



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

May 10, 1949.

Hon. Raymond E. Magee
County Attorney
Galveston County
Galveston, Texas

Opinion No. V-826.

Re: The applicability of statutes prescribing bonds for sale of real estate to estates of decedents and guardians when the fiduciary is a corporation qualified to act without bond under Article 4982 of Chapter 16.

Dear Mr. Magee:

Your request for an opinion reads, in part, as follows:

"The County Judge has addressed a communication to me asking for an opinion construing several probate statutes.

"The question in my mind involves the applicability of the statutes prescribing bonds for sale of real estate to estates of decedents and guardians where the fiduciary is a corporation qualified to act without bond under Article 4982-86. . . .

"He has applications pending by a bank which is qualified to act as guardian by compliance with requirement as to deposit of securities with the State Treasurer in which they seek authority to sell as Administrator without bond.

"He has the same question in an estate of a ward whose guardian is a Trust Company qualified in compliance with the requirement as to deposit of securities.

"The questions which he wants clarified are:

Hon. Raymond E. Magee, page 2 (V-826)

"1. May the administrator be authorized to sell without complying with quoted Article 3576?

"2. May the guardian be authorized to sell without complying with quoted Article 4201?"

Articles 4982 and 4983, V.C.S., provide:

"Art. 4982 . . .

"Any person or association of persons, any State banking corporation or any other domestic corporation, or any corporation organized under the laws of any other State, provided such foreign corporation complies with the laws of this State relating to insurance other than life, may exercise the following powers by complying with the provisions of this subdivision:

"1. Qualify as guardian, curator, executor, administrator, assignee, receiver, trustee by appointment of any court or under will, or depositary of money in court, without giving bond as such.

"2. Become sole guarantor or surety in or upon any bond required to be given under the laws of this State, any other statute to the contrary notwithstanding." (Emphasis added throughout.)

"Art. 4983 . . .

"Those included in the provisions of this subdivision shall:

"1. Deposit with the State Treasurer fifty thousand dollars consisting of cash, treasury notes of the United States, or government, State, county, municipal or other bonds, notes, or debentures, secured by first mortgages or deeds of trust, or mortgages or deeds of trust on unencumbered real estate in Texas worth at least double the amount loaned thereon, or such other first class securities

as the Commissioner may approve. Said bonds or securities shall not be received or held at a rate above par, but if their market value is less than par they shall not be held above their actual market value. The State Treasurer shall require any such depositor to replace any securities so deposited on which the interest shall not be paid within six months after maturity, by other securities equal in amount to those removed, upon which the interest has not been defaulted. The funds so deposited shall be primarily liable for the obligations of the depositor in any capacity herein authorized, and shall not be liable for any other debt or obligation of the depositor until all such trust liabilities have been discharged.

"2. Satisfy the Commissioner of its solvency. The Commissioner shall issue any such depositor, when satisfied it is solvent and has made the required deposit, a certificate showing such facts.

"3. Maintain a premium reserve of the amount required to reinsure all outstanding risks, to be determined by taking fifty per cent of the premiums of all unexpired risks that have less than one year to run, and a pro rata of all gross premiums on risks that have more than one year to run.

"4. File with the Commissioner, within sixty days after the first day of each January, a report sworn to by its president and secretary or by two of its principal officers, as to the surety and bond business done by the same during the preceding year.

"5. Pay taxes on its surety and bond business as required of other surety companies."

It was held in Attorney General's Opinion No. 2541 under date of January 11, 1924, (Opinions of Attorney General, 1922-1924, page 306) construing Articles 540 to 545, Revised Civil Statutes of 1911 (now Articles

4982 and 4983) that since the laws of the State of Texas authorize and permit State banks and State bank and trust companies to act as guardian, administrator, etc., without bond, National bank associations doing business in Texas may be authorized and empowered by the Federal Reserve Board to perform such powers and functions in Texas. Following this opinion, it was held in Attorney General's Opinion No. 0-5929 that where a State or a National bank complies with the deposit requirements of Articles 4982 and 4983, it has met the full requirements of law and may function in such fiduciary capacity without a bond. It was further held in this opinion that Article 4201 required the execution of a "sales" bond regardless of whether or not the bank actually executed a "general" bond and regardless of the fact whether the bank had made the required deposit under the terms of Article 4983. Subsequent to the above mentioned Attorney General's Opinions, Articles 3576, 4201, and 4216, V.C.S., have been amended so as to provide the following:

"Art. 3576 . . .

"Whenever any property of an estate is ordered to be sold by the county judge, such order shall be entered upon the minutes of the court, shall describe the property to be sold, the time and place of sale, and the terms of said sale, and shall require the executor or administrator to file a good and sufficient bond, subject to the approval of the court, and if the sureties on said bond are natural persons, same shall be in an amount equal to twice the amount for which such real estate is sold, but if the surety on said bond is either a domestic or foreign corporation permitted to do business in this State for the purpose of issuing surety, guaranty, or indemnity bonds guaranteeing the fidelity of executors, administrators and guardians, same shall be equal to the amount for which such real estate is sold, plus any additional sum the court shall find necessary and fix for the protection of said estate; provided that where the sale of such real estate is made to the owner or holder of a secured claim against the estate the sale of the real estate securing such claim, and is in full

payment, liquidation and satisfaction thereof, no bond shall be required except for the amount of cash, if any, actually received by such executor or administrator in excess of the amount necessary to pay, liquidate and satisfy such claim in full."

