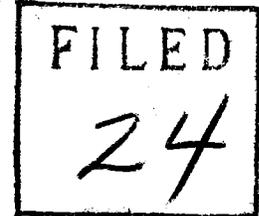


BONDS:
FUND COMMISSIONERS:
SCHOOLS:

State Board of Fund Commissioners not authorized to invest Public School Fund in United States bonds, said authority vested in State Board of Education; Fund Commissioners may invest in registered county, municipal or school district bonds of state, but not in drainage or levee district bonds.

July 11, 1941

Honorable Forrest C. Donnell
Governor and President of the
State Board of Fund Commissioners
State Capitol Building
Jefferson City, Missouri



Dear Governor Donnell:

We are in receipt of your request for an opinion, under date of July 2nd, wherein you state as follows:

"The Board of Fund Commissioners of the State of Missouri, pursuant to an order of said Board made at a meeting held on the 26th day of June, 1941, respectfully requests your official opinion on the following questions:

- (1) Under the Constitution and Statutes of Missouri, has the Board of Fund Commissioners authority to invest the funds of the State School Fund in United States Government Securities?
- (2) Under the Constitution and Statutes of Missouri, has the Board of Fund Commissioners authority to invest the funds of the State Seminary Fund in United States Government Securities?
- (3) Under the Constitution and Statutes of Missouri, in what type of securities can the Board of Fund Commissioners legally invest the funds of: (a) State School Fund (b) State Seminary Fund?"

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In reply we are enclosing copy of an opinion rendered by this department to the Honorable Forrest Smith, under date of March 28, 1936, wherein we held that the State Board of Fund Commissioners was without authority to purchase state bonds for the Public School Fund. The writer of said opinion, had the question been presented, would have concluded that said Board was also without authority to purchase United States bonds for the Public School Fund.

Said opinion cites Section 9 of Article XI of the Missouri Constitution as follows:

"No part of the public school fund of the State shall ever be invested in the stock or bonds or other obligations of any other State, or of any county, city, town or corporation; and the proceeds of the sales of any lands or other property which now belong or may hereafter belong to said school fund shall be invested in the bonds of the State of Missouri, or of the United States."

The above section was derived from a portion of Section 6 of Article IX of the Constitution of 1865, which provided that the School Fund could be invested in United States bonds only, but under the present section, the Public School Fund can be invested in either bonds of the State of Missouri or of the United States.

The enclosed opinion also refers to Section 6, Article XI of the Missouri Constitution, which details how the "Public School Fund", mentioned in Section 9, Article XI, supra, is derived.

"The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; also, all

moneys, stocks, bonds, lands and other property now belonging to any State fund for purposes of education; also, the net proceeds of all sales of lands and other property and effects that may accrue to the State by escheat, from unclaimed dividends and distributive shares of the estates of deceased persons; also, any proceeds of the sales of the public lands which may have been or hereafter may be paid over to this State (if Congress will consent to such appropriation); also, all other grants, gifts or devises that have been, or hereafter may be, made to this State, and not otherwise appropriated by the State or the terms of the grant, gift or devise, shall be paid into the State treasury, and securely invested and sacredly preserved as a public school fund; * * * "

Thus, as pointed out in said opinion, "the moneys which are a part of the public school fund set up and described in Section 6 of Article XI may only be invested in bonds of the State of Missouri or of the United States."

Section 10871, R. S. Mo. 1939, is substantially a reenactment of Section 6 of Article XI of the Constitution of Missouri except that it provides that the Public School Fund is to be invested under the direction of the State Board of Education, and provides that same may be in "state certificates of indebtedness" in addition to the bonds of the United States and bonds of the State of Missouri.

There is no mention of investment in "state certificates of indebtedness" in Section 6 of Article XI, supra. We find same referred to in Section 8044, R. S. Mo. 1889, but not in the revision of the Revised Statutes of Missouri, 1879, Section 7095. The duty to invest the Public School Fund was first imposed upon the State Board of Education by the Legislature in 1870 (Laws of Missouri, 1870, Section 74,

page 154), and same was to be only in bonds of the United States in conformance with Section 6, Article IX of the Constitution of 1865. In 1874 (Laws of Missouri, 1874, Section 82, page 166) this was broadened to include bonds of the State of Missouri.

