



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable C. Burt Porter
County Attorney
San Patricio County
Sinton, Texas

Dear Sir:

Opinion No. 0-3821

Re: Would the State Board of Education be compelled to surrender bonds of Sinton Independent School District now held by the Board of Education, said bonds not having a call date, providing refunding bonds be voted for the express purpose of refunding the outstanding bonds in order to obtain a lower interest rate.

We acknowledge receipt of your opinion request of July 25, and quote from your letter as follows:

"The Sinton Independent School District issued bonds in 1933 or '34 which were purchased by the State Board of Education. The following questions arise:

"1. Would the State Board of Education or State Treasurer, as custodian, be compelled to surrender bonds of the Independent School District now held by the Board of Education; said bonds not having a call date, providing refunding bonds was voted by the people for the express purpose of refunding the outstanding bonds in order to obtain a lower interest rate?

"2. Where an independent school district has outstanding bonds that are owned by the State Board of Education, and three (3%) per cent refunding bonds could be issued to retire the five (5%) per cent bonds, would the State Board of Education be required to surrender the 5% bonds, although such bonds had no call date."

We have been unable to locate a Texas case squarely in point but we believe that the well established rule is laid down by the Supreme Court of Kansas in the case of State ex rel Parker, Attorney General v. State School Fund Commission, et al., 103 Pac. (2d) 801:

"It is well settled that in the absence of a provision therefor, either in the bonds or an applicable statute, municipal bonds issued for a certain number of years are not redeemable before maturity without the consent of the persons holding them".

See also 44 C.J. 1235; State v. Keith (Supreme Court of Okla.) 66 Pac. (2d) 1059; Brenham v. German-American Bank, 144 U.S. 173.

There is no constitutional or statutory provision in this State providing that bonds may be redeemed before maturity at the option of the school district. The school district may, however, reserve in the bonds an option to redeem.

In view of the foregoing it is our opinion that a school district has no authority to call bonds prior to their maturity date against the will of the owner, in the absence of express stipulation therefor in the bonds.

Therefore, both of your questions are answered in the negative.

Trusting that this answers your question, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/ Claud O. Boothman
Claud O. Boothman
Assistant

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APPROVED AUG 21, 1941
s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/GWB Chairman