



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
~~WILLIAM WILSON~~
ATTORNEY GENERAL

Mrs. B.B. Sapp, Director and Executive Secretary
Teacher Retirement System of Texas
Austin, Texas

Dear Mrs. Sapp:

Opinion Number 0-4908

Re: Investment of moneys now in sus-
pense account.

We have received your letter of February 16, 1943, which we quote in part as follows:

"The Teacher Retirement System respectfully requests an opinion from your Department on the following questions:

"This year due to the emergency so many teachers are changing from school to school it makes it very difficult to clear reports. As a result we have in Fund No. 63, known as a suspense account, approximately \$400,000. This money is idle and as a result the interest rate for teachers on their investments will be materially affected; since within a few months these reports will be cleared and this money properly deposited, would we have the right to invest approximately three fourths of this money held in suspense account in order to receive interest and thereby give the members of the Teacher Retirement System full benefit of their investment? Would it be within our rights to transfer from Fund No. 63 (Suspense Fund) a lump sum to Fund No. 103 and mark it Undistributed?

"I am herewith outlining the method the Teacher Retirement System will use in exhausting the amount transferred to Fund No. 103, Undistributed. Each day reports will be completed to the extent that all credits can be applied to the individual accounts. Such reports will be listed daily by Register Numbers. If the reports include membership fees, such fees will be transferred direct from Fund No. 63 to Fund No. 103. All credits to individual accounts will be applied against the Fund No. 103 Undistributed Fund until

the Fund is completely exhausted. The Summary of Deposits to Funds submitted to the State Treasurer will not include the amount applied against Fund No. 103 Undistributed. This amount will be carried in a different column to be used in the office of the Teacher Retirement System only. The Teacher Retirement System will exhaust the complete 103 Undistributed Fund before August 31, 1943.

"We will appreciate your immediate attention in this instance because this amount of money idle, as I have aforesaid, will seriously affect our interest credit to the individual teachers' accounts."

Section 8 of the Teacher Retirement Act (Article 2922-1, Vernon's Annotated Civil Statutes) sets up seven different funds for teacher retirement moneys. You have informed us that Fund No. 103, mentioned in your letter is the Teacher Saving Fund. Subsection 1 of Section 8 provides in part as follows:

"1. The Teacher Saving Fund.

"(a) The Teacher Saving Fund shall be a fund in which shall be accumulated regular five (5) per centum contributions from the compensation of members, including current interest earnings. Contributions to and payments from the Teachers Saving Fund shall be made as follows:

"(b) * * * *"

Subsection (1), Section 7 of the Retirement Act reads as follows:

"Sec. 7. (1) The State Board of Trustees shall be the trustees of the several funds as herein created by this Act, and shall have full power to invest and reinvest such funds subject to the following limitations and restrictions: All retirement funds, as are received by the Treasury of the State of Texas from contributions of teachers and employers as herein provided, may be invested only in bonds of the United States, the State of Texas, or counties, or cities, or school districts have not defaulted in principal or interest on bonds within a period of ten (10) years, or in bonds issued by any agency of the United States Government, the payment of the principal and interest on which is guaranteed by the United States; and in in-

terest-bearing notes or bonds of the University of Texas issued under and by virtue of Chapter 40, Acts of the Forty-third Legislature, Second Called Session; provided that a sufficient amount of said funds shall be kept on hand to meet the immediate payment of the amounts that may become due each year as provided in this Act. The State Board of Trustees shall have full power by proper resolution to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds, provided that any money on hand shall be subject to the State Depository Laws of Texas."

The suspense account is a fund set up by the State Board of Trustees of the Retirement System for retirement moneys received by the Retirement System which but for some error in the reports of the school district or other employer or in the amount of money sent would be placed in the Teacher Saving Fund and the Expense Fund. In most instances the error is minor and will in a short time be corrected. Also, in the great majority of cases the error concerns only one or two teachers of the employer whereas the reports and contributions fully and adequately cover all the remaining teachers of such employer. In other words, because of an error which affects only one or two teachers of the employer, the report must necessarily be held up until the error is corrected. The contributions of all the teachers covered by the report of the employer in the past have been placed in the suspense account until the error is corrected. You now wish to know whether part of the moneys presently in the suspense account may be transferred to the Teacher Saving Fund in an undistributed lump sum, earmarked as such, and then itemized and properly distributed as the reports are cleared up. In other words, you wish to transfer part of the suspense account, which part you feel offers very little doubt and feel certain will promptly be cleared, and then moneys will thereafter be cleared in the Teacher Saving Fund instead of first being cleared in the suspense account and then transferred to the Teacher Saving Fund. In this manner, such moneys may promptly be invested and start earning interest.

It seems to us that this is a matter properly lying within the discretion of the State Board of Trustees. The contributions of the members of the Retirement System under the Act are to be placed in the Teacher Saving Fund (Subsection (1) of Section 8). The Act is silent as to the means whereby errors in reports and in contributions are to be corrected. Of course,

it is contemplated that such errors will be corrected, and we think that the means of such correction are for the State Board of Trustees to determine.

Subsection (7) of Section 6 provides as follows:

"(7) Subject to the limitations of this Act, the State Board of Trustees shall, from time to time, establish rules and regulations for eligibility of membership and for the administration of the funds created by this Act and for the transaction of its business."

In answer to your question, it is our opinion that if the State Board of Trustees in its discretion determines that the transfer of moneys from the suspense account to the Teacher Saving Fund, as outlined, is reasonable and proper, we know of no legal inhibition to the same.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/George W. Sparks
George W. Sparks
Assistant

GWS/s/wc

APPROVED FEB 26, 1943
s/Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

Approved Opinion Committee By s/BWB Chairman