THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

February 24, 1955

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Letter Opinion No. MS-176

Re: Questions relating to the issuance of notes or bonds by State Institutions of Higher Learning secured by proceeds of the five cent tax levied by Section 17 of Article VII of the Constitution.

Dear Mr. Calvert:

Your request for an opinion presents questions arising from an interpretation of the provisions of Article VII, Section 17, of the Constitution of Texas, as follows:

"1. What can be pledged as security for notes or bonds issued during the initial ten-year period?

"2. Must notes or bonds issued during the initial ten-year period mature not later than December 31, 1957?

"3. May notes or bonds include an extension clause to extend the maturity beyond December 31, 1957?

"4. Would a note or bond that was in default on December 31, 1957, because of inadequate funds, be a legal note or bond, and could the note or bond be paid from proceeds of taxes levied during the initial ten-year period but not collected until after this date?"

After providing for the tax levy and creating the special fund, the Constitution (Article VII, Section 17) provides:

> ". . . The governing body of each such institution . . . is fully authorized to pledge all or any part of said funds allocated to such institution as hereinafter provided . . ."
>
> ". . .
>
> "Funds raised from said Five (5¢) Cents tax levy for the ten-year period beginning January 1, 1948, are hereby allocated to the following institutions . . . and in the following proportions . . ." (Emphasis added)

Thus, the specified institutions may pledge all the allocated revenues from the tax levy during the initial ten-year period irrespective of the date such revenues are actually collected.

Your second and third questions are governed by the following language of the same Constitutional provision:

> "Such bonds or notes shall be issued in such amount as may be determined by the governing boards of said respective institutions . . . and shall mature serially or otherwise not to exceed ten (10) years from the first (1st) day of January of each year in which such funds are allocated or re-allocated to said respective institutions; . . ." (Emphasis added)

The language is mandatory and too clear to admit any construction, and the language of the Constitution may not be expanded by the note or bond providing for extension of the maturity date. Your second question is answered in the affirmative; the third question is answered in the negative.

As to your fourth question, you are advised that the passing of the maturity date of the note will not affect its validity. The obligation to pay the note or bond may be affected by laches or limitations, but in the absence of such factors, the obligation is a continuing one and should be paid out of the funds later obtained from the levies made during the initial period.

Your related questions point out an unusual situation in that all of the funds anticipated to be collected from the tax levies during the initial ten-year period may be pledged to the payment of the obligations irrespective of the actual date the funds are collected, while the maturity date of the obligations is set at not later than December 31, 1957. Obviously, the bonds or notes will go into default if issued for the maximum of the Comptroller's estimated anticipated proceeds for the entire tax levies and that amount is not collected prior to December 31, 1957. A default in the payment of the bonds, no matter how short in duration, will have a great effect upon the net interest cost of future issues of the particular institutions.

The situation is helped, in part, when it is remembered that the Constitution allocates (and provides for a reallocation) of the tax proceeds to the respective institutions for certain purposes. After payment of notes and bonds issued during the initial period, any surplus thereafter collected from the taxes levied during the initial period may be used by the respective institutions during the succeeding periods for the purposes originally authorized.

The notes or bonds issued during the initial ten-year period, pursuant to Article VII, Section 17, of the Constitution of the State of Texas, may be secured by a pledge of the revenues collected from the 5¢ tax levied during the initial period. Such bonds or notes must mature not later than December 31, 1957, and the obligation may not provide for an extension of the maturity date. The passing of the maturity date will not ordinarily affect the validity of the obligation.

The foregoing guides are the ones to be used by this department should you or another authorized official present a question as to the validity of a particular note. We will not approve or disapprove the notes unless so submitted because the Constitution limits our approval to bonds issued by the various institutions.

Very truly yours,

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