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MUNICIPAL CORPORATIONS — BONDS REDEEMABLE AT OPTION OF MUNICIPALITY — NOTICE TO BONDHOLDERS NECESSARY TO STOP RUNNING OF INTEREST — Defendant municipality issued bonds redeemable before maturity at defendant's option. There was no provision for registration, and neither the statute nor the bonds provided for notice of redemption. In May, 1938, notice was published in newspapers of general circulation that the bonds were to be redeemed on June 1. Plaintiff, owner of the entire issue, did not know of the redemption until September 27. It sued for interest from June 1 to September 27. *Held*, notice by publication is sufficient to stop the running of interest,

and plaintiff is therefore not entitled to recover. *Philadelphia Savings Fund Society v. City of Bethlehem*, 143 Pa. Super. 449, 17 A. (2d) 750 (1941).

The notice of redemption necessary to stop the running of interest on municipal bonds redeemable before maturity at the option of the municipality is usually provided for in a general statute, in the special enabling act authorizing the bond issue, or in the bonds themselves. But a few cases in which there was no such provision have reached the appellate courts. It has been said that the weight of authority favors the view that the bondholder must have actual notice,[1] but the division appears to be about even,[2] all the recent cases holding that notice by publication is sufficient.[3] In *Hinds County v. National Life Insurance Co.*,[4] the leading case for the older view, the court proceeded on the theory that the lack of any provision is the fault of the legislature and the municipality, for which the latter should suffer rather than its creditors, and that the credit of the municipality should not be impaired by a refusal to pay the interest demanded. The court then drew an analogy to the rule requiring the maker of a promissory note who has an option to pay before maturity to give notice to the holder before he can stop the running of interest. There were in the case, however, only a few bondholders, who were mostly local residents. On that basis the case was distinguished from *Stewart v. Henry County*,[5] the leading case for the more recent view and the primary authority for the holding in the principal case. The latter view is based on expediency: since the municipality cannot know who the bondholders are, personal notice to each is an unreasonable, if not impossible, requirement.[6] Such an approach is far more realistic, especially when, as in the *Stewart* case, the bondholder has relatively easy means of keeping in communication with the municipality or its agent. One court seems to have struck a reasonable compromise in requiring notice by publication, notice to the paying agent, and actual notice to all bondholders known to the municipality.[7] To require more seems unduly burdensome. If there are circumstances which render the position of the bondholder peculiarly favorable or the conduct of the municipality unreasonably neglectful of the bondholder's rights, the court may exercise some discretion in varying the rule in the bondholder's favor.[8]

[1] 30 AM. JUR. 43 (1940); 43 L. R. A. (N. S.) 1146 (1913).

[2] The writer has found four American cases on each side of the question, in addition to the principal case. Those requiring actual notice: Keith v. New Orleans, 10 La. Ann. 423 (1855); Read v. Buffalo, 74 N. Y. 463 (1878); Berkey v. Board of Commissioners of Pueblo County, 48 Colo. 104, 110 P. 197 (1910); Hinds County v. National Life Ins. Co., 104 Miss. 104, 61 So. 164 (1913). Those allowing constructive notice: Stewart v. Henry County, (C. C. Mo. 1895) 66 F. 127; State v. Tallahassee, 126 Fla. 275, 170 So. 897 (1936); Spartanburg v. Leonard, 180 S. C. 491, 186 S. E. 395 (1936); Catholic Order of Foresters v. State, 67 N. D. 228, 271 N. W. 670 (1937). The last case cited appears to be the only one involving bonds of a private corporation.

[3] See note 2, supra.

[4] 104 Miss. 104, 61 So. 164 (1913).

[5] (C. C. Mo. 1895) 66 F. 127.

[6] Annotation, 109 A. L. R. 988 at 999 (1937).

[7] Spartanburg v. Leonard, 180 S. C. 491, 186 S. E. 395 (1936).

[8] Some of the cases place much emphasis on the fact situation and may be reconciled with the others on that basis. See especially Hinds County v. National Life Ins.

But it is advantageous to the municipality to be certain of its rights. The principal case illustrates a tendency to be liberal with the municipality. Since the factors in the bondholder's favor were as strong as in any case,[9] the court's liberality was perhaps too extreme, but certainly the holding is predicated on a general approach that is both realistic and reasonable.

Co., 104 Miss. 104, 61 So. 164 (1913); Stewart v. Henry County, (C. C. Mo. 1895) 66 F. 127.

[9] The notice here was published only once, and that less than thirty days before the redemption date. Since plaintiff was the sole bondholder, no bonds were redeemed on that date, which fact might have put the defendant on inquiry as to the effectiveness of its notice. Furthermore, plaintiff had frequently written to defendant to discover whether the bonds had been called, thus giving defendant notice that plaintiff was a bondholder and interested in the possibility of redemption. It was only in a reply to the last of these communications that plaintiff first received notice of the redemption.