OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

C. MANN
ATTORNEY GENERAL

March 25, 1939

Honorable L. A. Woods
State Superintendent of Public Instruction
Austin, Texas

Dear Sir:

Opinion No. O-398
Re: Powers and duties of State Superintendent of Public Instruction under Article 2675b-9, Revised Civil Statutes in the purchase of bonds for investment of Permanent School Fund

By your letter of February 28, 1939, you seek the opinion of this department on the respective rights and duties of the State Superintendent of Public Instruction, and the State Board of Education under statutes governing the purchase of bonds for the purpose of investing the Permanent Free School Fund of this State.

You point out that under Article 2669 through Article 2673, inclusive, Revised Civil Statutes, as amended by Chapter 278, Section 1, p. 573, Acts Regular Session, Forty-first Legislature, the duty rested upon the State Board of Education as then constituted, rather than the State Superintendent of Public Instruction, to invest the Permanent School Fund of Texas in the bonds designated in Article 2669, Revised Civil Statutes, as amended, by following the procedure and exercising the purchase option provided in Articles 2670, 2671 and 2673, Revised Civil Statutes.

As we interpret the instant inquiry, you wish to know the effect on the foregoing statutes, of the subsequently enacted Article 2675b-9, Revised Civil Statutes, being Chapter 10, p. 12, Section 9, Acts Second Called Session, Forty-first Legislature, and providing as follows:

> "The State Superintendent of Public Instruction shall, subject to the approval of the Board of Education hereby created, invest the permanent school fund in the class of bonds which may be bought with said funds under existing law. And, when the State Superintendent of Public Instruction exercises the option given by law for the purchase of bonds, the same shall prevent the sale of said bonds to any other party until said

Board of Education, at its next meeting, has had opportunity to either approve or disapprove such purchase. If the purchase is approved, said bonds shall be paid for out of the permanent school fund, as is now provided by law; and if disapproved, then said bonds shall be released as though the option given the permanent school fund to purchase said bonds had not been exercised."

In this connection, you point to the repealing clause embodied in Section 11 of the Act next above cited, and to the amendment to the Constitution of Texas, and statutes thereunder, creating a State Board of Education of nine members by appointment by the Governor, in lieu of a State Board consisting of the Governor, Comptroller, Treasurer, and Superintendent of Public Instruction.

We find from a search of the records of this office that ur precise question has been fully and adequately answered by let- r opinion to your predecessor, Honorable S. F. H. Harrs, under date October 9, 1929, written by Mr. D. L. Whitehurst, then Assistant ...torney General, and by opinion supplementary thereto and explanatory thereof, between the same parties on October 15, 1929. This opinion referred to turns upon the same constitutional and statutory provisions upon which you request the present construction of this department, there having been no alterations, by amendment or repeal, of the then existing law. This opinion makes it clear that under Section 9, Chapter 10, Acts Forty-first Legislature, Second Called Session, (Article 2675b-9 R.C.S.), the exercise of the option to purchase bonds for investment of the Permanent School Fund was placed upon the State Superintendent of Public Instruction, and, consequently, taken from the State Board of Education, where it had theretofore rested under Section 1, Chapter 278, Acts Regular Session, Forty-first Legislature, (Article 2673, as amended, Revised Civil Statutes). But it is pointed out that such tentative purchase of bonds by the exercise of this purchase option, in the mode and manner provided by said Act next above cited, was subject to final approval or disapproval by the State Board of Education at their next meeting.

A careful review of the aforementioned opinion convinces s that nothing should be taken from or added to such opinion to lly answer the instant inquiry, and we are, accordingly, referring ou to such opinion, as it appears in your files, for guidance.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Pat M. Neff, Jr.

Pat M. Neff, Jr.
Assistant