

Opinion No. 32-512

September 6, 1932

BY: E. K. Neumann, Attorney General

TO: Honorable Juan N. Vigil, State Comptroller, Santa Fe, New Mexico.

{*178} Your letter of September 1, 1932, states that the city of Albuquerque has something over \$ 300,000.00 of its sinking fund invested, which draws interest ranging from three to six per cent, and you ask to what fund this interest earning should be credited, the Sinking Funds or others.

We are of the opinion that such moneys should be credited to the sinking fund earning same. It is apparently the intention of our laws, when it provides for the investment of the sinking fund of a municipality, to provide for the investment of the sinking funds for the retirement of outstanding obligations, with two desires, first to retain this fund intact and to allow such fund to pyramid itself by earnings.

While a city has the legal title to money raised for a sinking fund, together with the right to collect, manage and protect it, such legal title is held in trust for the bondholders, and it is the duty of the officers vested with supervision thereof, to protect it against waste, diversion or impairment.

It has been held that the city as trustee for the bondholders is liable for interest on non-applied special assessments collected by it at the rate paid by depositors of the fund. See *Jewell vs. Superior*, 135 Fed. 19.

Also has it been said in *Elser vs. Ft. Worth*, 27 S. W. 739, quoting the Supreme Court of the United States in 99 U.S. 700 that

"While it may be conceded that preservation is the principal object to be accomplished in dealing with sinking funds, their earning capacity in the way of interest should not be entirely ignored."

Taking these things into consideration, together with the principle of the law that sinking funds are to be kept intact, and used only for the purpose for which they were created, we feel, as stated that the earnings of such funds thru investment are dedicated to the same purpose that the fund proper is dedicated.