



**THE ATTORNEY GENERAL
OF TEXAS**

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November 7, 1968

Honorable J. W. Edgar
Commissioner of Education
Texas Education Agency
201 East 11th Street
Austin, Texas 78711

Opinion No. M-304

Re: Legality of acceptance of personal bond signed by officers or others of a bank-corporation in satisfaction of bond security requirement under Article 2832, V.C.S., and related questions.

Dear Dr. Edgar:

Quoting from your letter requesting an opinion on the above stated matter, we set out your first question as follows:

"1. Where a bank-corporation, as distinguished from a person, pursuant to Article 2832 is selected by an independent school district as its depository (treasurer), legally may the corporation tender and/or this Agency honor in satisfaction of the bond security requirement a personal bond signed by officers of that bank or others as sureties?"

By its terms, Article 2832, Vernon's Civil Statutes, uses "person" and "corporation" synonymously in reference to a "treasurer" who is required to be secured by bond. The first paragraph provides, in part:

"In any independent district . . . the treasurer of the school fund shall be that person or corporation who offers satisfactory bond and the best bid of interest on the average daily balances or time deposits for the privilege of acting as such treasurer. The treasurer when thus selected shall serve for a term of two (2) years and until his successor shall have been duly selected and qualified and he shall be required to give bond in an amount equal to the estimated amount of the total receipts coming annually into his hands, when such bond is a personal bond; provided, that

when a bond is executed by a surety company or is a bond other than a personal bond, such bond shall be in an amount equal to the highest daily balance for the current biennium, to be determined by the governing body of such school district . . ." (Emphasis added.)

The statutory bond thus provided for must be ". . . read, construed, and enforced in connection with, and according to, the statute pursuant to which it is given, and to be interpreted according to the purpose and meaning of the legislative enactment." 8 Am.Jur. 709, Bonds, Sec. 4.

As used above, "treasurer" includes both persons and corporations, and such treasurer may give a "personal bond" in fulfillment of the statutory requirements. Thus, a bank officer may legally give a personal bond, obligating either his own assets or those of the bank, in satisfaction of the bond requirements of Article 2832. The provisions of the statute contemplate the giving of such a "personal bond" as distinguished merely from one "other than personal," that is, a "surety bond." Either type bond is a "satisfactory bond," provided given in an amount as plainly prescribed by the statute.

Using a different approach, what is meant by "personal bond" as it is used in Article 2832? The word "personal" may include either a human individual or a corporation, a corporate entity being regarded as a person for legal purposes. 32 Words and Phrases, 307, 308, under "Person."

A "bond", in the present context, means a sworn promise in writing that, upon the failure of the treasurer to fulfill the terms of the contract undertaken, certain funds may be looked to for compensation of the school district for any damage caused by such failure of performance. 5A Words and Phrases, 121, under "Bond." Therefore, a "personal bond," as used in Article 2832 is a sworn statement in writing by a person (or persons) representing either himself or a corporation which he is authorized to contract for, that promises designated assets will be available to compensate the school district in question should the treasurer contracted with fail to properly fulfill his duties. So, the same result follows as above, that a bank officer may legally execute a personal bond in favor of the school district to secure the proper performance of duties by the treasurer of said school district.

Your second question reads:

"2. What responsibility, if any rests in this Agency to ascertain the financial worth of the surety(ies) signing a personal bond?"

In reference to the bond to be given, the second paragraph of Article 2832 reads, in part, "It shall be approved by the school board and the State Department of Education shall be notified of the treasurer by the president of the school board filing a copy of said bond in said department." (Emphasis added.) This language clearly does not place any responsibility on the Agency to ascertain the financial worth of the surety. As no other mention is made of the Agency in Article 2832 it is clear that no such duty is imposed by the statute.

The third question you pose is:

"3. Assuming query No. 1 is answered, Yes: Where pursuant to Article 2786d, a school district invests proceeds realized from sale of school bonds in time deposits of its bank-corporation depository which is covered only by a personal bond, are such proceeds properly secured and protected?"

To quote from the relevant portions of Article 2786d, Vernon's Civil Statutes:

"From and after the effective date of this Act, any school district within the state which has or may have on hand any sums of money which are proceeds received from the issue and sale of bonds of any such school district, either before or after the effective date of this Act, which proceeds are not immediately needed for the purposes for which such bonds were issued and sold, may, upon order of the board of trustees of such school district, place the proceeds of such bonds on interest bearing time deposit, secured in the manner provided in Article 2832, Revised Civil Statutes, with a state or national banking corporation within this state, or invest the proceeds of such bonds in bonds of the United States of America or in other obligations of the United States of America, as may be determined by the board of trustees of the school district;" (Emphasis added.)

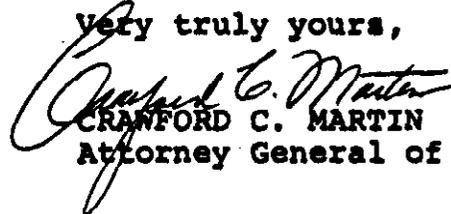
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The article clearly provides for three alternative methods of securing such deposits, one of such alternatives being the method discussed in regard to your first question, infra. Therefore, your third question is answered in the affirmative; such deposits may be secured by a personal bond.

S U M M A R Y

A bond signed by a bank officer, or other persons so authorized, either as an individual or authorized agent of the bank, may legally satisfy the security requirement of a personal bond under Article 2832, V.C.S. No duty evolves upon the Texas Education Agency to ascertain the financial worth of the surety on such bond, and such bond is, also, sufficient to fulfill the requirements of security for funds deposited pursuant to Article 2786d, V.C.S.

Very truly yours,


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