



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

May 5, 1950

Hon. Theophilus S. Painter, President
The University of Texas
Austin, Texas

Opinion No. V-1052.

Re: The legality of investing the Permanent University Fund in bonds of common and independent school districts of Texas.

Dear Sir:

We quote from your inquiry as follows:

"The investments of the Permanent University Fund are made pursuant to the authority delegated to the Board of Regents by Article 2591a, Vernon's Annotated Civil Statutes of Texas, and by Section 11 of Article VII of the Constitution of Texas, as amended. We would appreciate very much your opinion as to whether or not the term 'School Bonds of Municipalities' in the constitution and statutes includes the bonds of common and independent school districts of this State?"

The Constitution of this State by Section 11 of Article VII, as amended, declares that the Permanent University Funds "shall be invested in bonds of the United States, the State of Texas, or counties of said State, or in School Bonds of municipalities, or in bonds of any city of this State, or in bonds issued under and by virtue of the Federal Farm Loan Act . . ."

In conformance with the constitutional provision, as amended, Article 2591a of Vernon's Civil Statutes was enacted. Section 1 of that statute provides in part:

"The Board of Regents of the University of Texas is authorized to invest the Permanent Fund of the University of Texas in:

- "1. Bonds of the State of Texas;
- "2. Bonds of the United States;
- "3. Bonds of counties of the State of Texas; school bonds of municipalities of the State of Texas; bonds of cities in the State of Texas;"

Webster's New International Dictionary, 2nd Edition, defines "municipality" to be:

"A town, city or other district having powers of local self-government; a municipal corporation; also, the community under the jurisdiction of a municipal government. . ."

In Love v. City of Dallas, 120 Tex. 351, 40 S.W. 2d 20 (1931) our Supreme Court, speaking on the nature, status and property rights of school districts of Texas, said:

"School districts are local public corporations of the same general character as municipal corporations. Thompson v. Elmo Ind. School Dist. (Tex.Civ.App.) 269 S.W. 868,870; Royse Ind. School Dist. v. Reinhardt (Tex.Civ.App.) 159 S.W. 1010 (writ refused). They are defined as quasi-municipal corporations and derive their powers by delegation from the state. They are state agencies, erected and employed for the purpose of administering the state's system of public schools. 24 Ruling Case Law, pp. 562 to 565, §§ 6 and 7 . . . Cities and towns and municipal corporations are of the same general nature as quasi-municipal corporations, in so far as here involved, and the right of the Legislature to create, abolish, enlarge or restrict them in their territory or powers is, unless restrained by special constitutional provisions, similar to the authority of the Legislature over quasi-municipal corporations. Both are agencies of the government - the one with a more limited sphere than the other . . ."

And from Hatcher v. State, 125 Tex. 84, 81 S.W. 2d 499 (1935) we quote:

". . . School Districts, whether independent or common school districts, are not

primarily agencies of the state, but they are local public corporations of the same general character as municipal corporations"

See also Dupuy v. State, 135 Tex.Crim. 595, 121 S.W.2d 1003 (1938); Lewis v. Ind. School Dist. of City of Austin, 139 Tex. 83, 161 S.W.2d 450 (1942); Harlingen Independent School Dist. v. C. H. Page & Bro., 48 S.W.2d 983, (Tex.Comm.App. 1932); 27 Words & Phrases, Perm. Ed., Municipalities, p. 796.

Furthermore, school districts of Texas, whether classified as common or independent, are by statute constituted bodies politic and corporate. Arts. 2748, 2780, V.C.S.; Hatcher v. State, supra.

The authorities above quoted demonstrate that school districts of this State are municipalities, local public corporations, created by the State for the purpose of conducting in their localities the certain governmental educational functions delegated by the State.

In our opinion, the phrase "school bonds of municipalities" as used in Section 11 of Article VII of the Constitution and Article 2591a should be construed to include school bonds of common and independent school districts of Texas. Further, that the words "of municipalities" were employed to restrict the investment of permanent University funds (insofar as school bonds are concerned) to investments in public school bonds as distinguished from bonds of private school corporations.

It is important to note that the same provisions in the Constitution and statute considered herein further authorize investment of such funds "in bonds of any city of this State." The quoted phrase immediately follows the language under consideration. School bonds of municipally controlled school districts are issued by the city. Such bonds are city obligations, city bonds. Poteet v. Bridges, 248 S.W. 415 (Tex.Civ.App. 1923); A.G. Opinions V-334, V-690. Being city bonds, investment of permanent University funds in same would clearly be authorized by the clause, "bonds of any city of this State."

If it were the purpose of the Constitution with respect to investments in school bonds to restrict investments of said funds to those school bonds issued by municipally controlled school districts, such intendment

could and, we think, would have been accomplished simply by omission from the law of that phrase "school bonds of municipalities," and leaving therein only the phrase "bonds of any city of this State." It is clear that "municipalities" and "city," as used in the Constitution and statutes were intended to have different meanings from one another.

In construing the Constitution and statutes, as we have, to authorize investment of permanent University funds in common and independent school district bonds, as well as in the municipally controlled school district bonds, meaning is given to the phrase "school bonds of municipalities." Construed otherwise that phrase becomes useless, having no meaning. Such a presumption should not be ascribed to the people who adopted the amended constitutional provision, nor to the Legislature in its enactment in accordance therewith.

SUMMARY

Investments of the Permanent University Fund may be made in the bonds of common and independent school districts of this State. Art. VII, Sec. 11, Tex. Const.; Art. 2591a, Sec. 1, V.C.S.

APPROVED:

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GEO:mv

Yours very truly,

PRICE DANIEL
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By *Chester E. Ollison*
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