right to look to the entire assessment roll on that improvement insofar as the same was being paid in installments. I am informed, moreover, that such is the practical construction which has been given to the above language in the past and that no effort has been made to limit any bond holder to the installments coming due during the period immediately preceding the maturity date of his bond. I will say in passing that I doubt whether the word "aggregate," as used above, should be given such a broad meaning, however, in view of the language immediately

following that last above quoted. It will be noted that in providing that the bonds "shall be issued in anticipation of the aggregate amount of such assessments for each particular improvement" the language continues, "*and not against the individual assessment of each property owner.*" In other words, the word "aggregate" was used to mean all of the property owners as distinguished from each separate individual rather than all of the roll so far as payable in installments as distinguished from the installments due in any particular year. But I have not found any express provision which limits the bond holder to any particular year's collections, and, in view of what I have been informed has been the uniform practice in the past, I think that such construction should be adhered to in the further discussion of your question until the matter has been judicially determined.

Returning now to a discussion of section 4 of the 1931 Act *supra*, I think the language used is fairly plain in its meaning. In the first place, it is evident that there is no obligation upon the part of the collecting officer to pay except upon the presentation of a matured bond. Neither is there any provision that the officer shall take cognizance of all outstanding matured bonds, whether presented or not, and disburse or retain for future payment his collections upon a pro rata basis. The intention seems to be to require the collecting officer to pay any matured bond upon presentation if there are sufficient funds available to do so. If there are not sufficient funds to do so and the holder requests it, the officer must give such holder notice by mail when funds are available, and these notices are required to go out in the order in which the requests are made. I think the statute is plain on this subject. In my opinion the question should be answered in the affirmative.

I desire to call attention, however, to the fact that this opinion affords no protection to a disbursing officer in the event of a final adverse ruling by a court of competent jurisdiction, and for that reason the question, perhaps, should be settled in an appropriate legal proceeding.