



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

December 19, 1963

Dr. J. W. Edgar
Commissioner of Education
Texas Education Agency
Austin, Texas

OPINION NO. C-197

Re: Whether an independent school district can execute a binding obligation in the form of an interest-bearing note or time warrant for a school construction loan secured by pledging of anticipated incentive aid payments amounting to approximately \$41,000 annually for a period of nine years.

Dear Dr. Edgar:

You have requested that the Attorney General answer the following three questions:

"(1) Can the independent school district execute a binding obligation in the form of interest-bearing note or time-warrant for a school construction loan secured by or pledging of anticipated incentive aid payments approximately \$41,000 annually for a period of nine years?"

"(2) May incentive aid payments be applied both to principal and interest on such a loan, or to payment of principal only?"

"(3) If (1) is answered yes: Is assignability of the incentive aid payments permissible in payment of the loan; viz., this Agency to forward such payments as are determined annually to the assignee lender on its filing of a copy of the assignment instrument?"

The statutory provision for incentive aid payments to consolidated independent school districts is found in Article 2815-3, Vernon's Civil Statutes, Section 1 of which provides, in part, as follows:

"C. The Incentive Aid Payments shall be used exclusively to retire the existing bonded indebtedness of the school districts which have been

consolidated, or shall be applied to the cost of constructing new buildings required by the reorganized district."

The authority of a school district to issue interest-bearing time warrants is found in Article 2786e, Vernon's Civil Statutes, Section 8 of which defines "interest-bearing time warrants" as being a "promissory note, interest-bearing time warrant, or obligation or other evidence of indebtedness issued under this Act."

Section 1 of Article 2786e provides that "such warrants shall mature in serial installments of not more than five (5) years from their date of issue" and further that "such warrants shall upon maturity be payable out of any available funds of such school district." (Emphasis added.)

Section 3 of Article 2786e limits the amount of such warrants that a school district can issue, including the following: "No school district shall have outstanding at any one time warrants totalling in excess of Twenty-Five Thousand Dollars (\$25,000) under the provisions of this Act."

In answering your first question we have only to determine whether or not the school district could execute the contemplated obligation without violating the provisions of Article 2786e. The answer is that it clearly could not in that to do so would violate all the requirements of Sections 1 and 3 which are referred to above. Not only would the contemplated obligation be in an amount of approximately \$400,000 (as opposed to the maximum of \$25,000 allowed by Article 2786e) and extend over a nine year period (as opposed to the maximum of five years allowed by Article 2786e), but it would attempt to secure the loan by pledging specific funds for its payment, whereas Article 2786e specifically says that such obligations shall be payable out of "any available funds." There is no provision in Article 2786e that authorizes specific funds of any kind to be pledged for payment of time warrants, nor does Article 2815-3 authorize pledging of anticipated future incentive aid payments for any purpose.

Since your first question has been answered in the negative it is unnecessary to answer your second and third questions.

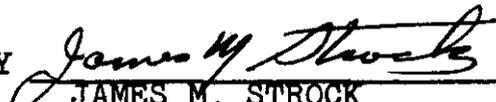
SUMMARY

The authority of a school district to execute an interest-bearing note or time warrant is set out in Article 2786e, Vernon's Civil Statutes and is limited by the provisions of said Act. Thus the specific obligation contemplated here would be unlawful in that it would pledge specific funds for payment rather than "any available funds" and would also exceed the statutory maximum as to both amount and duration of the obligation.

Very truly yours,

WAGGONER CARR
Attorney General

BY



JAMES M. STROCK
Assistant

JMS:da

APPROVED:

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APPROVED FOR THE ATTORNEY GENERAL
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