Section 10874, R. S. Mo. 1939, is more specific in its terms with respect to the investment of the money belonging to the capital of the Public School Fund and provides in part that:

"Whenever there shall be in the treasury or elsewhere, subject to the order of the treasurer, any money belonging to the capital of the public school funds, the state auditor shall make reports thereof to the state board of education, who shall direct the investment of the same in bonds of the United States, bonds of the state of Missouri, or state certificates of indebtedness. * * * "

This section also goes back to the year 1870 (Laws of Missouri, 1870, Section 77, page 155) requiring the State Auditor to make reports to the State Board of Education of moneys belonging to the capital of the Public School Fund, and directing the Board to invest same in United States bonds. This was broadened in 1874 (Laws of Missouri, 1874, Section 84, page 166) to include bonds of the State of Missouri, and again the first mention of state certificates of indebtedness is found in Section 8047, R. S. Mo. 1889.

It seems perfectly clear, by these foregoing sections, that since the year 1870 the State Board of Education has had authority to invest the Public School Fund in United States bonds.

As we previously pointed out, there had been no constitutional authority for the investment of state certificates of indebtedness. However, at the general election held November 4, 1902, the following constitutional provision was adopted (Section 26, Article X, Missouri Constitution):

"All certificates of indebtedness of the State to the 'public school fund'

and to the 'seminary fund' are hereby confirmed as sacred obligations of the State to said funds, and they shall be renewed as they mature for such period of time and at such rate of interest as may be provided for by law. The General Assembly shall have the power to provide by law for the issuing certificates to the public school fund and seminary fund as the money belonging to said funds accumulates in the State treasury: Provided, that after the outstanding bonded indebtedness has been extinguished, all money accumulating in the State treasury for above named purposes shall be invested in registered county, municipal or school district bonds of this State of not less than par value. Whenever the State bonded debt is extinguished or a sum sufficient therefor has been received, there shall be levied and collected, in lieu of the ten cents on the one hundred dollars valuation now provided for by the statutes, an annual tax not to exceed three cents on the one hundred dollars valuation, to pay the accruing interest on all the certificates of indebtedness, the proceeds of which tax shall be paid into the State treasury and appropriated and paid out for the specific purposes herein mentioned."

Whether the above constitutional provision was enacted among other things to give some validity to state certificates of indebtedness, we can only surmise. In our previous opinion it was pointed out that "At the time of that election the bonded indebtedness of the State of Missouri was practically extinguished, and, therefore, the provisions of Section 9 of Article XI of the Constitution would prevent the investment of the public school fund and the seminary fund in anything other than bonds of the United States." Investments being thus limited, it was undoubtedly the intent of the voters to broaden same to include investment in registered county, municipal or school district bonds of the state.

Pursuant to Section 26 of Article X, supra, the Legislature in 1909 (Laws of Missouri, 1909, Section 57, page 896) enacted Section 10883, R. S. Mo. 1939 (formerly Section 9724, R. S. Mo. 1929) authorizing the State Board of Fund Commissioners to invest the money in the Public School Fund and in the Seminary Fund in registered county, municipal and school district bonds of this state. The section provides as follows:

"The state board of fund commissioners shall invest all money belonging to the 'public school fund' and to the 'seminary fund' that has accumulated or may hereafter accumulate in the state treasury, in registered county, municipal or school district bonds of this state, or in their discretion in the approved registered bonds of any drainage or levee district in this state, at not less than par value, and shall at all times keep said fund so invested as far as possible. Whenever said board shall contract with the holder of any such bonds for the purchase thereof, the bonds shall be delivered to the state treasurer and a certificate of that fact filed with said board, and thereupon a requisition shall be made by the board of fund commissioners upon the state auditor for a warrant upon the state treasurer, payable out of the fund for which the investment is to be made, in favor of the holder of such bonds, for the purchase price agreed upon between him and said board. The board of fund commissioners shall enter in full upon its records a description of all bonds purchased by it, the particular fund out of which the bonds were purchased, the person from whom the said bonds were bought, the price paid therefor and the date of the transaction, and shall also require

the state treasurer to give a receipt for said bonds, which shall be filed with the state auditor."

