



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

September 23, 1954

Honorable J. W. Edgar  
Commissioner of Education  
Texas Education Agency  
Austin, Texas

Letter Opinion No. MS-155

Re: Purchase by State Board  
of Education of eligible  
bonds from parties other  
than issuer.

Dear Dr. Edgar:

We have received your request for an opinion of this department and you ask the following questions:

"Can the State board of Education legally have the authority to purchase eligible municipal bonds from parties other than an issuing agent between regular meetings of the State Board of Education by the adoption and employment of the following procedures:

"1. The State Board of Education to adopt an investment program or policy framework setting forth certain conditions or requirements not in conflict with the statutes pertinent thereto which a bond issue must meet before it could be purchased for the account of the Permanent School Fund.

"2. The State Board of Education, at a regular meeting, to pass a motion authorizing the purchase of such municipal bonds as may be eligible not to exceed a specified aggregate amount and further stipulating that the specific bonds or bond issues to be purchased shall be determined by an investment committee of the Board acting within the adopted framework, after a careful analysis of the investment merits of each bond issue submitted for purchase or waiver by the Board."

Article VII, Section 4, Constitution of Texas, charges the Board of Education with the responsibility of

directing the investment of the Public Free School Fund. Since the Constitution places this duty on the Board, this duty can not be delegated; however, the Board can delegate powers of administration which are ministerial in nature. Burgess v. American Rio Grande Land & Irrigation Co., 295 S.W. 649 (Tex.Civ.App. 1927, error ref.); Hitchcock v. City of Galveston, 96 U.S. 341; Moore v. Logan, 10 S.W. 2d 428 (Tex.Civ.App. 1928, error disp.); Macklin v. Trustees of Common School District No. 9, 11 S.W.657 (Ky. Ct. App. 1889); Arkansas-Missouri Power Corporation v. City of Kennett, 159 S.W. 2d 782 (Mo.Sup.Ct. 1942). The Board has the power to adopt whatever rules, regulations and procedures as are necessary to carry out the duties imposed upon it by law. Art. 2654-3, Vernon's Civil Statutes; Margolin v. State, 205 S.W. 2d 775 (Tex.Crim.App. 1947); Trapp v. Shall Oil Co., 145 Tex. 323, 198 S.W. 2d 424 (1946); Harvill v. State, 188 S.W. 2d 869 (Tex.Civ.App. 1945, error ref.).

With the foregoing principles of law in mind, you are advised that the Board of Education can appoint a committee or designate a certain person or persons and charge them with the ministerial duties connected with the purchase of eligible securities for the Public Free School Fund. The person or persons may be Board members or an officer or employees of the Board of Education. The Board could adopt a very specific investment program and formulate an administrative framework for the purpose of purchasing eligible securities provided that the duties to be performed by said persons in the purchase of the eligible securities would be purely ministerial and not discretionary so as to usurp the function placed on the Board by the Constitution.

Under such a practice, the Board could meet either in a regular or special session which had been properly called and provide for the purchase of a certain amount of eligible securities of a certain class, certain type, etc. Care must be taken so as to leave only a ministerial duty to the designated committee or person or persons to complete the purchase by merely selecting securities that meet the requirements and are within the limitations set by the Board and the laws of the State of Texas.

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Under the foregoing operational procedure, the purchasing could be accomplished by the designated person or persons during the interim between the meetings of the Board. Since the purchase is authorized and directed by the Board and the purchase is completed by the authorized person or persons, there is no necessity for a ratification by the Board of the purchases made by this operational procedure. Eligible bonds could be purchased through this administrative framework either from the issuing agency or on the open market as provided by Art. 2673, V.C.S. The foregoing procedure in no way would affect the power of the Board to purchase eligible bonds at their meetings.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General of Texas

By  
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Assistant

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