



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GERALD C. MANN
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ATTORNEY GENERAL

Honorable W. M. Tucker
County Attorney
Collingsworth County
Wellington, Texas

Dear Sir:

Opinion No. 0-2376

RE: Liability of county treasurer for
school funds over which treasurer
does not have control - Investment
of school funds.

Your request for opinion has been received and carefully considered by this department. We quote from your letter of request as follows:

"Question No. 1. Where County School Superintendent used public school funds for the purchase of bonds, where said County School funds are handled independently by the County School Superintendent, and said funds does not pass through the hands of the County Treasurer should there be a shortage in the County Superintendents account or if said bonds should be worthless, or defective in any manner, would the County Treasurer, the said Viola Hudson, be liable under her official bond for any such shortage, or defects in said bonds so purchased by said County School Superintendent? Under Art. 1704 R.V.S.

"Question No. 2. Is the County School Superintendent authorized to invest the Public School funds in bonds, without the sanction of the Commissioners Court of his County, when said school fund is carried in the School Depository, and handled exclusively by the County School Superintendent independent of the County treasurer."

We understand from your letter that Collingsworth County has a duly selected and qualified county depository and that the school funds are in said depository.

Article 1704, Revised Civil Statutes of Texas, reads as follows:

"The county treasurer before entering upon

the duties of his office, and within twenty days after he has received his certificate of election, shall give a bond payable to the county judge of his county, to be approved by the commissioners court, in such sum as such court may deem necessary, conditioned that such treasurer shall faithfully execute the duties of his office and pay over according to law all moneys which shall come into his hands as county treasurer, and render a true account thereof to said court at each regular term of said court."

Article 3942, Revised Civil Statutes of Texas, reads as follows:

"The treasurers of the several counties shall be treasurers of the available public free school fund and also of the permanent county school fund for their respective counties. The treasurers of the several counties shall be allowed for receiving and disbursing the school funds one-half of one per cent for receiving, and one-half of one per cent for disbursing, said commissions to be paid out of the available school fund of the county; provided, no commissions shall be paid for receiving the balance transmitted to him by his predecessor, or for turning over the balance in his hands to his successor; and provided, that he shall receive no commissions on money transferred."

Article 2828, Revised Civil Statutes of Texas, reads as follows:

"The terms 'county treasurer' and 'county treasury' as used in all provisions of law relating to school funds, shall be construed to mean the county depository. The commissioners court shall file with the State Department of Education a copy of the bond of said depository to cover school funds. No commission shall be paid for receiving and disbursing school funds."

Article 2829, Revised Civil Statutes of Texas, reads as follows:

"Within twenty days after the receipt of a certificate of its selection, the County Depository shall execute a good and sufficient bond, payable to the County Judge, in amount equal to

the probable amount of available School Fund, which may be on deposit at any one time, and of the permanent County Fund, to be estimated by the County Superintendent, and shall be conditioned that the depository will faithfully perform its duties under this title, and safely keep and faithfully disburse the School Fund according to Law, and pay such warrants as may be drawn on said fund by competent authority; provided, in lieu of said bond, such depository may secure said School Funds in the same manner as is now provided by law for qualification as County Depository.

"Sec. 1-A. In the event depositories have been selected at the time of adoption of the above provision, such depositories may, at option, secure said School Fund by approved securities other than by personal bond."

Article 2549, Revised Civil Statutes of Texas, reads as follows:

"As soon as said bond be given and approved by the Commissioners Court, and the Comptroller, an order shall be made and entered upon the minutes of said Court designating such banking corporation, association or individual banker, as a depository for the funds of said county until sixty (60) days after the time fixed for the next selection of a depository; and thereupon, it shall be the duty of the county treasurer of said county immediately upon the making of such order, to transfer to said depository all the funds belonging to said county, as well as all funds belonging to any district or other municipal subdivision thereof not selecting its own depository, and immediately upon receipt of any money thereafter, to deposit the same with said depository to the credit of said county, district and municipalities. It shall also be the duty of the tax collector of such county to deposit all taxes collected by him, or under his authority, for the State and such county and its various districts and other municipal subdivisions, in such depository or depositories, as soon as collected, pending the preparation of his report of such collection and settlement thereon. The bond of such county depository or depositories shall stand as security for all such funds. Upon such funds being deposited as herein required, the tax collector and sureties on his bond, shall thereafter be

relieved of responsibility of its safe-keeping. All county depositories shall collect all checks, drafts and demands for money so deposited with them by the county and when using due diligence shall not be liable on such collections until the proceeds thereof have been duly received by the depository bank, provided that any expense incurred in collection thereof by the depository, which the depository is not allowed or permitted to pay or absorb by reason of any act of Congress of the United States or any regulation by either the Board of Governors of the Federal Reserve System or the Board of Directors of the Federal Deposit Insurance Corporation, shall be charged to and paid by the county. All money collected or held by any district, county or precinct officer in such county, or the officer of any defined district or subdivision in such county, including the funds of any municipal or quasi-municipal subdivision or corporation which has the power to select its own depository, but has not done so, shall be governed by this law, and shall be deposited in accordance with its requirements, and shall be considered in fixing the bond of such depository, and shall be protected by such bond; and all warrants, checks, and vouchers evidencing such funds shall be subject to audit and countersignature as now or hereafter provided by law."