The present section differs from the original enactment in that it contains a provision for the purchase of registered bonds of any drainage or levee district in this state. This amendment was made by the Legislature in 1911 (Laws of Missouri, 1911, page 415).

The same Legislature that in 1909 enacted Section 10883, supra, authorizing the State Board of Fund Commissioners to invest the school funds in registered county, municipal and school district bonds of this state, also reenacted Section 10874 (Laws of Missouri, 1909, Section 76, page 801) placing the investment of the bonds of the State of Missouri, the bonds of the United States and state certificates of indebtedness in the State Board of Education. This is a clear indication of the Legislature's intent to retain in the State Board of Education the investment of school funds in bonds of the United States, bonds of the State of Missouri, and state certificates of indebtedness.

Section 10884, R. S. Mo. 1939, provides as follows:

"The treasurer shall be the custodian of the certificates of indebtedness of the state to the 'public school fund' and of the certificates of indebtedness of the state to the 'seminary fund,' and of all renewals thereof, and of all registered county, municipal or school district bonds of this state in which the 'public school fund' or the 'seminary fund' shall be invested, and also of all money belonging to either of said funds, and no money shall be paid out of said funds by the state treasurer except upon warrants drawn by the state auditor, in accordance with requisitions made by the board of fund commissioners, as hereinbefore provided."

The above section, at first blush, seems to indicate that no moneys may be paid out of any of the school funds without requisitions made by the Board of Fund Commissioners. However, the words "hereinbefore provided" clearly refer to school funds authorized by Section 10883, supra, to be invested by the State Board of Fund Commissioners in "registered county, municipal or school district bonds of this state."

It is true that Section 13081, R. S. Mo. 1939 (formerly Section 11464, R. S. Mo. 1929) would permit the Governor, Treasurer and Auditor to invest the Public School Fund and the Seminary Fund in bonds issued pursuant to authority of the first three subsections of Section 44 of Article IV of the Constitution. However, said investment would not be by the State Board of Fund Commissioners since said section does not name all the members of said Board, and it furthermore would be authority only as to certain specific state bonds.

We find no authority given the State Board of Fund Commissioners to invest the State School Fund or the Seminary Fund in United States Government securities.

The above constitutional and statutory provisions may appear to be in conflict, but a thorough and careful consideration of same will reveal that same are in perfect harmony.

There is a well known rule of statutory construction that where different sections of the law deal with features of the same general subject matter, they must be construed together and harmonized, if possible. *Johnson v. Kruckemeyer*, 224 Mo. App. 351, 29 S. W. (2d) 730.

The sections hereinabove dealt with are readily harmonized. The State Board of Education has the authority to invest the Public School Fund in state certificates of indebtedness, State of Missouri bonds and bonds of the United States. The State Board of Fund Commissioners has the authority to invest the Public School Funds in registered county, municipal or school district bonds of this state.

It has been suggested to us orally that the State Board of Fund Commissioners has in the past purchased bonds of the United States, and that great weight should

be given the construction of a statute by those charged with the duty of enforcing it. Said rule is well recognized in the case of State ex rel. Hanlon v. City of Maplewood, 231 Mo. App. 739, 99 S. W. (2d) 139. Our Supreme Court has declared, however, that same is not the rule where the executive construction is plainly wrong. Williams v. Williams, 325 Mo. 963, 30 S. W. (2d) 69.

We are of the view that the construction placed upon Section 10883, supra, by prior members of the State Board of Fund Commissioners, as giving them authority to purchase United States Government bonds, was plainly wrong, and, for that reason, we cannot give any great weight to such executive construction. We surmise again that if the Board of Fund Commissioners did purchase United States Liberty Bonds in 1918, it was laudable as a gesture of patriotism, but unauthorized under our law.

Our previous opinion did not pass on the constitutionality of that portion of Section 10883, R. S. Mo. 1939, which permits the State Board of Fund Commissioners to invest money belonging to the Public School Fund and the Seminary Fund "in the approved registered bonds of any drainage or levee district in this state." Since the question is raised, however, as to what type of securities may be purchased by the Board of Fund Commissioners out of the Public School Fund under our Constitution and statutes, it is necessary that we consider the constitutionality of the portion of said statute hereinabove quoted.

