OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Jesse James
State Treasurer
Austin Texas

Dear Sir:

Opinion Number O-5319
Re: Under the facts submitted do the funds, over and above the face value of the securities sold, properly belong to the Permanent School Fund or to the Available School Fund? And a related question.

We are in receipt of your request for an opinion, the pertinent facts as stated in your letter being as follows:

"Under authority of H. B. No. 370, 47th Legislature, R. S. the Board of Education has just consumated a sale of $2,800,000.00 par value of U.S. Treasury Bonds held by the State Treasurer of Texas for the account of the Permanent School Fund at September 1, 1940. The proceeds of this sale are as follows:

"$1,800,000.00 par value sold	112.875	$2,031,750.00
1,000,000.00 par value sold	112.40625	1,124,062.50
Accrued interest - 2 3/4 %, 6-15-43 to 7/7/43		4,628.42
Total		$3,160,440.92

"The price obtained was not ' a lesser price than paid for the bonds at the time of purchase thereof' but, was in fact at a considerably higher price.

"Under Section 2 of said Act, the State Treasurer has made delivery of said bonds and received in payment

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therefor the sum of $3,160,440.92 The sum of $2,800,000.00, par value of said bonds, has been credited by us, on warrant from the Comptroller, to the Permanent School Fund, and, the remainder of $360,440.92 has been deposited by us in the State Treasurer's Suspense Fund awaiting decision as to whether some part or all of said sum is to be credited to Available School Fund."

Upon these facts you submit the following questions:

"1. Whether the funds over and above the face value of the securities sold properly belong to the Permanent School Fund or to the Available School Fund, $355,812.50 of same being produced by sale above par and $4,628.42 being accrued interest.

"2. Whether the entire proceeds of the sale of such bonds may, under the circumstances outlined above, be reinvested in the 2½% fully-taxable bonds which the Board has directed be purchased, or whether only that portion of the sum which is the face amount of the securities disposed of by sale may be so reinvested."

Section 5 of Article 7 of the Constitution reads as follows:

"The principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be the permanent school fund, and all the interest derivable therefrom and the taxes herein authorized and levied shall be the available school fund, to which the Legislature may add not exceeding one per cent annually of the total value of the permanent school fund, such value to be ascertained by the Board of Education until otherwise provided by law, and the available school fund shall be applied annually to the support of the public free schools.

And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same, or any part thereof ever be appropriated to or used for the support of any sectarian school; and the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in such manner as may be provided by law. (Sec. 5, Art. 7, adopted election August 11, 1891; proclamation September 22, 1891.)"

The above article of the Constitution defines the "permanent" fund and the "available" fund. The permanent fund is defined as the "principal of all bonds and other funds, and the principal arising from the sale of the lands, etc.," and the available fund is defined as "all the interest derivable therefrom and the taxes herein authorized."

Replying then to your first question, it is our opinion that the funds over and above the face value of the securities sold belong to the permanent school fund. It is our opinion that the profit constitutes capital gain and not interest. The accrued interest should be credited to the available fund.

It is apparent from our answer to your first question that the answer to your second question is that the entire proceeds, except the accrued interest, may be reinvested in the 2½ % bonds.

Very truly Yours

ATTORNEY GENERAL OF TEXAS

By

C. C. Gibson
Assistant

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