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**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

ORDER SELLERS
FRANCIS D. SMITH
XXXXXXXXXXXXXX
ATTORNEY GENERAL

Honorable Gilbert Denman
State Board for Vocational Education
Capitol Station
Austin, Texas

Dear Sir:

Opinion No. 0-5853

Re: Does the State Board of Education have the authority to advertise and sell the Arroyo Colorado Navigation District Refunding Bonds to the highest bidder at not less than par and accrued interest and thus obtain any premium that might be paid for speculative bonds under present favorable market conditions? And related questions.

We are in receipt of your letter of recent date reading as follows:

"The State Permanent School Fund owns \$413,000.00 Arroyo Colorado Navigation District Ref. Bonds dated 4-1-40, which mature over a period of about 24 years from the present time, the average maturity being 14.35 years. These Bonds pay 5½ per cent interest per annum. The Bonds are not payable before maturity.

"The District has made application to the State Board of Education for permission to pay the Bonds by paying principal and accrued interest to date of payment. In the application the District states that the Federal Government has decided to deepen the Arroyo from Harlingen to the Bay at Federal expense so that the Arroyo will be navigable, but the Government requires the District to furnish necessary rights-of-way and other facilities, requiring the District to raise an additional three hundred thousand dollars. It is represented to the Board that the District can borrow enough money to pay off the Bonds held by the School Fund and to pay for the additional expenses of rights-of-way, etc. at approximately

3½ per cent, perhaps a lower rate on early maturities. The present Bonds have been in good standing since they were issued. However, the original Bonds were in default for several years.

"Assuming for the purposes of the following questions that after an investigation and due consideration the State Board of Education reaches the conclusion that the Arroyo Colorado Navigation District Bonds are too speculative to be safely owned by the School Fund, but that, nevertheless, they probably have a present market value considerably in excess of par and accrued interest, in view of the very favorable market existing at this time, then:

1. Does the Board have authority to advertise and sell these Bonds to the highest bidder at not less than par and accrued interest and thus obtain any premium that might be paid for speculative Bonds under present favorable market conditions?
2. Does the Board have authority to accept payment of these Bonds before maturity?
3. Does the Board have authority to accept payment of the Bonds and receive a voluntary payment of a premium or penalty for the privilege of prepayment, the amount of the premium to be agreed to by the Board and the District?

"We would greatly appreciate answers to the foregoing questions in time for our next Board meeting which is July 3.

I am enclosing a copy of the application made by the District to the Board * * *

The only authority granted to the State Board of Education to release unmatured bonds is found in Article 2787a, Vernon's Annotated Civil Statutes, which article 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 dis-

charge, 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 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 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 board of all cities, counties and political subdivisions in this State whose bonds are owned and may hereafter be owned by the Permanent School Fund of the State."

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It will be observed that the application for permission to pay unmatured bonds must come from the governing board of the political subdivision seeking to pay said bonds. No authority is granted to the Board of Education to advertise for bids, nor to sell bonds in any other manner than that set out in Article 2787, a, supra. Upon receipt of the application from the governing board to pay off and discharge bonds, "it shall be the duty of the State Board of Education * * * to act thereon in such manner as they deem best and notify the applicants whether the application is refused or granted in whole or in part." Your question No. 1 is answered in the negative.

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In answer/your question No. 2, you are advised that the State Board of Education may permit the prepayment of the bonds in question at such times and upon such conditions as are authorized by the provisions of Article 2787a, above quoted.

In answer to your question No. 3, the Court of Civil Appeals held in the case of State v. Hatcher, 52 S.W. (2d) 794, (Reversed by the Supreme Court on other grounds, 81 S.W. (2d) 499) that the State Board of Education could require a bonus of sixty days' interest. The court in construing the law said: "We are unable to construe it as inhibiting the requirement of a bonus to be paid to the permanent school fund for a privilege which the board of education was given the discretion to allow or deny. Such discretion, we think, should admit of reasonable conditions imposed by the board of education as a means of preventing loss to the permanent school fund by reason of delay in reinvesting its funds. A bonus of sixty days interest certainly could not be held unreasonable."

You are therefore advised that the State Board of Education may condition the prepayment of the bonds in question under Article 2787a upon prepayment by the district of such an amount of interest, as a bonus, as it may fix and determine.

Yours very truly

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

CFG:EP;mds - 2/21/52

APPROVED JUN 27, 1944
/s/ E. P. BLACKBURN
(ACTING) ATTORNEY GENERAL OF TEXAS
APPROVED OPINION COMMITTEE
BY B.W.B. Chairman