



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 7, 2019

The Honorable George P. Bush
Commissioner
Texas General Land Office
Post Office Box 12873
Austin, Texas 78711-2873

Opinion No. KP-0229

Re: Whether and to what extent the Permanent School Fund should be classified as nonspendable in annual financial reporting (RQ-0231-KP)

Dear Commissioner Bush:

You request an opinion concerning to what extent your office should report the Permanent School Fund as nonspendable in its annual financial reporting.¹ The Permanent School Fund “is a perpetual endowment for the public schools of this state.” TEX. EDUC. CODE § 43.001(a). Established by the Texas Constitution, it consists of all land appropriated for public schools by the Constitution or state laws, other properties belonging to the fund, and all revenue derived from the land, other properties, or investment of properties belonging to the fund. TEX. CONST. art. VII, §§ 2, 4, 5(a); TEX. EDUC. CODE § 43.001(a)(1)–(6). The Constitution authorizes the State Board of Education and the General Land Office to make limited annual distributions from the Permanent School Fund to the Available School Fund for the support of the public schools. TEX. CONST. art. VII, § 5(a), (c), (g). The Permanent School Fund is also used “to guarantee bonds issued by school districts or by the state for the purpose of making loans to or purchasing the bonds of school districts.” *Id.* § 5(d).

Section 2101.011 of the Government Code requires each state agency, including the General Land Office, to submit an annual financial report to the Comptroller. TEX. GOV'T CODE § 2101.011(b); *id.* § 403.013(a)(1) (defining “state agency” to include an office in the executive branch of state government). That report “must include a detailed statement of all assets, liabilities, and fund balances.” *Id.* § 2101.011(c). The financial reporting procedures used by state agencies must “comply with generally accepted accounting principles as established by the Governmental Accounting Standards Board,” among others.² *Id.* § 2101.012(b)(1). Consistent with those principles, state agencies must report on the fund balances of governmental funds using a classification system based on “the extent to which the government is bound to honor constraints

¹Letter from Honorable George P. Bush, Comm’r, Tex. Gen. Land Office, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (May 10, 2018), <http://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

²The Governmental Accounting Standards Board (“GASB”) is a private, independent organization “that establishes accounting and financial reporting standards for U.S. state and local governments that follow Generally Accepted Accounting Principles.” <https://www.gasb.org> (“About Us”).

on the specific purposes for which amounts in those funds can be spent.” GASB Statement No. 54, ¶ 5, at 3. That system requires reporting the funds in one of the following classifications: (1) nonspendable, (2) restricted, (3) committed, (4) assigned, or (5) unassigned. *Id.* ¶¶ 6–18, at 3–7. An individual fund could include amounts in more than one of these classifications. *Id.* ¶ 18, at 7–8.

Related to these requirements, you ask specifically about which amounts in the Permanent School Fund qualify as nonspendable. Request Letter at 1, 3. Funds should be classified as nonspendable if they “cannot be spent because they are either (a) not in spendable form or (b) legally or contractually required to be maintained intact.” GASB Statement No. 54, ¶ 6, at 3. “The corpus (or principal) of a permanent fund is an example of an amount that is legally or contractually required to be maintained intact.” *Id.* ¶ 6, at 3–4.

You suggest that because the Legislature has not expressly stated its intent to delineate the Permanent School Fund corpus as nonspendable, an argument could be made that the entire Permanent School Fund is spendable but restricted.³ Request Letter at 3. The Constitution expressly prohibits the Legislature from enacting a law appropriating any part of the Permanent School Fund except as provided by article VII, section 5. TEX. CONST. art. VII, § 5(c). And funds in the state treasury may not be expended without a legislative appropriation. *Id.* art. VIII, § 6 (“No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law . . .”). Thus, the Constitution requires that the fund remain intact, making it nonspendable except for distributions and payments therein authorized.⁴ *Id.* art. VII, § 5.

Article VII, section 5 of the Texas Constitution authorizes certain specific distributions and payments, meaning a portion of the Permanent School Fund qualifies as something other than nonspendable. First, it authorizes a distribution to the Available School Fund in an amount not to exceed a certain percentage of the Permanent School Fund as determined by either the State Board of Education or the Legislature. *See id.* art. VII, § 5(a). It also authorizes the Legislature to make an appropriation from the Permanent School Fund to cover “expenses of managing permanent school fund land and investments.” *Id.* art. VII, § 5(b). Finally, it authorizes your office to make a separate distribution to the Available School Fund each year:

Notwithstanding any other provision of this constitution or of a statute, the General Land Office or an entity other than the State Board of Education that has responsibility for the management of permanent school fund land or other properties may in its sole discretion distribute to the available school fund each year revenue

³If a governmental unit possesses authority to use resources but “constraints placed on the use of resources are . . . [i]mposed by law through constitutional provisions or enabling legislation,” those amounts should be reported as “restricted.” GASB Statement No. 54, ¶ 8(b), at 4.

⁴Such classification is consistent with previous Permanent School Fund annual financial reporting by the Texas Education Agency. *See* TEX. EDUC. AGENCY, TEX. PERMANENT SCH. FUND, COMPREHENSIVE ANNUAL FIN. REPORT FOR THE FISCAL YEAR ENDING AUG. 31, 2017, at 18 (“[T]he entire fund balance is classified as nonspendable except for that portion explicitly allowed to be expended by the Texas Constitution, which is classified as restricted.”), https://tea.texas.gov/Finance_and_Grants/Texas_Permanent_School_Fund/Texas_Permanent_School_Fund_Annual_Report/.

derived during that year from the land or properties, not to exceed \$300 million each year.

Id. art. VII, § 5(g). In each of these provisions, the Constitution expressly authorizes spending from the Permanent School Fund of a limited amount for specific purposes in a given year. Amounts available to fund such expenses and distributions should not be classified as nonspendable, as the Constitution authorizes their use for specific purposes. Instead, “when constraints placed on the use of resources are . . . [i]mposed by law through constitutional provisions or enabling legislation,” those amounts should be reported as “restricted.” GASB Statement No. 54, ¶ 8(b), at 4. Because article VII, section 5 establishes the limited extent to which the Permanent School Fund may be spent, those authorized amounts should be classified as restricted.

You also ask what specific dollar amount is nonspendable and how it should be determined. Request Letter at 1. We have no information to determine the amount currently in the Permanent School Fund or the revenue derived from that fund at any given time. In consultation with the Comptroller and the State Board of Education, the General Land Office is in the best position to determine the appropriate amounts to include as nonspendable or restricted in the fund balances on the annual financial report of the General Land Office.

S U M M A R Y

Article VII, section 5 of the Texas Constitution expressly prohibits the Legislature from enacting a law appropriating any part of the Permanent School Fund except as therein provided. Funds in the state treasury may not be expended without a legislative appropriation. The Constitution thereby makes the Permanent School Fund nonspendable except for specific distributions and payments authorized by the Constitution, and it should be so classified on annual financial reports.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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