



**THE ATTORNEY GENERAL
OF TEXAS**

Gerald C. Mann

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Hon. Charley Lockhart
State Treasurer
Austin, Texas

Attention: Mr. Chas. O. Rice
Opinion No. 0-1983
Re: Authority of the State Treasurer
to release bonds called for payment by
Bee County Common School District Num-
ber 3.

Dear Sir:

We are in receipt of your letter of February 19, in which you request our opinion as to the authority of the State Treasurer to release certain bonds called for payment by Bee County Common School District Number 3.

The facts underlying your question are as follows, and we quote from your letter:

"We have a call notice from Bee County Common School District No. 3, calling for payment on March 20, 1940, bonds 47/100 inclusive totaling \$5,400 of an issue dated July 10, 1927.

"The above bonds are callable on the date mentioned, and they are, of course, to pay the interest to said date, and they have tendered their check for the redemption of these bonds through their attorney. These bonds, however, are not being refunded, and we understand that part of the money which they are using to redeem them is coming from some source other than from the sinking fund of this particular issue of bonds from taxes levied and collected for that purpose, due to the fact that they would not have quite enough money in their sinking fund for this purpose."

We assume that the above described bonds are held by you as custodian for the Permanent School Fund, and if this assumption is correct, the only restriction on your authority for releasing bonds upon payment tendered therefor would be that prescribed by Article 2787a of Vernon's Annotated Civil Statutes. We must further assume that the right of redemption was retained by the issuing district and that the bond itself reflects that condition. Article 2787a reads, in part, as follows:

"The State Board of Education may authorize the trustees of any common school district or of any independent school district of this State to pay off and discharge, at any interest paying date whether the bonds are matured or not, all or any part of any bonded indebtedness now owned

or hereafter to be owned by the State Permanent School Fund, outstanding against such district or districts, before maturity thereof, to make direct application in writing to the State Board of Education at least thirty days before any interest paying date on said bonds, making known to said State Board of Education the desire of said trustees to pay off and discharge said bonded indebtedness, or any part thereof, describing said bonds or the part thereof that the trustees desire to pay off and discharge; and it shall be the duty of the State Board of Education upon receipt of such application to act thereon in such manner as they deem best and notify the applicant or applicants whether the application is refused or granted in whole or in part; provided, that only such tax money as has been collected by virtue of tax levies made for the specific purpose of providing a sinking fund and paying interest on the particular bonds to be redeemed shall be expended in the redemption, taking up, or paying off of such bonds as provided in this Act; unless said bonds are being redeemed for the purpose of being refunded; ***.

It is our opinion that this article has reference only to the discharging of bonds prior to the maturity date thereof, and is the authority extended to the State Board of Education to permit prepayment of bonds for either of two purposes, the first being actual retirement of the debt, and the second for the purpose of refunding such debt. In the case of Dallas County v. Lockhart, 96 S.W. (2d) 60, we find this language in paragraph 4, of point 4, which reads as follows:

"Reference is made in the brief to an act of the Thirty-ninth Legislature (1925), Chapter 164, designated in Vernon's Annotated Texas Statutes as Article 2787a. That act deals with bonds which have not matured and not with bonds which have matured or which have been called for redemption under a reserved privilege of redemption."

We think it is significant that the language of the act itself reads as follows:

"Provided that only such tax money as has been collected by virtue of tax levies made for the specific purpose of providing a sinking fund and paying interest on the particular bond to be redeemed shall be expended in the redemption, taking up or paying off of such bonds as provided in this act."

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It is our conclusion that the underscored phrase refers directly to the first paragraph of Article 2787a, which provides that the State Board of Education may authorize any school district to pay off and discharge its bonds at any interest paying date whether the bonds are matured or not, and certainly there could be no necessity for empowering the Board of Education to permit prior payment of a debt already matured. This, without doubt, refers to the prior payment of a bond where previously no provision had been made for the redemption thereof prior to the fixed maturity date.

It is our opinion that when bonds are called for payment in conformity with the redemption provision of such bonds at a date earlier than the fixed maturity thereof, that it automatically accelerates that maturity date and such bond is matured on and after notice of call for redemption has been issued.

You are, therefore, advised that in our opinion the State Treasurer would be required to release the bonds of Bee County Common School District Number 3 called for payment on March 20, 1940, irrespective of the source from which the money is derived and which is to be used in redeeming such bonds. We do not think Article 2787a applicable in this situation.

Trusting that the foregoing satisfactorily answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ Clarence E. Crowe
Clarence E. Crowe, Assistant

C&C-smb

APPROVED FEB. 29, 1940
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED: OPINION COMMITTEE
BY: BMB, CHAIRMAN