



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable T. C. Chadiok  
County Attorney  
Wood County  
Quitman, Texas

Dear Sir:

Opinion Number O-2271  
Re: Accrued uncollected interest  
on bonds owned by the Permanent  
School Fund of a county is the  
property and a part of the Perma-  
nent School Fund until collected,  
and not a part of and the property  
of the Available School Fund until  
such collection.

This acknowledges receipt of your opinion request of recent date, and we quote from your letter as follows:

"Lone Pine Common School District issued bonds of which \$4,000.00 are now owned by the Wood County Permanent School Fund; such bonds containing provisions that they might be recalled at the option of the giver; since the time of issuance Lone Pine Common School District has been absorbed by the Mineola Independent School District, the independent school district assuming the payment of the bonds; the Mineola district defaulted paying the annual interest to the extent of \$600.00; the Mineola district has called the bonds for payment of the principal.

"The Wood County Board of Education used the funds in the Available School Fund for administrative expense beneficial to all the common school districts

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of the county, including Lone Pine, prior to 1938, without prorating the independent school districts their share, including the Mineola Independent. Since the absorption of the Lone Pine District the Mineola district has received its pro rata share of the Available School Fund.

"The interest on the \$4,000.00 bond is current for the year 1940.

"The Mineola district refuses to pay the \$600.00 in accrued interest on the \$4,000 obligation, but offers to set this interest claim of the Permanent School Fund off against the Mineola district claim against the Available School Fund.

PROPOSITIONS

Number One

"Accrued uncollected interest on bonds owned by the Permanent School Fund of a county is the property and a part of the Permanent School Fund until collected, and not a part of and the property of the Available School Fund until such collection.

Number Two

"The claim of an independent school district for its pro rata share of the Available School Fund of a county arising when such funds were used for administrative expense of the common school districts of the county cannot be set off against the claim of the County Permanent School Fund for interest on bonds the independent school district assumed on the absorption of a common school district that was a beneficiary of the funds used for administrative expense.

Number Three

"County Available School Funds cannot be appropriated to pay indebtedness incurred in years previous to its collection.

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" \* \* \* We request an answer to each of the propositions."

The Constitution and Statutes enacted thereunder declare what shall constitute the School Fund. Constitution, Art. 7, Sec. 2-6; Revised Civil Statutes, 1925, Arts. 2323-24-25.

The County Available School Fund is the fund which is used to pay the administrative and operating expense of the schools of the county. This fund is derived from several sources, one of which is the interest arising from any bonds belonging to the Permanent School Fund. Arts. 2323 and 2324, Revised Civil Statutes; 37 Tex. Jurisprudence, pages 860-1-2. The management and control of the available fund seems to be in the county school trustees, acting through the county superintendent. Oge, et al vs. Froboese, et al., 66 S.W. 688.

The Permanent School Fund is a trust fund for educational purposes. The counties are mere trustees for the funds and the public schools are the beneficiaries. 37 Tex. Jurisprudence, 860, and cases cited therein. This department has held that the commissioners' court has the responsibility of investing and safeguarding this fund. Attorney General's Opinion Number 0-1484; Art. 7, Sec. 6, of the State Constitution; Art. 2324, Revised Civil Statutes.

The purpose of the foregoing discussion is to show that the Permanent School Fund and the Available School Fund are entirely separate and distinct funds, under management and control of different governing bodies and serve two different purposes. As stated above, the interest arising from bonds belonging to the Permanent School Fund, becomes a part of the Available Fund. We understand this contemplates the money collected as becoming a part and not the mere right to collect, which is inchoate, and, until the money is collected, cannot be exercised by any entity except the trustees acting for the Permanent School Fund. The interest does not become a part of the Available Fund until collected and properly placed in said fund. Under the facts submitted we are not passing upon the question of whether or not this claim against the school fund is a just one, but whether such claim is just or not, it cannot be set off against the Permanent School Fund.

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Therefore, it is the opinion of this department that the first two propositions, as stated by you, are true and correct.

We do not feel that we have been furnished with sufficient information to apply your third proposition to the facts submitted. However, we will state, as a general rule, that school funds cannot be appropriated to pay indebtedness incurred in years previous to its collection. Collins vs. Peacock, 55 S.W. 756.

Trusting that this answers your question, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

*Erwin Butler*

COB-s

BY *Claud C. Boothman*  
 Claud C. Boothman  
 Assistant

