



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

March 22, 1947

Hon. Jack C. Altaras
County Attorney
Johnson County
Cleburne, Texas

Opinion No. V-102

Re: Redemption of court-
house refunding bonds
issued in 1923

Dear Sir:

We have received your letter of March 6, 1947, which we quote in part as follows:

"The County of Johnson issued certain Court House Refunding Bonds dated April 10, 1923, and due April 10, 1947. In October, 1945, the County called in the outstanding County Court House Refunding Bonds. One holder of these bonds has refused to submit them and has demanded payment of principal and interest to maturity date. QUESTION: In view of the decision handed down January 29, 1947, by the Supreme Court of Texas in the case of the State National Bank of El Paso vs. Tarrant County, Texas, does Johnson County have the right to call in the outstanding County Court House Refunding Bonds?"

We have examined the original transcript covering these bonds which is on file in the Comptroller's Department. It is noted that the bonds were made payable serially from 1925 to 1953, inclusive. We assume that in your letter you have reference to the \$7,000.00 of bonds (Nos. 96 to 102, inclusive) which mature on April 10, 1947. The transcript shows that no option of redemption prior to maturity was included in the bonds. Therefore, if they can be redeemed prior to their maturity date, the authority must come from operation of law.

The record shows that the bonds were issued to refund \$150,000 "Johnson County Courthouse Bonds," dated October 10, 1912, due and payable forty years from their date, "with option reserved to redeem

said bonds at any time after TEN YEARS from their date." The authority to issue the refunding bonds was found in Article 657, Chapter 3, Title 18, Revised Civil Statutes of 1911. Moreover, it is expressly stated in Section I of the bond order and in the bonds themselves that the bonds were issued under the authority of the Constitution and Laws of the State of Texas, "particularly Article 657, of Chapter 3, Title 18, Revised Civil Statutes of Texas of 1911 . . ." Article 657 provided as follows:

"Art. 657. Old bonds of legal issue may be substituted by new. -- Where bonds have been legally issued, or may be hereafter issued, by any county for any of the purposes named in Article 610, new bonds bearing the same or a lower rate of interest may be issued in conformity with existing law, in lieu thereof. (Acts 1893, p. 112. Acts 1901, p. 16.)"

The original bonds were issued under the authority of Article 610, Chapter 1, Title 18, Revised Civil Statutes of 1911.

Article 611, which was part of Chapter 1 of Title 18, provided as follows:

"Art. 611. To run not exceeding forty years; redeemable when.--All bonds issued under this chapter shall run not exceeding forty years, and shall be redeemable at the pleasure of the county at any time after five years after the issuance of the bonds, or after any period not exceeding ten years, which may be fixed by the commissioners' court. (Acts 1893, p. 112.)" (Emphasis added)

The Supreme Court of Texas in the case of Cochran County v. Mann, 172 S. W. (2d) 689, in interpreting Article 611 held as follows:

"As we construe the above statute, where bonds are issued under the chapter therein referred to, if the Commissioners' Court at the time the bonds are issued makes no provision concerning its right to redeem the bonds prior to their matur-

ity, they may be redeemed at the pleasure of the county at any time after five years after the issuance thereof. However, the Commissioners' Court may, by an appropriate order entered at the time the bonds are issued, postpone the date after which the bonds may be redeemed to not exceeding ten years from the date of their issuance. The bonds are redeemable, in all event, at not exceeding ten years from the date of their issuance. *Dallas County v. Lockhart, State Treasurer, 128 Tex. 50, 96 S.W. 2d 60.*" (Emphasis added).

However, the Johnson County Courthouse Refunding Bonds were issued in 1923 under the authority of Article 657 which appeared in a different chapter. In the 1925 revision of Texas Statutes, Article 657 was placed in the same chapter with Articles 610 and 611. In the Revised Civil Statutes of 1925 these statutes appear in Chapter 2 of Title 22 as Articles 718 (610), 720 (611), and 725 (657). The Supreme Court in the case of *Bexar County v. Sellers, 178 S. W. (2d) 505*, held that the redemption provisions of Article 720 applied to all bonds issued under Chapter 2 of Title 22, which included refunding bonds issued under the authority of Article 725 of that chapter.

We have stated before, however, that the refunding bonds under consideration were issued in 1923 under the authority of Article 657, which appeared in a different chapter from Article 611, and as stated by the Supreme Court in the case of *State National Bank of El Paso v. Tarrant County, Texas, 199 S. W. (2d) 152*:

"We are here construing the applicable statutes as they existed in 1922, when the funding bonds involved in this suit were issued."

The statutes were the same in 1923 as in 1922.

In the Tarrant County case the identical legal question as the one under consideration was before the Supreme Court. Tarrant County had issued refunding bonds in 1922 under the authority of Article 657. No right of prior redemption was retained in those bonds. The Court held as follows:

". . . It is undisputed that the right to redeem such bonds before the maturity dates stated in such bonds was not reserved in the bonds or in the orders of the Commissioners' Court authorizing their issuance. The redemption article, Article 611 of Chapter 1 of Title 18 of the 1911 statutes, provides that 'all bonds issued under this chapter shall be redeemable' within a certain period of time. It is quite obvious that that article does not by its own terms apply to bonds issued under any other chapter. Jefferson County v. Sellers, 142 Tex. 528, 180 S. W. (2d) 138; Gavin v. Potter County (Civ. App.), 187 S. W. (2d) 705 (writ refused) . . ."

" . . .

"We have concluded that the redemption provisions of Article 611 of the Revised Civil Statutes of 1911 applied only to bonds issued under Chapter 1 of Title 18 of the 1911 Revised Civil Statutes, and cannot be applied to funding bonds issued under Chapter 3 of Title 18 of the 1911 Revised Civil Statutes."

SUMMARY

As the Johnson County Courthouse Refunding Bonds, dated April 23, 1923, contained no option of prior redemption, under the decision of the Supreme Court of Texas in the case of State National Bank of El Paso v. Tarrant County, 199 S.W. (2d) 152, the outstanding bonds of such issue are not subject to redemption prior to maturity, and the Commissioners' Court of Johnson County has no right to call in such outstanding bonds prior to maturity. Of course, such

bonds may be redeemed before maturity
with the consent of the holders there-
of.

Very truly yours

ATTORNEY GENERAL OF TEXAS

George W. Sparks

By

George W. Sparks
Assistant

GWS-s:wb

APPROVED MARCH 22, 1947

Price Daniel

ATTORNEY GENERAL OF TEXAS