"Art. 4201 . . .

"An order for the sale of real estate shall state: (1) The property to be sold, giving such description of it as will identify it. (2) Whether it is to be sold at public auction or at private sale, and if at public auction, the time and place of such sale. (3) The necessity and purpose of such sale. (4) That no sale made by the guardian pursuant thereto shall be confirmed nor shall the title of the ward to such real estate pass to the purchaser unless and until it shall first be found and determined by the court, by an order duly made and entered to that effect, that the guardian's general bond, if the sureties thereon are natural persons, is in an amount equal to double the value of the personal property then on hand, including the amount for which said real estate may be sold, plus such additional sum as may, in the opinion of the court, be necessary to protect the estate of the ward, and that the sureties on such bond are solvent; but if the surety or sureties on said bond are either a domestic or foreign corporation or corporations permitted to do business in the State for the purpose of issuing surety, guaranty, or indemnity bonds, guaranteeing the fidelity of guardians, the bond shall be in an amount equal to the value of the personal property on hand, including the amount for which said real estate may be sold, plus such additional sum as may, in the opinion of the court, be necessary to protect the estate of the ward; provided in the event the guardian's general bond is not sufficient to protect the estate of the ward as above required, an additional bond shall be filed in accordance with the above requirements. However, where the sale of such real estate is made to the owner or holder of a secured

claim against the estate and the same is of the real estate securing such claim and is in full payment, liquidation, and satisfaction thereof, only the amount of cash, if any, actually received by such guardian in excess of the amount necessary to pay, liquidate and satisfy such claim in full, shall be considered together with other property of the estate in passing upon the sufficiency of the bond as hereinabove required. (5) It shall require the sale to be made and the report to be returned to the court in accordance with the law."

"Art. 4216 . . .

"At any time after the expiration of five days after the filing of a report of sale, the Court shall inquire into the manner in which such sale was made, and hear evidence in support of or against such report, and if satisfied that such sale was fairly made and in conformity with the law and that the guardian has on file a good and sufficient general bond in an amount, if the sureties thereon are natural persons, equal to double the value of the personal property then on hand, including the amount for which said real estate is being sold, plus such additional sum as may, in the opinion of the court, be necessary to protect the estate of the ward; but if the surety or sureties on said bond are either a domestic or foreign corporation or corporations permitted to do business in the State for the purpose of issuing surety, guaranty or indemnity bonds guaranteeing the fidelity of guardians the bond shall be in an amount equal to the value of the personal property on hand including the amount for which said real estate may be sold plus such additional sum as in the opinion of the court may be necessary to protect the estate of the ward; and if and when the guardian's general bond has been examined by the court and found to be in the amount above required with good and sufficient sureties thereon, or if the guardian's general bond is found to be insufficient, then an additional bond shall be filed in accordance with the above

requirements; as evidenced by an order duly made and entered by the court to that effect, the court shall cause to be entered a decree confirming such sale, and order the report of sale to be recorded by the clerk, and the proper conveyance of the property sold to be made by the guardian to the purchaser, upon compliance by such purchaser with the terms of sale. The provisions of this Article shall be mandatory, and unless the court shall first determine that the guardian's bond is adequate and solvent as above set forth, as evidenced by an order made and entered by the court to that effect, any sale of real estate hereafter made under the provisions of this Title shall be void." (Emphasis added.)

It will be noted that Articles 4201 and 4216 now state that if the "general bond" of the guardian is sufficient, as evidenced by an order duly entered by the court to that effect, real estate may be sold without the necessity of a "sales" bond in addition to the "general" bond. There is no comparable provision with reference to administrators.

Therefore, it is our opinion that where a bank has qualified to act as guardian or administrator by compliance with the requirements of Articles 4982 and 4983, by making the required deposit of securities with the State Treasury, such bank may act as guardian or administrator without giving a "general" bond as required by Articles 4141 and 3386, V.C.S. It is our further opinion that such bank cannot sell property as administrator without filing a special "sales" bond as required by Article 3576. However, such bank may sell real estate under the provisions of Articles 4201-4216 as guardian without filing an additional "sales" bond if the court is of the opinion that the deposit of securities with the State Treasury is of sufficient value to protect the estate of the ward.

SUMMARY

A bank which has qualified to act as guardian or administrator by compliance with the requirements of Articles 4982 and 4983, by making the required deposit of securities with the State Treasury cannot sell property

Hon. Raymond E. Magee, page 8 (V-826)

as administrator without filing a special "sales" bond as required by Article 3576. However, such bank may sell real estate under the provisions of Articles 4201-4216, as guardian, without filing an additional "sales" bond, if the court is of the opinion that the deposit of securities with the State Treasury is of sufficient value to protect the estate of the ward.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

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APPROVED

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