



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

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~~WILLIAMSON~~  
ATTORNEY GENERAL

Hon. Jesse James  
Acting State Treasurer  
Austin, Texas

Opinion No. 0-3724  
Re: Authority of the State Board  
of Education to purchase certain  
bonds.

Dear Sir:

We are in receipt of your letter of June 20, which reads as follows:

"The State Board of Education is purchasing \$500,000 of Corpus Christi Independent School District Bonds dated 6-1-41; Nos. 1/500 inclusive at \$1,000 each; interest rate  $2\frac{1}{4}\%$  on the first 50 bonds;  $2\text{-}3/4\%$  on the next 80 bonds and  $3\%$  on the remaining 370 bonds, payable semi-annually on June 1st and December 1st of each year.

"Article 2671 as amended provides that no bonds, obligations or pledges shall be purchased that bear less than  $2\text{-}1/2\%$  interest. Bonds Nos. 1/50 of the above mentioned series bear only  $2\frac{1}{4}\%$  interest.

"We kindly request that at your very earliest convenience you give us your written opinion as to whether or not bonds Nos. 1/50 of this issue can be legally paid for out of the State Permanent School Fund."

Your question implies that the first fifty bonds, bearing interest at the rate of  $2\frac{1}{4}\%$ , might be waived by the Board of Education and the balance of the \$500,000 issue purchased under the option afforded by Article 2673 of Vernon's Annotated Civil Statutes. Briefly, the option given to the State Board of Education provides that before the bonds of any county, city, school district, or other taxing agency, are sold, bids shall be taken on the total amount desired to be sold and the best bona fide bid received shall be submitted to the State Board of Education said Board having an option of ten days within which to meet said bid, and in the event the bonds are not purchased by the Board, the issuing district, or subdivision, may then proceed to sell said bonds to the party or parties making the best bona fide bid. Such bids are made upon the basis

of bonds offered by the issuing political subdivision, and if such offering is bid for as a block, then under the law the Board of Education is required to meet the price offered for the bonds as a block. It does not have the authority to purchase the bonds so offered under any other conditions. In other words, the Board is not at liberty to pass up the first fifty bonds of the above described issue and exercise its option as to the remaining 450 bonds. It must take either all or none of said offering. This it has endeavored to do, treating the offering as one unit of investment, namely, \$500,000, said unit bearing interest at the coupon rates of  $2\frac{1}{4}\%$  for the first fifty bonds,  $2\text{-}3/4\%$  for the next eighty bonds, and  $3\%$  for the remainder.

For convenience in handling said debt aggregating \$500,000 has been set up in \$1,000 pieces, numbered 1 to 500, inclusive. The debtor district is obligated to pay on said debt an average interest of 2.90% throughout the life of the debt. Conversely, the State Permanent School Fund, as the owner of the evidence of the debt, will earn on its investment an average of 2.90% per annum throughout the life of the debt. This brings before us the question as to whether Article 2671 of Vernon's Annotated Civil Statutes, which reads, in part, as follows:

"No bonds, obligations or pledges shall be purchased that bear less than  $2\frac{1}{2}\%$  interest \*\*\*"

means that the bonds themselves shall bear a coupon interest rate of not less than  $2\frac{1}{2}\%$ , or does it mean that no investment by the State Board of Education shall be made which will not return as income on the investment a minimum yield of  $2\frac{1}{2}\%$ ? We think the statute was intended to provide a minimum of return on the investment. Article 2671, as amended, is merely a section of the law enacted by the Forty-first Legislature, Regular Session, 1929, Chapter 278, page 573, which law was an amendment to the Acts of 1909, page 216, and which last named Act amended the original law, Acts of 1905, page 263, governing investment of the State Permanent School Fund. The entire law relating to this subject must be read together in order to arrive at the correct legislative intent. By reference to this law we find that the State Board of Education is authorized to pay a premium for any bonds authorized by law to be purchased as an investment for the School Fund and, likewise, said Board is authorized to purchase bonds at a discount (Art. 2673), and then we find this language:

"The price paid for bonds, obligations and pledges, shall be endorsed thereon at the time the same are purchased."

This indicates to us that the investment shall not be determined by the denomination of the component pieces as prescribed by the issuing municipality or political subdivision, but by the sum of money laid out by the Permanent School Fund in the purchase of such evidences of debt. It seems clear that the Legislature intended that all investments made by the Board in behalf of the Permanent School Fund should return not less than  $2\frac{1}{2}\%$  interest on funds so invested.

