



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

June 4, 1951

Hon. J. C. McEvoy
County Attorney
Waller County
Hempstead, Texas

Opinion No. V-1182

Re: Legality of investing
county sinking funds,
operating funds, and
bonds funds in United
States securities.

Dear Sir:

You have requested an opinion relative to the authority of the commissioners' court to invest county funds, proceeds from the sale of county bonds, and sinking funds in certain United States Government securities.

In every instance that the commissioners' court has been authorized to invest public money in various securities, the Legislature has named bonds of the United States Government among the securities in which such public funds may be invested. Att'y Gen. Op. O-4297 (1942).

Article 708b, V.C.S. (Sec. 2 of S.B. 199, Acts 48th Leg., R.S. 1943, ch. 131, p.211), provides:

"That any political subdivision of the State of Texas which heretofore has issued and sold bonds and is unable to obtain labor and materials to carry out the purpose for which the bonds were issued may invest the proceeds of such bonds now on hand in defense bonds or other obligations of the United States of America; provided, however, that whenever war time or any other regulations shall permit such political subdivisions to acquire the necessary labor and materials, the obligations of the United States in which said proceeds are invested shall be sold or redeemed and the proceeds of said obligations shall be used for the purpose for which the bonds of any such political subdivision were authorized."

Article 1269j-3, V.C.S. (H.B. 746, Acts 48th Leg., R.S. 1943, ch. 321, p. 481), provides:

"All political subdivisions of the State of Texas which have balances remaining in their accounts at the end of any fiscal year may invest such balances in Defense Bonds or other obligations of the United States of America; provided, however, that when such funds are needed the obligations of the United States in which such balances are invested shall be sold or redeemed and the proceeds of said obligations shall be deposited in the accounts from which they were originally drawn."

Since you state in your request that none of the proceeds contemplated being invested are from bonds sold prior to the enactment of Article 708b, we agree with you that its provisions have no application to your question. Att'y Gen. Op. 0-7393 (1943).

It is noted that Articles 708b and 1269j-3 were enacted at the same Session of the Legislature. Article 708b provides for the investment of bond money and Article 1269j-3 provides for the investment of the balances remaining in the various accounts of political subdivisions of the State. Therefore, it is our opinion that the provisions of Article 1269j-3 are not applicable to the investment of bond funds since that is specifically provided in Article 708b.

In construing the provisions of Article 1269j-3, it was held in Att'y Gen. Op. 0-5278 (1943):

"The foregoing Act authorizes all political subdivisions of the State (which includes counties) that have balances remaining in their accounts at the end of any fiscal year to invest such balances in defense bonds or other obligations of the United States of America. However, when such funds are needed the obligations of the United States in which such balances are invested shall be sold or redeemed and the proceeds of said obligations shall be deposited in the accounts from which they were originally drawn.

"In view of the foregoing Act it is our opinion that counties having balances remaining in their accounts at the end of any fiscal

year may invest such balances in defense bonds or other obligations of the United States of America."

Article 779, V.C.S., provides:

"The Commissioners Courts may invest sinking funds accumulated for the redemption and payment of any bonds issued by such county, political subdivision, road district, or defined district thereof, in bonds of the United States, of Texas, or any county in this State, or any school district or road district of this State, or any incorporated city or town of this State; or in bonds of the Federal Farm Loan Bank system, or in war-savings certificates, and certificates of indebtedness issued by the Secretary of the Treasury of the United States. No such bonds shall be purchased which, according to their terms, mature at a date subsequent to the time of maturity of the bonds for the payment of which such sinking fund was created."

Article 836, V.C.S., provides:

"The legally authorized governing body of any county, city or town, or the trustees of any school district or school community, may invest their respective sinking funds for the redemption and payment of the outstanding bonds of such county, city or town, or community, in bonds of the United States; war-savings certificates; and certificates of indebtedness issued by the Secretary of the Treasury of the United States; in bonds of Texas, or any county of this State, or of any incorporated city or town; and in shares or share accounts of building and loan associations organized under the laws of this State, or Federal Savings and Loan Associations domiciled in this State where such shares or share accounts are issued under and by virtue of the Federal Savings and Loan Insurance Corporation. No such bonds shall be purchased which, according to their terms, mature at a date subsequent to the time of maturity of the bonds for the payment of which such sinking fund was created."

In view of the above articles, it was held in Att'y Gen. Ops. O-3329 (1941), O-4413 (1942), and O-4621 (1942) that surplus accumulations in the sinking fund of a bond issue may be invested in United States bonds, but the principal raised from the sale of bonds can only be used for the purpose for which bonds were voted and cannot be invested in securities.

Therefore, you are advised that the proceeds raised from the sale of bonds issued subsequent to the effective date of Article 708b which constitute the bond principal cannot be invested in United States securities, but the surplus accumulated in the sinking fund may be invested in bonds of the United States. You are further advised that the county may invest balances remaining in the various county funds at the end of any fiscal year in defense bonds or other obligations of the United States Government. However, when such funds are needed, the obligations of the United States in which such balances are invested must be sold or redeemed and the proceeds of said obligations deposited in the accounts from which they were originally drawn.

SUMMARY

The proceeds from the sale of bonds issued subsequent to the effective date of Article 708b, V.C.S., (April 12, 1943) which constitute the bond principal cannot be invested in United States securities. Surpluses accumulated in the sinking fund, however, may be invested in bonds of the United States. Balances remaining in the various county funds at the end of any fiscal year may be invested in bonds of the United States Government. When these funds are needed, the obligation of the United States in which the balances are invested must be sold or redeemed and the proceeds of the obligations deposited in the accounts from which they were originally drawn. Arts. 708b, 779, 836, and 1269j-3, V.C.S.; Att'y Gen. Ops. O-3329 (1941), O-4297 (1942),

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0-4413 (1942), 0-4621 (1942), 0-5278 (1943),
0-7393 (1943).

APPROVED:

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JR:mw

Yours very truly,

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