

OPINION
66-30

January 14, 1966 (OPINION)

Mr. Howard J. Snortland

Department of Public Instruction

RE: Bonds - Custody - Bond Register

This is in reply to your letter of January 11, 1966, relative to Sections 21-03-22 and 21-03-40 of the North Dakota Century Code, as amended. In your letter you quote two questions which have been presented by one of the county superintendents of schools. The questions are as follows:

"In our county we have two school districts that have a population of one thousand or more but not over fur thousand, to whom shall the bonds be delivered to meet the requirements of Section 21-03-22, is it the county auditor or the school district clerk or both?"

"In our case where there are two districts with a population of more than a thousand, shall the school district treasurer prepare and keep a bond register or is it necessary that the school district clerk prepare and keep the bond register or what procedure should be followed to meet the state law?"

Section 21-03-40 of the North Dakota Century Code, as amended by the 1965 Legislative Assembly, provides as follows:

"SINKING FUNDS - CUSTODIAN. The county treasurer shall be custodian of each sinking fund for the payment of bonds issued by each taxing district within the county except in case of any city, school district, or park district having a population of more than one thousand. In the case of any municipality having a population of more than one thousand, the treasurer thereof shall be custodian of each of its sinking funds."

Prior to the amendment of this statute by the 1965 Legislature, it provided that in case of any municipality (which includes school districts for the purpose of chapter 21-03) having a population of more than four thousand, the treasurer thereof should be custodian of each of its sinking funds.

Section 21-03-22 of the North Dakota Century Code was not amended and provides in part as follows:

"After the bonds have been executed, they shall be delivered to the county auditor, except in cities or school districts or park districts having a population of more than four thousand, in which cities, school districts, or park districts they shall be delivered to the auditor, clerk, or secretary thereof. When such bonds are delivered to the county auditor, there shall be delivered to him a certified copy of the resolution of the governing body showing their sale. The county auditor, or the auditor, clerk, or secretary of a city, school district, or park district having a population of more

than four thousand, upon receipt of such bonds, shall register, in a separate book provided for the purpose, an accurate description of every bond so issued, specifying its number, date, purpose, rate of interest, when and where payable, and the coupons attached. In all cases where the registering officer is not the recording officer of the governing body of the municipality issuing the bonds, there also shall be filed with him a certified copy of all proceedings of the municipality relating to such issue. * * * ."

Section 21-03-23 was amended by the 1965 Legislature, although the amendment is not pertinent to the questions presented. This section provides:

"BOND REGISTER. The county auditor shall keep a bond register in which shall be entered, as to each issue of bonds issued by a taxing district in the county required by the provision of Section 21-03-22 to be delivered to the county auditor after execution, a record of the date of issuance, the aggregate amount authorized, the aggregate amount issued, the number of bonds and the denomination of each, the date of maturity of each bond, the rate of interest, the amount of the levy on taxable property for each year certified by the taxing board, the amount levied on any other object of taxation by the municipality, the amount pledged or allocated from other sources of revenue of the municipality, and the amount of any unusual or periodic payments or distributions appropriated or allocated by the legislative assembly. Such bond register also shall contain similar information regarding each issue of certificates of indebtedness of each taxing district in the county. The state examiner shall prescribe for the use of the county auditors a uniform form of bond register."

While the school district treasurer, rather than the county treasurer, is now the custodian of sinking funds for the payment of bonds issued by a school district of more than one thousand population, the requirements relative to the delivery of the bonds after their execution and maintenance of the bond register were not amended. The issuance, sale, execution, etc., of bonds by a taxing district is somewhat technical in nature and it is advisable, if not mandatory, to strictly adhere to statutory requirements.

In direct reply to your first question, it is our opinion that in school districts having a population of four thousand or less, the bonds should be delivered to the county auditor for registration, certification and endorsement by the county auditor in accordance with Section 21-03-22 of the North Dakota Century Code.

In reply to your second question, it is our further opinion that in school districts having a population of four thousand or less the county auditor should keep the bond register in accordance with the provisions of Section 21-03-23 of the North Dakota Century Code, as amended. The school district clerk may, if he so desires, maintain a bond register also. However the official bond register will be the one maintained by the county auditor. Since the school district treasurer and not the county treasurer will maintain the sinking funds for bonds issued by school districts having a population of more than one thousand, in accordance with Section 21-03-40 of the North Dakota Century Code, as amended, there will necessarily need to

be close cooperation and exchange of information between the treasurer of the school district and the county auditor.

We also note that Section 21-03-27 of the North Dakota Century Code, relative to the receipt of bids for the purchase of bonds, requires the bids to be received at the county auditor's office in those instances in which bonds are issued by school districts having a population of four thousand or less. Section 21-03-34 of the North Dakota Century Code, governing the registration of ownership of bonds, requires the county auditor to so register the bonds when such bonds have been issued by a municipality having a population of four thousand or less.

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