



THE ATTORNEY GENERAL
OF TEXAS

GERALD C. MANN

~~XXXXXXXXXXXXXXXXXXXX~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable E. E. Coons
County Attorney
Sherman County
Stratford, Texas

Dear Sir:

Opinion Number 0-5000
Re: Whether Sherman County
may compel bondholders
to permit the county
to pay off unmatured
bonds to extent of
sinking fund and to
refund remaining out-
standing unmatured
bonds.

We are in receipt of your letter of recent
date requesting our opinion on the question stated therein.

The facts as disclosed in your letter are as
follows:

"In the year 1922 Sherman County issued
\$62,500.00 in Courthouse bonds, dated July
10, 1922, and maturing serially. At the
present time there is outstanding of this
issue \$42,500.00. These bonds bear 6% int-
erest, and none are now, and never been, in
default. Sherman County has in its sinking
fund applicable to these bonds approximately
\$15,000.00.

"Owing to the present conditions of the bond
market, the Commissioners' Court has asked for
an opinion as to whether the sinking fund can
be used to redeem these bonds, and whether the

other bonds may be refunded at a lower rate of interest. The bonds do not carry an option for payment prior to maturity."

The questions submitted are:

"1. May Sherman County require the holders of the above bonds, to the extent of its sinking fund, to submit their bonds for redemption at par and accrued interest? (It being assumed that Sherman County will wish to use its accumulated sinking fund for such purpose.)

"2. May Sherman County refund the remaining outstanding bonds by issuing new bonds at a lower rate of interest, and require the holders of such bonds to submit them for redemption at par and accrued interest?"

It is true that at the time these bonds were issued Article 657, Revised Statutes, 1911, read as follows: "Where bonds have been legally issued, or may be hereafter issued, by any county for any of the purposes named in Article 610, new bonds bearing the same or a lower rate of interest may be issued, in conformity with existing law, in lieu thereof."

It is also true that Section 7 of the "Bond and Warrant law of 1931" contains the following language: "Such Commissioners' Court and such governing bodies shall have the right at all times to issue refunding bonds for the refunding of any outstanding bonds legally issued and outstanding interest on any legally issued outstanding bonds, subject to laws applicable to the issuance of refunding bonds and without the necessity of any notice or right to a referendum vote."

From the foregoing it is seen that counties are given the right to refund outstanding bonds. But is that right contingent upon the consent of the bondholders? We are of the opinion that it is unless the bonds contain an option of redemption under which the county reserves the right to call the bonds upon a

given date. Dallas County v. Lockhart, 96 S. W. (2d) 60. It is our opinion that if the articles of the statutes hereinabove quoted undertook to authorize counties to compel the holders of unmatured bonds to surrender them either for cash or for refunding bonds bearing a lower rate of interest, such articles would be unconstitutional. Since the original bonds did not contain an option to redeem them prior to their maturity, any such law would impair the obligation of the contract between the county and the bondholder. In Vol. 12, page 1056, Corpus Juris, is found the following language: "Any enactment of a legislative character is said to 'impair' a contract which attempts to take from a party a right to which he is entitled by its terms, or which deprives him of the means of enforcing such a right." On page 1058, same volume of Corpus Juris, it is said: "Where a contract contains an express promise for the payment of interest * * * the obligation as to interest is within the protection of the Constitution, and any subsequent statute is void which attempts to remit such interest, or to change the rate at which it shall be computed."

The Supreme Court of California in the case of Los Angeles County v. Rockhold, 44 Pac. (2d) 340, 100 A. L. R., 149, had before it a question similar to the one under consideration. An Act of the Legislature providing for the refunding of certain bonds was under attack. We quote the following from the opinion of the court:

"The second ground of unconstitutionality urged by respondent is that by the 1933 Act the contract of the bondholders has been impaired. As already stated, the act provides that the refunding may take place when 75 per cent. of the holders of outstanding bonds consent. Under the refunding scheme, the nature of the security is changed and the principal and interest of the bonds are reduced. It is plain, therefore, that the obligation of the existing bonds is impaired. As to the 75 per cent. or more bondholders who consent, there is, of course, no complaint. But as to the nonconsenting bondholders, including those who

are absent and those incapacitated or incompetent, who may hold up to 25 per cent. of the bonds, there is an obvious impairment, if their bonds are canceled and they are forced to take new bonds with a different security, in a lesser amount, and bearing a reduced interest, or if their security is lessened * * *".

The refunding act was held invalid upon the grounds, among others, that it failed to protect adequately the rights of the dissenting bondholders. That the same result would be reached by the Texas courts is indicated by the language used in the case of Love v. Rockwall Independent School District, et al., 225 S. W. 263. In that case the question was considered whether a tax levy to pay the interest and provide a sinking fund for a certain issue of bonds was invalid because of the fact that the bonds had not been presented to the Attorney General for his approval. After holding that this fact did not invalidate the levy, the court made the following statement:

"This action of the board of trustees was legal. Besides, just recently the defendants located the holders of said common school district bonds and obtained an agreement that the refunding bonds would be accepted in lieu of common school district bonds, or that they would accept cash out of the proceeds of the sale of the refunding bonds."

In view of the foregoing you are advised that Sherman County can not require the holders of the bonds to submit their bonds for payment at par and accrued interest, and can not require such holders to submit their bonds for refunding at a lower rate of interest.

Of course this opinion is limited to non-option bonds. In the case of option bonds the issuing

Honorable E. E. Coons, page #5, 0-5000

agency reserves the right to call the bonds in for redemption at stated times. In the case of Dallas County v. Lockhart, supra, it was held that option bonds could be redeemed either by payment or by the issuance of refunding bonds.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ C. F. Gibson
C. F. Gibson
Assistant

CFG/s/lm

E.p.p.

APPROVED DEC 3, 1942

/s/ Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
By BWB
CHAIRMAN