February 20, 1939

Hon. William C. McDonald
County Attorney
Coke County
Robert Lee, Texas

Dear Mr. McDonald:

Opinion No. O-172
Re: Investing county permanent school funds in county bonds

This is in answer to your letter of January 15, 1939. In that letter you ask for an opinion on the following question:

"May the Commissioners' Court of Coke County use money belonging to the County's permanent school fund to buy Coke County bonds, to-wit, bonds in the sum of $25,000.00 voted in Precinct No. 1, for road purposes?"

The permanent school fund is provided for in Sections 2 and 6 of Article VII of the Constitution of Texas. Section 2, Art. VII, reads as follows:

"All funds, lands and other property heretofore set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the State out of grants heretofore made or that may hereafter be made to railroads or other corporations of any nature whatsoever; one-half of the public domain of the State; and all sums of money that may come to the State from the sale of any portion of the same, shall constitute a perpetual public school fund."

Sec. 6, Art. VII, reads in part as follows:

"All lands heretofore, or hereafter granted to the several counties of this State

> for educational purposes, are of right the property of said counties respectively, to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the Commissioners' Court of the county . . . said lands, and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said state, or in such other securities, and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon, and other revenue, except the principal shall be available fund."

This last quoted provision of the Constitution, Sec. 6, Art. VII, was adopted as an amendment in 1883. In the case of Boydstun v. Rockwall County, 86 Tex. 234, 24 S. W. 272, which concerned only the investment of a County's permanent school fund in the bonds of another county, the Supreme Court of Texas commented on this provision of the Constitution as follows:

> "We are of opinion, therefore, that the amended section was intended to confer authority upon these courts to invest the fund in county bonds. 'Under such other restrictions as may be prescribed by law' means that the legislature might throw restrictions around the investment, and not that it was bound to do so before the power could be exercised."

The language of Sec. 6, Art. VII, is plain and unambiguous. It says that the proceeds from the sale of school lands, which is permanent school fund money, are "to be invested in lands of . . . counties in said state. . . under such restrictions as may be prescribed by law". That language clearly means that a county may invest its permanent

school fund in the bonds of any and all counties of the State, unless (as stated in Boydstun v. Rockwall County, supra) the Legislature has thrown restrictions around the investment. The only language that we can find in the statutes wherein the legislature has said how and where this money shall be invested is Article 2824 of the Revised Civil Statutes of Texas, which says:

> "Each county may sell or dispose of the lands granted to it for educational purposes in such manner as may be provided by the Commissioners' court of such county, and the proceeds of any such sale shall be invested in bonds of the United States, the State of Texas, the bonds of the counties of the State, and the independent or common school districts, road precinct, drainage, irrigation, navigation and levee districts in this State, and the bonds of incorporated cities and towns, and held by such county alone as a trust for the benefit of public free schools therein, only the interest thereon to be used and expended annually."

This statute reiterates that this money shall be invested in certain bonds, including "the bonds of the counties of the State". This is certainly no restriction or limitation as to what county bonds may be bought. We believe a county has a right to invest this money in its own bonds as much as it has the right to invest it in bonds of other counties.

In giving this opinion we are confronted with the statement in 37 Tex. Jur. 861, as follows:

> "When the proceeds of the sale of county lands are received by the commissioners' court it is the duty of the court thereafter to invest the same as directed by the Constitution. It is provided (art.7, sec. 6), that the proceeds shall 'be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon, and other revenue, except the principal shall be available fund.' Authority to invest the proceeds should be exercised by the commissioners' court . . .
>
> "A county has no power to invest the proceeds in its own bonds."

The only authority cited for this last sentence is the case of Commanche County v. Burks, (Tex. Civ. App.) 166 S. W. 471; but in our opinion that case does not support such a statement. In the case of Commanche County v. Burks, supra, the right of the Commanche County Commissioners' Court to invest the Commanche County permanent school fund in certain Commanche County bonds was attacked, and the Court of Civil Appeals held that the bonds were "invalid . . . for want of any authority for their issuance"; and as we understand it the court held that it was improper for the Commissioners to invest the county's permanent school fund in these invalid bonds or any other invalid bonds because of the fact of their invalidity. Therefore, we do not think that the case of Commanche County v. Burks, supra, is authority for the above quoted statement in Texas Jurisprudence, and we believe the last quoted sentence is wrong.

Our answer to your question is that the Commissioners' Court of Coke County may use money belonging to the County's permanent school fund to buy Coke County bonds, provided, of course, that such bonds were properly issued and are valid bonds.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Cecil C. Rotsch

Cecil C. Rotsch
Assistant

CCR:BT

APPROVED:

Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

O.K.
GRL