Manifestly, the framers of the Constitution had in mind providing some sort of fixed income for the operation of the schools of the State. Section 5 of Article 7 of the Constitution provides, in part, as follows:

"The principal of all bonds and other funds, and the principal arising from the sale of lands hereinbefore set apart to said School Fund, shall be the Permanent School Fund, and all the interest derivable therefrom \*\*\* shall be the Available School Fund \*\*\*".

Responsive to this constitutional mandate the Legislature has endeavored to provide a minimum of income for the Available Fund, and we conclude that the language contained in Article 2671, supra, "No bonds, obligations or pledges shall be purchased that bear less than  $2\frac{1}{2}\%$  interest" is intended as the legislative direction that the Board of Education, in making investments as provided by law, shall make no investment yielding less than  $2\frac{1}{2}\%$  interest on the amount so invested.

Under date of July 23, 1937, the Honorable Joe J. Alsup, Assistant Attorney General, in an opinion addressed to the Honorable Ghent Sanderford, President, State Board of Education, reached the conclusion above set forth. We quote, in part, from his opinion --

"We are of the opinion that the phrase 'bear less than 3% interest' means that the State Board shall realize 3% on their investment. We do not feel that the coupon face shall evidence 3% interest. In view of the fact that these statutes were enacted for the protection of the school funds of the State, we cannot see how we can consistently arrive at any other legislative intent."

Since the above quoted opinion was rendered, Article 2671 has been amended, lowering interest from 3% to  $2\frac{1}{2}\%$ . In this connection we find further support for the conclusion herein reached in the emergency clause of the law amending Article 2671, which clause reads as follows:

"The fact that prevailing interest rates on shorter maturity bonds in the case of a great many desirable investments is less than 3%, and the fact that under the present law the State Board of Education is not permitted to invest in these securities because of the fact that the present law requires a yield of 3%, creates an emergency \*\*\*."

It will be noted in this quotation that the Legislature has used the word "yield" which we find by reference to Webster's International Dictionary to be a synonym of the word "bear"; therefore, we think that the legislative intendment in Article 2671, as above quoted, was that no bonds, obligations or pledges, shall be purchased yielding less than 2½% interest.

Following receipt of the above quoted opinion the State Board of Education proceeded from that day forward to invest its funds on such a basis as would yield not less than the minimum amount provided by statutes. In some instances this yield was determined by the payment of a premium for bonds so purchased, and in others it was reached through the purchase of bonds at a discount, but according to the records of the State Board of Education, no bonds have been purchased yielding less than the statutory minimum. We are informed by the State Board of Education that this has been their practice for the years following the obtaining of the Attorney General's opinion interpreting Article 2671 relative to the minimum amount of interest that might be borne by bonds so purchased.

This practice was being followed by the Board of Education at the time Article 2671 was amended by the Acts of the Forty-sixth Legislature, Regular Session, 1939, and in accordance with the decision of the Supreme Court in the case of Federal Crude Oil vs. Yount-Lee Oil Company, et al., 52 S.W. (2d) 56, such amendment by the Legislature will be presumed to have been made with knowledge of the interpretation placed upon Article 2671 by the Attorney General and the Board of Education. Judge Leddy used the following language in that case:

"Where the officers of the State government during a long period of years have construed a statute of doubtful import, and the same is later reenacted by the Legislature in substantially the same form, it will be presumed that the law-making body knew of the construction placed upon its language by its officers, and that if it was not satisfied that its intention had been rightly interpreted, it would have so changed the verbiage of the Act as to have shown clearly a contrary intention."

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In support of this statement Judge Leddy cited the cases of Houston and T. C. R. Co., v. State of Texas, 95 Tex. 521. 68 S. W. 777; Galveston H. & S. A. Ry. Co., v. State, 17 S.W. 67; Stephens County v. Hessler, 16 S.W. (2d) 804. Therefore, the presumption being in favor of the interpretation placed upon the statute by the Attorney General and the Board of Education, we think it conclusive on this department to hold that by the amendment of 1939, the Legislature, in effect, approved the construction placed upon Article 2671 by the Attorney General and the Board of Education.

Accordingly, you are advised that in our opinion bonds numbered 1/50, inclusive, bearing interest at the face rate of 2½% can be legally paid for out of State Permanent School Funds, so long as such bonds constitute a part of the entire unit of investment, namely, \$500,000, and so long as the income yield on the total sum invested is not less than 2½%.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

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

APPROVED JUL 1, 1941  
/s/ Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

(This opinion considered and approved in limited conference)

CEC-s:wb