Harris on Municipal Bonds defines the term "municipal bonds" thus:

"By the term 'municipal bonds' is meant evidences of indebtedness, issued by cities, incorporated towns, counties, townships, school districts, and other public corporate bodies, negotiable in form, payable at a designated future time, bearing interest payable annually or semi-annually, and usually having coupons attached evidencing the several installments of interest."

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Said definition is adopted by the Court in the case of Muskingum County Commissioners v. State, 85 N. E. (Ohio) 562, l. c. 566, and a similar definition is to be found in the case of City of Stanford v. Town of Stanford, 141 Atl. (Conn.) 891, l. c. 896. It is to be noticed, however, that the question of whether "municipal bonds" included drainage and levee district bonds was not a matter of issue in the above case.

Drainage and levee districts being public corporate bodies (Deekroeger v. Jones, 151 S. W. (2d) (Mo.) 691, l. c. 693), it would appear that bonds issued by said districts would be municipal bonds.

Evidently the Legislature in 1911 did not consider the term "municipal" as including drainage and levee districts. Otherwise, obviously there would have been no need for amending the section.

While, for some purposes, the issuance of bonds by drainage and levee districts might be considered as municipal bonds, we do not believe that the word "municipal," as used in the Constitution, was intended to be used in its broader significance. If same be true, it would have been unnecessary to distinctly specify "county" and "school district" since, under the above definitions, these terms also come within the meaning of "municipal."

By specifically enumerating in the Constitution the type of bonds that money could be invested in, it is obvious that other types of bonds were intended to be excluded. This conclusion is sustained by the well known rule of statutory construction "expressio unis est exclusio alterius," which means that the expression of one thing is the exclusion of another. (State ex rel. Kansas City Power and Light Company v. Smith, 342 Mo. 75, 111 S. W. (2d) 513) Although this is a statutory rule, it is equally applicable to construction of provisions in a Constitution since the established rules of construction applicable to statutes apply also to the construction of Constitutions. (State ex rel. Buchanan County v. Imel, 242 Mo. 293, 146 S. W. 783.)

The legislative amendment authorizing the investment of public school moneys in drainage and levee district bonds is clearly beyond the scope of the constitutional authorization and, consequently, invalid.

In the case of State v. Smith, 81 S. W. (2d) 613, 1. c. 614, the Supreme Court of Missouri said:

"It is elementary that the statute could not authorize an expenditure out of the proceeds of the bond issue not sanctioned by the constitutional amendment itself. In other words, the purposes for which the statute directs expenditures can be no broader than the restrictions placed thereon by the constitutional amendment."

Having determined the investments that may be made by the respective boards, the question arises as to which board is to have priority in investing the school funds of the state.

Again, we refer to Section 26 of Article X, which provides in part as follows:

" * * * provided, that after the outstanding bonded indebtedness has been extinguished, all money accumulating in the state treasury for above named purposes shall be invested in registered county, municipal or school district bonds of this state of not less than par value."

Here we have a specific limitation as to when the school funds may be invested by the State Board of Fund Commissioners, viz., "after the outstanding bonded indebtedness has been extinguished." Thus, we find not only a limitation as to the kind of bonds the State

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Board of Fund Commissioners may invest the school funds in, but also a limitation that before the funds may be invested by the Commissioners, the bonded indebtedness of the state must first have been shown to be extinguished. The State Board of Education clearly has the preference as long as there is an outstanding bonded indebtedness.

CONCLUSION

It is therefore the opinion of this department that under the Constitution and statutes of this state, the authority to invest the money in the State School Fund and State Seminary Fund in United States Government securities is in the State Board of Education and not in the State Board of Fund Commissioners.

It is our further opinion that when the bonded indebtedness of the state has been extinguished, the State Board of Fund Commissioners can legally invest the moneys designated in Section 26, Article X, of the Missouri Constitution in registered county, municipal or school district bonds of this state. The use of said moneys, however, for investment in approved registered bonds of any drainage or levee district in this state is prohibited.

Respectfully submitted,

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APPROVED:

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MW:VC