1984 WL 249833 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
February 22, 1984

***1** The Honorable George W. Summer
Newberry County Treasurer
Post Office Box 206
Newberry, South Carolina 29108

Dear. Mr. Summer:
By your letter of September 16, 1983, you advised that Newberry County is considering a Money Management Program whereby all county bank accounts would be combined, with interests earned on investments applied equally to the County and School General Funds. You further advised that the County presently has four sinking fund accounts for the purpose of paying off bonds and coupons on bond issues, to wit: Newberry County Hospital Sinking Fund, FHA Hospital Sinking Fund, JFH Nursing Home Sinking Fund, and Newberry County School Sinking Fund. You have requested an opinion on whether the sinking fund accounts along with their investment earnings must be kept in individual accounts, or whether such sinking funds may be combined with all other county bank accounts and interests under the Money Management Program.

As this Office has not examined any ordinances enacted by Newberry County pertaining to the above-cited sinking funds, we would note first that there are at least two portions of the South Carolina Code under which these bonds could have been issued. Chapter 15 of Title 11 pertains to the issuance of bonds by political subdivisions, which could include counties; however, Newberry County is specifically excluded from the provisions concerning investment of funds as related to sinking funds by Section 11-15-300, Code of Laws of South Carolina (1976). Additionally, a county may issue bonds pursuant to the County Bond Act, Section 4-15-10 et seq. of the Code. Your inquiry does not appear to be resolved by Chapter 15 of Title 4 of the Code. Thus, the general law concerning sinking funds will be examined to resolve your questions, but the ordinance authorizing the bond issues should be examined and followed if guidance is provided therein.

A sinking fund is 'a fund arising from particular taxes, imposts or duties, which is appropriated toward the payment of the interest due on a public loan, and for the payment of the principal.' Talbott v. City of Lyons, 171 Neb. 186, 105 N.W. 2d 918 (1960). The object of a sinking fund is 'to diminish the debt whose existence warranted its foundation.' 64 Am.Jur.2d, Public Securities and Obligations § 5. Sinking funds are considered by some authorities to be trust funds, see Smith v. Hospital Authority of Hall County, 210 Ga. 801, 82 S.E. 2d 827 (1954), Maine Turnpike Authority v. Brennan, 342 A. 2d 719 (Maine 1975), and Brown v. J. P. Morgan & Co., Inc., 31 N.Y.S. 2d 323, 177 Misc. 626 (1941); and also special funds, 15 McQuillin, Municipal Corporations § 43.132. [1]

Whether a sinking fund is denominated a trust fund or a special fund, it clearly is intended to be a sum set apart from other county moneys. See Brown v. J. P. Morgan & Co., Inc., supra, 15 McQuillin, Municipal Corporations § 43.133, and City of Norfolk v. Board of Supervisors, 168 Va. 606, 192 S.E. 588 (1937). In one discussion of special funds, it is stated, 'Moneys received to be used . . . for a particular and specific purpose are to be kept as a separate fund and cannot properly be placed in the general fund . . ..' 81A C.J.S. States § 228 (emphasis added); see also 20 C.J.S. Counties § 231 for a similar discussion of special funds. Thus, it would appear that Newberry County is properly handling the four sinking funds by its present policy of maintaining each sinking fund in a separate account. This Office would therefore advise against implementing that portion of a proposed Money Management Program in which all bank accounts of the county would be combined.

***2** Because interest generated by such a special fund as a sinking fund would belong to the sinking fund and cannot be diverted from the sinking fund for other purposes until the purpose for which the sinking fund was established has been fulfilled, Parker v. Bates, 216 S.C. 52, 56 S.E. 2d 723 (1949), this Office further advises that allocation of interest generated by the sinking funds equally to the County and School General Funds would probably not be viewed as proper. The basic principle is stated in University of South Carolina v. Elliott, 248 S.C. 218, 149 S.E. 2d 433 (1966): 'the interest earned . . . is simply an increment of the principal fund, making the interest the property of the party who owned the principal fund . . ..' 248 S.C. at 220, 149 S.E. 2d at 434.[2] See also, Annot., 5 A.L.R. 2d 257 at 263. It would be preferable to return the interest generated by a specific sinking fund to that specific fund, in its separate account, rather than to divert the interest for other county purposes (until the purpose for which the sinking fund was established has been fulfilled) as would be done if the interest so earned were divided among other county funds.

I hope that the above discussion satisfactorily responds to your inquiry. If we my provide additional information, please advise us.

Sincerely,

Patricia D. Petway
Staff Attorney

Footnotes

1 A special fund is defined in terms of a trust fund by McQuillin: [A] special fund is a trust fund which cannot be used for purposes other than those for which it was created . . ..' Id.

2 Legal title to a sinking fund would be in the county, held in trust for the bondholders. See 15 McQuillin, Municipal Corporations § 43.133, and 20 C.J.S. Counties § 277.

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