Article 2557, Revised Civil Statutes, reads as follows:

"The county treasurer shall not be responsible for any loss of the county funds through the failure or negligence of any depository; but nothing in this Act shall release any county treasurer for any loss resulting from any official misconduct or negligence on his part, nor from any responsibility for the funds of the county until a depository shall be selected and the funds deposited therein, nor for any misappropriation of such funds by him."

Article 2663, Revised Civil Statutes, reads as follows:

"On the first of each month, the State Superintendent shall prorate to the several counties, cities and towns and school districts constituting separate school organizations, according to the scholastic population of each, the available school

money collected during the preceding month and then on hand as shown by the certificate issued that day to him by the Comptroller, and shall thereupon certify to the Comptroller the total sum prorated to each; and such certificate shall be authority for the Comptroller to draw his warrant in favor of the Treasurer of each such county, city or town or school district for the amount stated in such certificate. He shall receive from the State Treasurer all warrants so drawn, and shall transmit such warrants to the respective treasurer in favor of whom they are drawn."

The term "treasurer" as used in Article 2663, supra, clearly means "county depository." See Article 2828, supra.

This department held in an opinion written by Hon. Scott Gaines, Assistant Attorney General, dated June 9, 1931, addressed to Mr. S.M.N. Marrs, State Superintendent, that a county depository being selected, bond furnished under Article 2829 and approved, said bank as selected becomes the depository for all school funds of said county, including State and county available school fund and permanent county school fund. This opinion held further that the custody of bonds and other securities as investments of permanent school fund will be with county treasurer and that such responsibility was covered by the county treasurer's general bond.

We call your attention to the following language, found in the footnotes under Article 2828, Vernon's Annotated Texas Civil Statutes, Vol. 8, page 298, to-wit:

"Under Const. Art. 16, § 44, providing that the Legislature shall prescribe the duties of the county treasurer, who shall have such compensation as may be provided by law, the Legislature, notwithstanding this article, had power to pass Act 31st Legislature, c. 12, transferring the custody of such funds to the county depositories, thus relieving the county treasurers of any liability for such funds so deposited.... Citing Horton vs. Rockwall County, (Civ. App) 149 SW 297." (Underlining ours)

The case of Horton vs. Rockwall County, Supra, holds that the county treasurer is not entitled to a commission for receiving and disbursing school funds. The following language of the court in that case, pertinent to your inquiry, is called to your attention, to-wit:

"Pursuing this policy and for the purpose of further conserving and increasing the school funds particularly, the amendment to the public free school laws was passed, by which the management and control of the district schools were placed squarely in the hands of the school trustees, including the disbursement of all funds raised by the issuance of bonds for the purchase of sites and the building of schools, with the additional provision that on funds raised for such school purposes no commission should be paid for receiving and disbursing same for the obvious reason that since the safety of the fund was secured by the depository, and the labor and duty of disbursing it rested with the school trustees, it would be a needless expense and but curtail the school fund to pay an officer for receiving and disbursing same, when he was charged neither with its safe-keeping nor liable for its loss or misappropriation." (Underlining ours)

The case of Baxter, County Treasurer, vs. Rusk County, 11 SW 2nd 648, follows and supports the case of Horton vs. Rockwall County, supra.

You are therefore respectfully advised that it is the opinion of this department that the county treasurer is not liable under the treasurer's official bond for shortages in school funds over which the treasurer exercised no control and which have been legally and properly deposited in the duly authorized and properly bonded county depository, in the absence of official misconduct or negligence on the part of the treasurer and in the absence of any misappropriation of such funds by the treasurer. The complete facts in each case will determine the liability in each case.

We are not furnished with enough facts relative to the matter of defects or worthlessness of the bonds and surrounding facts to pass upon the question of the liability of the treasurer, if any, in those matters.

With reference to your second question, we assume that by the term "public school funds" you refer to the investment of the permanent county school fund.

Section 6, Article VII, Texas Constitution, reads as follows:

"All lands heretofore, or hereafter granted to the several counties of this State for educa-

tional purposes, are of right the property of said counties respectively, to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the Commissioners' Court of the county. Actual settlers residing on said lands, shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands, and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon, and other revenue, except the principal shall be available fund."

Article 2824, Vernon's Annotated Civil Statutes of Texas, reads as follows:

"Each county may sell or dispose of the lands granted to it for educational purposes in such manner as may be provided by the commissioners court of such county, and the proceeds of any such sale shall be invested in bonds of the United States, the State of Texas, the bonds of the counties of the State, and the independent or common school districts, road precinct, drainage, irrigation, navigation and levee districts in this State, and the bonds of incorporated cities and towns, and held by such county alone as a trust for the benefit of public free schools therein, only the interest thereon to be used and expended annually."

The case of *Boydston vs. Rockwall County*, 24 SW 272, holds among other things, that it is the duty of the commissioner's court to invest the county permanent school fund. This case also holds that the commissioners court may ratify an act of a county judge who without authority purchases bonds with the school funds.

This department has repeatedly held that the power and duty to invest the county permanent school fund is in the commissioners' court.

Your second question is therefore answered in the negative.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/Wm. J. Fanning
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Assistant

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APPROVED JUNE 7, 1940
s/Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

Approved Opinion Committee By s/BWB Chairman