



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
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ATTORNEY GENERAL

Honorable Tom C. King
State Auditor and Efficiency Expert
Austin, Texas

Dear Sir:

Opinion No. 0-1693

Re: Does Senate Bill #455 purport to validate the procedure so as to give the sanction of the Legislature to an originally unlawful pledge of funds?

Your request for an opinion has been received by this department. We quote from your letter as follows:

"Chapter 5, Acts 43rd Legislature, 2nd Called Session, provides for bond issues by the Board of Regents of the State Teachers College to secure loans to the various institutions under their charge, for the purpose of constructing needed buildings. The Act, in specifying the money available for payment of the bonds, limits the same 'solely' to revenues derived from the operation of the buildings constructed under its authority. This Act, with its amendments, has been codified as Art. 2603c in Vernon's Annotated Statutes.

"Senate Bill 455, 46th Legislature purports to validate all Acts of the Board, theretofore had in issuing bonds 'to accomplish purposes authorized under the provisions of Chapter 5'. This Act is codified by Vernon as Art. 2603cl.

"Your opinion is respectfully requested as follows:

- "1. If a bond issue was made, under color of the authority of the said Chapter 5, but which in fact provided for the use of repayment funds not available for that purpose under the Act, does Senate Bill 455 purport to validate the procedure so as to give the sanction of the Legislature to the originally unlawful pledge of funds?

"2. Is the Act (Senate Bill 455) effective in thus providing additional funds for such purposes than those allowed under the original Act, at least as to the issues executed between their respective dates?"

In answering this request we enclose a copy of our Opinion No. 0-1662, addressed to Honorable Tom C. King, State Auditor and Efficiency Expert, Austin, Texas, which holds that the Board of Regents of the State Teachers College is not authorized to use either appropriations from the general fund or local or institutional funds in payment of bonds issued under Chapter 5, Acts of the Forty-third Legislature, Second Called Session.

Senate Bill 455 provides as follows:

"Art. 2603c1. Validation of proceedings and bonds purchased by Federal Agencies.

"That severally all the acts of the Board of Regents of the University of Texas, the Board of Directors of the Agricultural and Mechanical College of Texas, the Board of Directors of Texas Technological College, the Board of Regents of the State Teachers Colleges, the Board of Regents of the Texas State College for Women, and the Board of Directors of the Texas College of Arts and Industries, heretofore had in the authorization, issuance, and delivery of bonds, notes or warrants, evidencing loans made to accomplish purposes authorized under the provisions of Chapter 5, Acts of the Second Called Session of the Forty-third Legislature, and amendments thereto, and all other laws of the State of Texas, relating to such bonds, notes or warrants, including the construction, acquisition and equipping of dormitories, kitchens and dining halls, hospitals, libraries, student activity buildings, gymnasias, athletic buildings and stadia, and other buildings, are hereby in all things validated. Any such bonds, notes or warrants heretofore issued, or that may be issued hereafter, pursuant to any order or resolution of any such Board of Directors or Board of Regents heretofore adopted, are in all things fully validated, and such bonds, notes or warrants, the pledge of the revenues by any such Board of Directors or such Board of Regents to secure and assure the payment of such obligations, and the provisions and covenants as to rates and charges supporting such pledges, are in all things ratified, and such bonds, notes or warrants are hereby declared to be the valid and binding special obligations of such

Board of Directors or such Board of Regents, to be paid out of revenues pledged and not otherwise obligations of such respective institutions. It is hereby made the duty of said Boards of Directors and of said Boards of Regents to fix, maintain and collect charges or rates, sufficient for a reasonable reserve and to pay the interest as it accrues and the principal as it matures of any such bonds, notes or warrants heretofore or hereafter authorized by such Boards.

"Provided, however, that the provisions of this Act shall apply only to such bonds, notes or warrants as have heretofore or may hereafter be purchased by the Government of the United States or some agency thereof, or which bonds, notes, or warrants are under contract of purchase by the Federal Government or any agency thereof. Acts 1939, 46th Leg., S.B. #455, Sec.1."

It seems to be the settled law of this State that the Legislature may legalize unauthorized acts of subordinated agencies where same would have been valid under legislative sanction previously given. Louisiana Ry, & Nav. Co. v. State, 298 S.W. 462, Aff. 7 S.W. (2) 71; Anderson Co. Rd. Dist. No. 8 vs. Pollard, 296 S.W. 1062.

Under the statement of facts given in your letter the Legislature could not at this time validate the unlawful pledging of funds or make additional appropriation out of public funds to pay principal and interest on bonds issued under Chapter 5, Acts of the Forty-third Legislature, Second Called Session. An additional appropriation from the funds in the State Treasury or from local or institutional funds would be in violation of Article 3, Section 44 of the Constitution of Texas, which provides, in part, that the Legislature shall not "grant, by appropriation or otherwise, any money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by preexisting law."

There being no liability against the State because under the expressed provision of the statute authorizing the construction of buildings and the issuing of the bonds in question, there would be no "preexisting law" to serve as the basis of the appropriations of any public funds to repay the loan, and such appropriations would be in violation of Article 3, Section 44 of the Constitution. Ft. Worth Cavalry Club vs. Sheppard, 83 S.W. 660.

For reasons above stated, and also as set out in the enclosed opinion, it is the opinion of this department that Senate Bill 455, Forty-sixth Legislature, does not purport to validate the procedure so as to give the sanction of the Legislature to the originally unlawful pledge of funds, and also does not attempt to provide additional funds for such purposes than those allowed under the original Act.

Trusting that this answers both of your questions,
we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/Claud O. Boothman
Claud O. Boothman
Assistant

COB:s:wc

APPROVED FEB 27, 1940
S/W. F. Moore
FIRST ASSISTANT
ATTORNEY GENERAL

This Opinion Considered and Approved in Limited Conference