

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

June 13, 2014

Christopher J. Latimer
Mitchell, McNutt & Sams
P.O. Box 1366
Columbus, MS 39703-1366

Re: Proper Transfer by Municipality of School Bond Surplus Funds

Dear Mr. Latimer:

Attorney General Hood is in receipt of your request for an official opinion and it has been assigned to me for research and reply.

Background and Questions Presented

On behalf of the City of Starkville, your letter states in part:

In 1986, Starkville issued two general obligation bonds on behalf of the Starkville School District. The Starkville School District is a Municipal Separate School District that has added territory that extends beyond the City limits. To cover the cost of the bonds, Starkville raised the taxes of residents within the Starkville School District. Starkville created a bond and sinking interest fund into which proceeds derived from the taxation were deposited and from which payments were made to retire the bonds.

In 2006, the bonds were retired. The objectives of the school bond were accomplished by the School District. At that time, a surplus remained in the bond and sinking interest fund. Over time, that surplus grew, through the accrual of interest, to be \$474,081.63. Starkville's Mayor and Board of Aldermen were recently made aware of this surplus and wish to know all options the City has with respect to these funds.

Miss. Code Section 27-105-367 appears to govern the transfer of surplus funds. Your opinion to Donald M. Waits on May 29, 1984 WL 247552 (Miss. A.G.), appears to provide guidance in a factually analogous situation. In light of that authority, Starkville requests an opinion from your office on the following questions:

1. Whether Starkville may follow the steps in Section 27-105-367 to transfer the surplus funds from the city's school bond account to another city account?
2. Whether Starkville must follow the steps in Section 27-105-367 to transfer the surplus funds from the city's school bond account to the school district?
3. Whether Starkville has any other legal options for the use or transfer of the surplus funds?

Brief Response

The surplus funds in the bond and sinking interest fund may be transferred to the general fund or to other funds in accordance with Section 27-105-367.

Applicable Law and Analysis

Section 27-105-367 applies to municipalities and counties and authorizes the transfer of surplus funds in a bond and interest fund to the general fund or to other funds in accordance with subsection (1) or subsection (2)(b) of that section. Section 27-105-367(3)(b) states:

(b) Surplus monies in a bond and interest fund shall not be transferred unless there remains to the credit of such fund a sufficient balance to fully retire such bonds and interest thereon, including all redeemable bond coupons and the tax levy required to be made to pay principal of and interest on such bonds as they become due has been discontinued by the governing authorities of the county or municipality, as the case may be. Surplus monies in a bond and interest fund may be transferred to the general fund in accordance with subsection (1) of this section or to other funds in accordance with subsection (2) (b) of this section, regardless of the amount of the balance to be transferred.

(Emphasis added.)

Subsections (1) and (2)(b) of Section 27-105-367 state:

(1) The board of supervisors and municipal governing authorities, by order spread on their minutes, may transfer any balance remaining in a special fund in the treasury of the county or municipality, as the case may be, to the general fund to be used for general purposes for the succeeding fiscal year if the purpose for which the special fund was created has been fully carried out. Taxes imposed for the succeeding fiscal year for county or municipal general purposes shall be reduced by the amount of such balance transferred from the special fund to the general fund.

... (2) (b) Whenever the surplus monies in any special fund shall be Two Thousand Five Hundred Dollars (\$2,500.00) or more, the board of supervisors or the governing authorities of the municipality, as the case may be, desiring to transfer such surplus monies, shall cause notice of same to be published in some newspaper published in the county, district or municipality, as the case may be, for three (3) consecutive weeks or, if there be no newspaper so published, then in some newspaper having a general circulation in the county, district or municipality. Thereafter, the monies shall be transferred as stated in the order not less than thirty (30) days after the first publication in a newspaper as above stated, unless within said thirty (30) days, a petition against the proposed transfer, signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors residing in the county, district or municipality, as the case may be, shall be filed with the governing body. In the event such petition is filed, an election on the question of such transfer shall be called and held as herein provided. Notice of the election and manner of conducting it shall be the same as other elections conducted within counties or municipalities, as the case may be. The ballot shall have printed thereon the amount of surplus monies sought to be transferred, the purpose for which such monies were authorized to be used and a statement that a surplus exists in such fund, and the purpose for which such monies are sought to be used pursuant to their transfer. If a majority of the qualified electors voting in the election vote in favor of the transfer of surplus monies, then such monies shall be transferred. If a majority of the qualified electors voting in the election do not vote in favor of such transfer of surplus monies, then such monies shall not be transferred. Provided, however, that if the question of transferring the balance remaining in a special fund, the purpose for which such fund was created having been fully carried out, fails at an election held on same, then such monies shall be invested as authorized by law and shall be calculated in the budget for the county or municipality, as the case may be, to be used for general purposes for the succeeding fiscal year. Taxes imposed for the succeeding fiscal year for county or municipal general purposes shall be reduced by the amount of such monies in such special fund. . .

We have previously opined that once a bond issue has been paid off and the tax levy for payment of such bonds has been discontinued, the funds remaining may be considered surplus funds and transferred pursuant to Section 27-107-367. MS AG Ops., Gex (November 7, 1997); Nowak (September 7, 2001); Barrett (January 23, 2009).

Your opinion request references our opinion to Donald M. Waites dated May 29, 1984 in which we stated that surplus funds "may be transferred in accordance with the provisions of Section 27-105-367 only to a fund which relates generally to the purpose for which the bond issues were passed." MS AG Op., *Waites* (May 29, 1984). Since that opinion was issued, the language of Section 27-105-367 which required

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surplus funds to be directed for certain uses has been removed from the statute. See Laws of 1988, Chapter 337.

Conclusion

The surplus funds in the bond and sinking interest fund may be transferred to the general fund or to other funds in accordance with Section 27-105-367.

Please contact our office if I can be of further assistance regarding this matter.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Elizabeth S. Bolin
Special Assistant Attorney General

OFFICIAL OPINION