



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

September 27, 1972

Honorable George W. McNeil
State Auditor
Sam Houston State Office Building
Austin, Texas 78711

Opinion No. M-1224
Re: Legality of invest-
ment in United States
Postal Service Bonds
for various state
funds

Dear Mr. McNeil:

You have requested our opinion as to whether the United States Postal Service (hereinafter styled Postal Service) may be deemed an agency of the United States within the meaning of the Texas Constitution and state statutes governing the investment of (1) the funds of the Teacher Retirement System of Texas, (2) the Permanent University Fund, (3) the Permanent School Fund, (4) the funds of Employees Retirement System of Texas, and (5) the funds of the Texas County and District Retirement System.

The pertinent provisions of the Texas Constitution and state statutes which authorize the investment of these various funds by their respective governing boards are as follows:

(1) Teacher Retirement System of Texas. Texas Constitution, Article III, Section 48b:
". . . Said Board is hereby authorized and empowered to invest and reinvest. . . in bonds, notes, or other evidences of indebtedness issued or assumed or guaranteed in whole or in part, by the United States or any agency of the United States, . . ."

(2) Permanent University Fund. Texas Constitution, Article VII, Section 11a:
". . . the Board of Regents of The University of Texas may invest . . . in securities, bonds or other obligations issued, insured, or guaranteed in any manner by the United States Government, or any of its agencies, . . ."

(3) Permanent School Fund. Texas Education Code, Sec. 15.02(a): ". . . the State Board of Education is authorized and empowered to invest the permanent school fund in . . . (1) securities, bonds, or other obligations issued, insured, or guaranteed in any manner by the United States Government or any of its agencies; . . ."

(4) Employees Retirement System of Texas. Texas Constitution, Article XVI, Sec. 62(a): ". . . Said Board is hereby authorized and empowered to invest and reinvest. . . in bonds, notes or other evidences of indebtedness issued, or assumed or guaranteed in whole or in part, by the United States or any agency of the United States, . . ."1.

(5) Texas County and District Retirement System, V.C.S. Article 6228g, Sec. 8, subd. 7: "The assets of the System . . . as determined by the Board, shall be invested and reinvested in the following types of securities: (a) Interest-bearing bonds or other evidences of indebtedness: . . . of the United States or of any authority or agency of the United States, or any such securities which are guaranteed as to the payment of principal and interest by the United States or by any authority or agency of the United States."

It is clear that the governing boards of the Systems and Funds in question may invest in the bonds issued by an agency of the United States whether or not the principal and interest thereof is guaranteed by the United States.

¹ V.C.S., Art. 6228a., Sec. 7.A, speaks to the investment of the Employees Retirement System of Texas. However, Tex. Const., Article XVI, Section 62(a), provides: ". . . This Amendment shall be self-enacting and shall become effective immediately upon its adoption without any enabling legislation."

The Postal Service is wholly owned by the United States Government and was established as "an independent establishment of the executive branch of the Government of the United States" (39 U.S.C. Sec. 201) created by Act of Congress pursuant to the power granted to Congress by the Constitution "to establish post offices and post roads." U.S. Const., Art. 1, Sec. 8. Pursuant to the provisions of the Postal Reorganization Act, the Postal Service assumed the assets, revenues, functions, and duties of the Post Office Department on July 1, 1971. Congress made it clear that the United States has a direct interest in the Postal Service.

The Postal Service is governed by a Board of Governors composed of eleven members. Nine of the members, known as Governors, are appointed by the President, by and with the advice and consent of the Senate. The Governors appoint and have the power to remove the Postmaster General, who is a voting member of the Board and who is the chief executive officer of the Postal Service. The Governors and the Postmaster General appoint and have the power to remove the Deputy Postmaster General who is a voting member of the Board and who is the alternate chief executive officer of the Postal Service. 39 U.S.C. Section 202.

With limited exceptions, officers and employees of the Postal Service shall be in the postal career service, which is a part of the civil service. 39 U.S.C., Section 1001. Postal Service Officers and employees are covered by the Federal Workmen's Compensation law and civil service retirement laws. 39 U.S.C., Section 1005.

The Postal Service is authorized to borrow money and to issue and sell such obligations as it determines necessary to carry out its authorized purposes - such obligations outstanding at any one time not to exceed \$10,000,000,000. It may pledge its assets and pledge and use its revenues and receipts for the payment of the principal of or interest on such obligations, for the purchase and redemption thereof, and for other purposes incidental thereto. 39 U.S.C., Section 2005. Obligations issued by the Postal Service shall not be obligations of nor shall payment of the principal thereof or interest thereon be guaranteed by the Government of the United States, 39 U.S.C., Section 2005 (d)(5), except that obligations issued by the Postal Service shall be obligations of the Government of the United States, and payment of principal and interest thereon shall be

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fully guaranteed by the Government of the United States if and to the extent that, (1) the Postal Service requests the Secretary of the Treasury to pledge the full faith and credit of the Government of the United States for the payment of principal and interest thereon, and (2) the Secretary in his discretion determines that it would be in the public interest to do so. 39 U.S.C., Section 2006(c).

Financial transactions of the Postal Service are conducted through the Postal Service Fund, a revolving fund established in the Treasury of the United States. 39 U.S.C., Section 2003.

The accounts and operations of the Postal Service are audited by the Comptroller General and reports thereon made to the Congress to the extent and at such times as he may determine. 39 U.S.C., Section 2008(a). The Postal Service shall cause to be prepared annually a budget program which shall be submitted to the Office of Management and Budget. 39 U.S.C., Section 2009. The Postmaster General shall render an annual report concerning the operation of the Postal Service to the Board of Governors and upon its approval, the Board shall transmit such report to the President and the Congress. 39 U.S.C., Section 2402.

The Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. 39 U.S.C., Section 101(a).

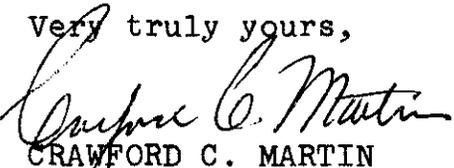
All of the foregoing have been considered with respect to the Postal Service and it is our opinion that the Postal Service has sufficient involvement with the United States government so as to constitute it an agency thereof. The obligations issued or to be issued by the Postal Service will not constitute obligations of the United States unless the Secretary of the Treasury has pledged the full faith and credit of the United States with respect to such obligations. However, since the Postal Service exercises powers conferred upon it by federal statute in a field which, under the Constitution of the United States, is within the sole jurisdiction of the federal government, the obligations to be issued by the Postal Service will clearly constitute obligations of an agency of the United States within the meaning of the cited provisions of the Texas Constitution and state statutes.

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S U M M A R Y

For the purposes of Tex. Const. Art. III, Sec. 48b, Tex. Const. Art. VII, Sec. 11a, Texas Education Code, Sec. 15.02(a), Tex. Const. Art. XVI, Sec. 62(a), and V.C.S., Art. 6228g, Sec. 8.7, the United States Postal Service is an agency of the United States Government.

Very truly yours,



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Attorney General of Texas

Prepared by James A. Maxwell
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APPROVED:
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