



**THE ATTORNEY GENERAL
OF TEXAS**

Grover Sellers

~~FOUNDRER~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Hon. M. M. Wilshire
County Auditor
Kaufman County
Kaufman, Texas

Opinion No. 0-5944

Re: Can the Commissioners' Court of Kaufman County sell part of the bonds in question, which are held by the Permanent School Fund, to the City of Kemp, at 85% of par value, which were purchased at 62% of par value?

Dear Sir:

Your letter of March 21, is in part as follows:

"The Permanent school fund of Kaufman County owns \$15,000 of City of Kemp Refunding Bonds, date of issue 1934, which were purchased at 62½% of par value. This bonds are due in 1974 and carry an interest rate of 3½%.

"The City of Kemp has on hand \$5,000 in their Interest & Sinking fund and have asked the Commissioners' Court to allow them to take up part of these bonds at 85% of par value, even though they are not due.

"Please advise whether or not the Commissioners' Court can sell part of these bonds which are held by the Permanent School fund to the City of Kemp, at 85% of par value, which were purchased at 62½% of par value."

Under Article 2824 of the Revised Civil Statutes, the Commissioners' Court of the county is authorized and empowered to invest the Permanent School Fund of the county in the type of securities listed in the statute. *Boydston et al. vs. Rockwall County*, 24 S.W. 272.

Your inquiry, in effect raises the question of whether the power to invest carries with it the power to dispose of investments held by the Permanent School Fund through sale thereof at a price equal to or exceeding the amount paid for the investment securities proposed to be sold. As an original matter, the question would not be free from doubt, although our Supreme Court in the case of *South American Mortgage Company v. Massie*, 94 Texas, 339, 60 S.W.544, indicated that the power to substitute investments is inherent in the continuing power to invest.

In substantially its present form and verbiage, however, the provisions of Article 2824 of the 1925 revision of our statutes has long been in effect. We are aware of the long continued construction which has been placed upon the provisions by the several Commissioners' Courts of this State in their handling of the School Funds of the Counties. The Commissioners' Courts generally have assumed to exercise the power to sell investment securities held for their County Permanent School Funds where it was possible in their judgment to obtain securities offering terms which were more favorable to the investment trust fund committed to their management. It is a well settled rule of statutory construction placed upon it by the officers charged with its enforcement, while not binding, is entitled to weight in the determining of the meaning of the statute; and that where this construction has been continued over a long period of time it will not be overturned except for strong reasons of public policy, unless the construction given the statute is clearly erroneous. *Moorman vs. Terrell* 109 Tex. 173, 202 S.W. 727, *Kay vs. Schneider*, 110 Tex. 369 221 S.W. 880.

In view of the long continued construction placed upon this statute by the several Commissioners' Courts of this State, and of the rights and liabilities which have attached by reason of their actions based upon the construction of the statute, that the power to sell investment securities held by the Permanent School Fund of the county at a price equal to or exceeding the amount paid for the same was inherent in the power vested in the Commissioners' Court to invest the Fund, we feel constrained to follow that construction of the statute. For that reason your question is answered in the affirmative.

APPROVED APR 11, 1944
/s/ Geo. C. Blackburn
(Acting) ATTORNEY GENERAL
OF TEXAS

APPROVED: OPINION COMMITTEE
BY: BWB, CHAIRMAN

Yours very truly
ATTORNEY GENERAL OF TEXAS

By /s/ Gaynor Kendall
Gaynor Kendall, Assistant

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