



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Jesse James  
Acting State Treasurer  
Austin, Texas

Dear Mr. James:

Opinion No. G-2182  
Re: Brazos River Conservation  
and Reclamation District  
Refunding Bonds as eligible  
collateral security under  
State Depository Law --  
Revised Civil Statutes,  
Article 2529.

As Secretary for the State Depository Board, you request the opinion of this department whether or not Brazos River Conservation and Reclamation District Refunding Bonds are eligible, under our State Depository Law, as collateral to secure State funds.

Article 2529 of the Revised Civil Statutes, as amended by H. B. No. 364, of the 46th Legislature, 1930, controls the answer to your inquiry, and so far as is pertinent, is as follows:

"As soon as practicable after the Board shall have passed upon said applications, the Treasurer shall notify all banks whose applications have been accepted of their designation as State Depositories of State funds. The Treasurer shall require each bank so designated to qualify as a State Depository on or before the 25th day of November next; by (a) depositing a depository bond signed by some surety company authorized to do business in Texas, in an amount equal to not less than double the amount of State funds allotted, such bond to be payable to the Treasurer and to be in such form as may be prescribed by the Board and

subject to the approval of such Board; or (b) by pledging with the Treasurer any securities of the following kinds: Bonds and certificates and other evidences of indebtedness of the United States, and all other bonds which are guaranteed as to both principal and interest by the United States; bonds of this State; bonds and other obligations issued by the University of Texas; warrants drawn on the State Treasury against the General Revenue of the State; bonds issued by the Federal Farm Mortgage Corporation provided both principal and interest of said bonds are guaranteed by the United States Government; Home Owners Loan Corporation Bonds, provided both principal and interest of said bonds are guaranteed by the United States Government and such securities shall be accepted by the Board in an amount not less than five (5) per cent greater than the amount of State funds which they secure; provided, that Texas Relief Bonds may be accepted at face value and without margin for the amount of State funds allotted, provided, such State Relief Bonds have all unexpired coupons attached; bonds of counties located in Texas; road districts of counties in Texas; independent and common school districts located in Texas; and bonds issued by municipal corporations in Texas; \* \* \*

Conservation and reclamation districts are public corporations authorized and regulated by Chapter 8 of Title 128 of the Revised Civil Statutes. Brazos River Conservation and Reclamation District was created by act of the 41st Legislature, second called session, Special Laws, page 22, Chapter 13. The Act has been several times amended, the last one being that of 1935, 44th Legislature, first called session, page 1527, Chapter 368.

Article 2529 of the statutes defines the classes of eligible securities for public depositories. If the bonds under consideration are to be considered eligible, it must be because they belong to the class "issued by municipal corporations," for, clearly, they do not fall within any other class enumerated by the statute.

The term "municipal corporation" is used in two different senses in statutes and in decisions, and, likewise, in common parlance of financial circles. First, it is frequently used as synonymous with public corporations as contra-distinguished from private corporations, and in that sense it would include State bonds, county bonds, city bonds, school-district bonds, improvement-district bonds, and any other bond issued by a corporation serving a public purpose. In the second place, the term "municipality" is used in a narrower and more specific sense as referring to cities, towns and villages only.

Dillon on Municipal Corporations (5th edition) says:

"Municipal corporations are institutions designed for the local government of towns and cities; or, more accurately towns and cities with their inhabitants are for purposes of subordinate local administration invested with a corporate character." (Vol. 1, Sec. 18).

Again, the same authority declares:

"Corporations intended to assist in the conduct of local civil government are sometimes styled political, sometimes public, sometimes civil, and sometimes municipal, and certain kinds of them with very restricted powers, quasi corporations, -- all these by way of distinction from private corporations. All corporations intended as agencies in the administration of civil government are public, as distinguished from private corporations. Thus an incorporated school district, or county, as well as city, is a public corporation; but the school district or county, properly speaking, is not, while the city is, a municipal corporation. All municipal corporations are public bodies, created for civil or political purposes; but all civil, political, or public corporations are not, in the proper use of language, municipal corporations. The phrase 'municipal corporations,' in the

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contemplation of this treatise, has reference to incorporated villages, towns, and cities, with power of local administration, as distinguished from other public corporations, such as counties and quasi corporations." (§34, p. 62)

To the same general effect are the following standard writers: Fletcher on Corporations, vol. 1, §§ 57 to 66; Thompson on Corporations, vol. 1, §§ 24-26; McQuillian Municipal Corporations, §§ 133-137.

In Opinion No. 0-152, applying these principles and construing Article 2529, we held that the refunding bonds of a county water-improvement district were not eligible as municipal bonds. That opinion should be followed not only upon precedent but upon sound reasoning as well.

It has been suggested that the wording of the statutes creating the Brazos River Conservation and Reclamation District is such as to constitute the district a municipality within the meaning of Article 2529; the particular language referred to being as follows:

"The Brazos River Conservation and Reclamation district is created as a governmental agency, a municipality, body politic and corporate, vested with all the authority as such under the Constitution and laws of this State." (§ 2 of the original Act).

We cannot adopt this suggestion. The word "municipality" in Section 2 is used in the general all-comprehensive sense of public corporations, as distinguished from private corporations. In this sense the word is apt and it is in this sense the Legislature used it; obviously, the Legislature did not use the word "municipality" in its more specific sense -- that of city, town or village -- for the conservation and reclamation district was not at the time and cannot be, and was never intended by the Act to be, a city, town or village.

Moreover, the fact that Article 2529, according to the latest amendment thereof (1939) in enumerating the

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classes of securities made eligible named "road districts," "independent and common school districts", and "municipal corporations," thus indicated indisputably that "municipal corporations" as a class was used in the specific sense of cities, towns and villages, rather than in its most general sense -- that of public corporations -- for road districts and common school districts and independent school districts are public corporations, and in the broadest sense municipal corporations, so that their enumeration would have been useless if "municipalities" included them.

If the Legislature had intended that conservation and reclamation district bonds should be eligible, under Article 2529, it could easily have included them in its amendment of 1939.

We therefore hold that the refunding bonds of Brazos River Conservation and Reclamation districts are not eligible as securities for public depositories, under Article 2529 of the Revised Civil Statutes.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Ocie Speer*  
Ocie Speer  
Assistant

OS-MR

APPROVED APR 25, 1940

*Gerald B. Moran*

ATTORNEY GENERAL OF TEXAS

