



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

Honorable Gaynor Kendall
Investment Counsel
State Board of Education
Austin, Texas

Dear Sir:

Opinion Number O-5402

Re: Under the facts set forth, does the State Board of Education have the power to allow the school districts in question to prepay bonds if the district will pay interest thereon to the date of payment of such bonds?

We acknowledge receipt of your letter of recent date reading as follows:

"On April 3, 1943, there was filed with this office by Ralls Independent School District an application by said district for permission to prepay on May 10, 1943, Bonds Nos. 26 to 28 in the aggregate amount of \$3,000 out of the 1925 series of bonds held by the Permanent School Fund against said district. The interest-paying date of said bonds is May 10th and November 10th in each year.

"The State Board of Education did not have a meeting between March 29th and June 7th, and in consequence the application was considered by the Board at its June 7th meeting, at which time the Board voted to approve the payment as of May 10th,

Honorable Gaynor Kendall, page #2

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subject to your opinion as to the power of the Board to do so. The district had forwarded to the Treasurer and there was in his hands before May 10th a check for the full amount of the bonds which the district desired to prepay, together with interest thereon through May 10, 1943.

"You are respectfully requested to advise whether prepayment of the bonds can be accepted as of May 10, 1943, in view of the fact that the district had remitted to the State Treasurer the amount involved before the interest-paying date, and had filed its application for permission to prepay the bonds more than thirty days in advance of the interest-paying date.

"A similar case also was considered by the Board at its June 7th meeting, and your advice in the matter is likewise requested. The Holliday Independent School District of Archer County desired to prepay on April 10, 1943, \$10,500 in bonds out of the series held for the Permanent School Fund. The district did not make application to the State Board of Education before the interest-paying date had elapsed this year, but did send to the State Treasurer on or about April 9, 1943, a check covering the amount of bonds and interest due at that date, together with the sum of \$10,500 which it stated it desired to be applied in prepayment of bonds in that amount on April 10, 1943. The Treasurer returned the remittance to the officials of the district and advised them that it would be necessary for the district to make application to the State Board for permission to prepay the bonds in question; the application was later duly filed by the district, but after the interest-paying date for 1943 had passed.

"Under the statute has the Board the power to allow the Holliday Independent School District to prepay the bonds as of April 10, 1943, or between that date and the next succeeding interest date if the district will pay interest on the bonds it desires to prepay to the date of payment of such bonds?"

Honorable Gaynor Kendall, page #3

Article 2787a, Revised Civil Statutes, 1926, reads as follows:

"The State Board of Education may authorize the trustees of any common school district or of any independent school district of this State to pay off and discharge, at any interest paying date whether the bonds are matured or not, all or any part of any bonded indebtedness now owned or hereafter to be owned by the State Permanent School Fund, outstanding against any common school district, or any independent school district in this State.

"It shall be the duty of the school trustees of any common school district, or any independent school district of this State desiring to pay off and discharge any bonded indebtedness now owned or hereafter to be owned by the Permanent School Fund of this State, outstanding against such district or districts, before maturity thereof, to make direct application in writing to the State Board of Education at least thirty days before any interest paying date on said bonds, making known to said State Board of Education the desire of said trustees to pay off and discharge said bonded indebtedness, or any part thereof, describing said bonds or the part thereof that the trustees desire to pay off and discharge; and it shall be the duty of the State Board of Education upon receipt of such application to act thereon in such manner as they deem best and notify the applicant or applicants whether the application is refused or granted in whole or in part; provided, that only such tax money as has been collected by virtue of tax levies made for the specific purpose of providing a sinking fund and paying interest on the particular bonds to be redeemed shall be expended in the redemption, taking up, or paying off of such bonds as provided in this Act; unless said bonds are being redeemed for the purpose of being refunded; and the application of the board of trustees of any common or independent school district desiring to retire bonds as herein provided shall

Honorable Gaynor Kendall, page #4

include an affidavit to that effect in their application; and provided further, that it shall be unlawful for any person upon whom any duty rests in carrying out the provisions of this law to give or receive any commission, premium, or any compensation whatever for the performance of such duty or duties.

"The provisions of this Act shall apply also to the governing boards of all cities, counties and political subdivisions in this State whose bonds are owned or may hereafter be owned by the Permanent School Fund of the State."

From the above it will be seen that the State Board of Education is given broad discretionary powers. It may, in its discretion, grant or refuse an application, but it is made the duty of the Board "upon receipt of such application to act thereon in such manner as they deem best and notify the applicant or applicants whether the application is refused or granted in whole or in part." From the statement of facts stated in your letter, the Halls Independent School District filed its application more than thirty days prior to May 10, 1943, the interest paying date, and forwarded to the State Treasurer a check for the full amount of principal and interest due on that date, but the State Board of Education did not have a meeting until June 7, at which time the Board voted to approve the payment as of May 10, subject to the opinion of the Attorney General as to the power of the Board to do so. We find nothing in the article above quoted which limits the time in which the Board must act, except the words "upon receipt of the application." The Board acted at its very first meeting after the receipt of the application, which was the first opportunity it had to pass upon it, and you are advised that it is our opinion that the Board had the power to do so at that meeting.

With respect to the Holliday Independent School District it appears that the District did not file an application thirty days prior to the April 10th interest paying date as required by Article 2787a, but did file an application after that date. It is our opinion that this application does not comply

Honorable Gaynor Kendall, page #5

with the plain provisions of the statute and it is, therefore, our opinion that the Board does not have the authority to permit the district to prepay these bonds until the next succeeding interest paying date.

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED JUL 9, 1943
Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

By *C. F. Gibson*

C. F. Gibson
Assistant

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