



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

July 26, 1948

Mr. Joe Skiles, Business Manager
North Texas State Teachers College
Denton, Texas

Opinion No. V-640

Re: The legality of selecting a bank as trustee for bondholders of a college revenue bond issue when an officer of the bank is also a member of the college's board of regents.

Dear Sir:

Two letters, one from you and one from Mr. William L. Kerr, President of the Board of Regents, State Teachers Colleges of Texas, both request an opinion of this Department upon the above subject matter. We have before us a copy of the proposed contract evidencing an agreement by and between the Board of Regents of the State Teachers Colleges of Texas for and on behalf of the North Texas State Teachers College at Denton and Dallas National Bank, Dallas, Texas. The instrument evidences a contract which, in legal effect, makes the bank an agent or trustee for the benefit of bondholders of certain revenue bond issue and likewise for the benefit of the Board in divers respects, wherein the Board agrees to make and maintain certain deposits with the bank and agrees to pay for the bank's services a stipulated monthly sum. The integrity and honesty of the regent-officer is questioned by no one. You are interested solely in the legal principle involved.

This brief general statement of the nature of the contract is sufficient for the purposes of our opinion.

It is contrary to the public policy of the State for public officers or boards of the State to make contracts of the type above mentioned. This is so because such public officers and boards owe to the

State their unbiased official discretion in the matter of making contracts with others, and especially free from personal interest adverse to the State. The contract of the Board of Regents, of which Mr. Thomas is a member, with the bank, of which Mr. Thomas is Vice-President, is in violation of the public policy above mentioned. *City of Edinburg v. Ellis* (Com. App.) 59 S.W. (2d) 99. It is not a question of whether or not the public interest will actually suffer in permitting the particular contract, but it is rather one of a sound policy as to official conduct where the law will not speculate upon the actualities following its violation. Many years ago the Supreme Court reversed the judgment of a district judge in a case where he was distantly related to one of the parties, and sent the cause back for another trial, saying, in its judgment of reversal, that in truth the judge below had decided the case properly.

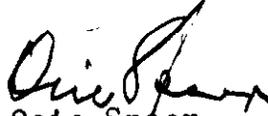
SUMMARY

A contract between the Board of Regents of the State Teachers Colleges with a National bank whereby the bank is to act as agent and trustee for certain bond proceeds and the Board pays to the bank certain monthly payments and keeps and maintains certain deposits, is contrary to public policy and should not be made.

Yours very truly,

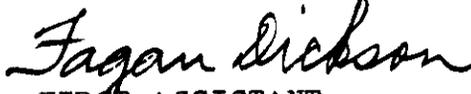
ATTORNEY GENERAL OF TEXAS

By


Ocie Speer
Assistant

OS:wb

APPROVED:


FIRST ASSISTANT
ATTORNEY GENERAL