ACCOUNTS, STATE BOARD OF: Ditch bonds, whether same bear interest after maturity.  

August 22, 1938.

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

Dear Sir:

I have before me your letter requesting an official opinion upon the question as to whether drainage bonds issued pursuant to section 6183 of Burns’ Annotated Indiana Statutes of 1926 bear interest after maturity. The above statute provides that,—

"* * * such bonds shall be numbered in consecutive order, beginning with those first maturing, and shall fall due from year to year as the assessments above provided shall suffice to pay the same; they shall bear interest at the rate of six per cent per annum, payable semi-annually; they shall show upon their face for what purpose they are issued, and shall be payable from such assessments and not otherwise."

The bonds thus issued are not county bonds in the sense that they are county obligations, being payable only out of the fund to be derived as provided by statute. See Thorlton v. Guirl Drainage Co., 184 Ind. 637.

The fund for the payment of such bonds is derived from special assessments as provided by the language of the statute immediately after that already quoted which is as follows:

"* * * Thereupon, the auditor shall extend all such assessments then remaining unpaid upon a special duplicate, to be provided for him at the expense of the county, and to be known as the 'ditch duplicate,' for recording all such assessments in said county; in so extending such assessments upon said duplicate, the auditor shall, in the first instance, extend the same for the full period of payment of all such assessments, as fixed by said order of the board of commissioners, and shall calculate and add to each successive installment interest at the rate of six per cent per annum until the date fixed for the payment thereof; such assessment shall constitute a first and paramount lien upon
said tracts or parcels of land respectively, and shall be collected at the same time and in the same manner that taxes are collected; and, when collected, shall be applied to the payment of such bonds, principal and interest, and to no other purpose whatever; and in event said assessments or one or more of them shall not be paid when due, such failure to pay shall result in the same penalties as attach upon the nonpayment of taxes as provided in cases of delinquent taxes, and such lands shall, upon the failure of payment of said assessments or installments, be placed upon the list of lands to be sold at tax sale and be sold at tax sale at the same time and in the same manner as is provided for under the general law of making tax sales, and the same penalties shall attach and the same rights shall be acquired upon purchase at such tax sales as in other cases, including the execution and delivery of tax deed and rights and remedies provided for in cases of property sold at tax sale. * * *” (Our italics.)

Burns' Annotated Indiana Statutes of 1926, Section 6183.

It will be noted that the statute provides expressly for the payment of interest on said bonds at the rate of six per cent per annum but is silent as to whether such interest ceases with the maturity of any such bond or bonds. Their payment, however, is expressly limited to the assessments, and the method provided for setting the same up upon the duplicate evidently contemplates the collection, if such assessments are paid when due, of any amount sufficient only but entirely sufficient to pay the principal and interest of such bonds at their maturity. In other words, a fund is provided for the payment of principal and interest to maturity; but no fund is provided to pay interest thereafter unless it is contained in the provision for the collection of delinquent assessments wherein it is provided that in such case the same penalties shall attach as in the case of the collection of delinquent taxes. In this connection it is urged that these penalties can be used for no other purpose than the payment of the principal and interest of the bonds. However, it seems to me that a close reading of the statute discloses that the provision referred to applies only to the installments as set up upon the duplicate and which are paid
in the usual course. Moreover, as to the penalties to attach in case of delinquencies, the measure is the penalties attaching in the case of delinquent taxes which might be changed many times during the term of one of such bonds. If it be contended that the penalty attaching is the penalty attaching in the case of delinquent taxes at the time when the bonds were issued, at the time the bonds were issued in the case which gives rise to your question the penalties involved would be much more than sufficient to pay six per cent interest upon the past due bonds. This argument would show that there would be enough collected in the way of penalties to pay the six per cent interest after maturity of such bonds but it does not fit in with the claim that such penalties are to be added to the bond fund which can not be used for any purpose other than the payment of the principal and interest of the bonds. In my opinion the bond fund consists of the amounts realized from the several assessments as set up upon the duplicate which includes sufficient to pay principal and interest to maturity and it is this fund which can be used for no other purpose.

I think the view heretofore expressed is strengthened when it is considered that when a bondholder, as is provided by the statute, sues the property holder on his bond, the penalties and attorney's fees to be collected are not because of interest on such bonds accruing after maturity, but are in the nature of costs to be allowed to the litigant on account of his costs of collection. Note the language of the statute upon the subject,—

"* * * and the holder or holders of such bonds shall have the right to enforce collection by suit brought in the name of the State of Indiana, on the relation of the county treasurer, in behalf of the holder or holders of such bonds for any installment or installments remaining due and unpaid, together with like penalties, and the recovery shall be without relief from valuation and appraisement laws, and with reasonable attorney's fees for collecting the same. * * *"

In my opinion, in the absence of a provision for the payment of interest after maturity, bonds issued under the statute referred to by you do not bear interest after maturity.