



THE ATTORNEY GENERAL
OF TEXAS

Gerald C. Mann

~~JAMES S. BROWN~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Hon. T. F. Slack
County Attorney
Reeves County
Pecos, Texas

Opinion Number O-5584

Re: Is the recent Act of the Legislature, which grants to the State Board of Education an option to purchase refunding bonds, issued to refund bonds owned by the State Permanent School Fund, applicable to the refunding of the Reeves County Courthouse and Jail Bonds in question?

Dear Sir:

We are in receipt of your letter of recent date reading as follows:

"On November 25, 1942, Reeves County entered into a contract with B. V. Christie & Company to refund \$92,500. Reeves County Courthouse and Jail Bonds of an issue now outstanding in the amount of \$105,000, the remainder to be discharged out of available sinking funds. Under this contract, B.V. Christie & Company was granted an option to purchase the refunding bonds, bearing interest at the rate of 3 1/2% per annum, at par and accrued interest. B. V. Christie & Company has recently exercised the option granted by the contract to purchase these bonds.

"Subsequent to the making of this contract, the Legislature enacted Chapter 248, Acts of the 48th Legislature, Regular Session, which grants to the State Board of Education an option to purchase refunding bonds issued to refund bonds owned by the State Permanent School Fund. The State Permanent School Fund now owns \$93,000 in principal amount of the County's Courthouse and Jail Bonds which have been called for redemption on September 30, 1943, pursuant to the opinion of the Supreme Court in the recent case of Cochran County v. Mann.

"I would appreciate your valued opinion as to whether or not this recent Act of the Legislature is applicable to these particular bonds and whether or not it is necessary for the County Judge to comply with the terms of that statute in regard to

notifying the Board of the terms under which the County has agreed to sell the refunding bonds to B. V. Christie & Company.

"Article I, Section 16, of the Constitution of Texas, and Article I, Section 10, of the Constitution of the United States, forbid the enactment of laws impairing the obligations of contracts. These constitutional provisions apply to the contracts between States and individuals. The State of Indiana v. Brand, 303 U.S. 95, 82 L.Ed. 685, Johnson v. Smith, 246 S.W. 1013 (Supreme Court of Texas). They also apply to contracts between political subdivisions of States and individuals. Shapleigh v. San Angelo, 156 U.S. 646, 42 L.Ed. 310, Payne v. First National Bank, 291 S.W. 209 (Comm. App.).

"In 9 Texas Jurisprudence, 543, the nature of the protection of contracts against impairment afforded by both Constitutions is stated as follows:

"The constitutional provision is violated whenever there is any invasion of the effect of a contract "in however small a particular"; the contract need not be entirely or even materially impinged upon.

"The utmost freedom to enter into any contract permitted by existing law is the inherent right of every citizen, and when he exercises that right in a lawful way, no Legislature has the power to disturb the purposes or effect, or in any manner rewrite any of the provisions of that contract, or make a new contract for him, and the right to comply with and enforce its provisions as written is fixed and vested. The degree in which the offending statute may impair the obligation of contract is immaterial. The only question is, Has the obligation been encroached upon in any respect?"

"Under its contract with the County, B. V. Christie & Company is given the right to purchase the refunding bonds. This right is a creature of the contract. If the above mentioned Act of the Legislature grants a prior right to the State Board of Education, it seems clear that the rights of B. V. Christie & Company are thereby impaired. Since this is prohibited by both Constitutions, it is my opinion that this statute does not apply to the bonds covered by the preexisting contract.

Hon. T. F. Slack, page #3

"The State Board of Education meets again on September 6th and I would greatly appreciate your opinion on this question before that date if it is conveniently possible. Please send a copy of your opinion to the State Board of Education."

Replying to the above you are advised that under the facts as stated, it is our opinion that the authorities cited by you sustain your position. Both the State and the United States Constitutions forbid the enactment of laws impairing the obligation of contracts. It follows that if B. V. Christie & Company entered into a valid contract with Reeves County prior to the passage of Chapter 248, Acts of the Forty-eighth Legislature, Regular Session, said Chapter 248 is not applicable to these bonds and it is not necessary for the County Judge to comply with the terms of same in regard to notifying the Board of Education of the terms under which the county has agreed to sell the refunding bonds to B. V. Christie & Company, but it is sufficient if it be made known to the Board that a valid contract had been made prior to the passage of said Chapter 248, giving to said Company the option to purchase the refunding bonds.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ C. F. Gibson
C. F. Bigson, Assistant

APPROVED SEP 3, 1943
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED: OPINION COMMITTEE
BY: BWB, CHAIRMAN

CFG-s:wb