

BOARD OF FUND COMMISSIONERS: Not authorized to invest public school fund.

PUBLIC SCHOOL FUND- To be invested at direction of State Board of Education.

4-2

March 28, 1936

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri



Dear Mr. Smith:

Acknowledgment is made of your recent request for an opinion from this office, on the following matter:

"Is it permissible under the law for the Fund Commission to sell building bonds which they have now authorized to be sold for investment of funds in the State School and Seminary Funds at par? Under the provisions of Section 9724, R. S. Mo. 1929, I believe the Fund Commission's authority to buy state bonds for investment purposes is clear.

You will recall that at the Board meeting held on the 18th day of February, 1936, it was the opinion of the Board that it reserve the right to purchase \$50,000.00 of the State of Missouri Building Bonds Series "B", which they expect to sell on the 7th day of April on the bid price. If the Fund Commission has the right to sell \$50,000.00 of said bonds to these various accounts, then it

would only be necessary to advertise for sale to the public \$1,950,000.00 in lieu of \$2,000,000.00 authorized by the Board."

Before concerning ourselves with particular statutes bearing upon the questions involved, we direct attention to the pertinent constitutional provisions.

Section 9 of Article XI, which was derived from the Constitution of 1865, reads 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."

By virtue of this provision the public school fund of the State could only be invested in bonds of the State of Missouri or of the United States. The public school fund referred to in that provision is obviously the "public school fund" referred to in Section 6, of Article XI of the Constitution, which reads, in part, as follows:

"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* * * * *"

Therefore, 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.

We now direct attention to the provisions of Article 24, Chapter 57, Revised Statutes Missouri 1929. An examination of Section 9712, Revised Statutes 1929, reveals it to be practically a re-enactment of Section 6 of Article XI of the Constitution, except that it provides that the public school fund shall be invested under the direction of the State Board of Education "in the bonds of the United States, bonds of the State of Missouri, or state certificates of indebtedness."

Section 9715 is more clear in its direction respecting the investment of the fund and provides, in part,

"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.* * * * *"

By these statutory provisions the State Board of Education is charged with the duty of investing the public school funds .

Before concluding this opinion it seems desirable and advisable to refer to other constitutional and statutory provisions which may appear to be conflicting with the decision reached herein. We first refer to Section 26, of Article X of the Constitution, which reads as follows:

"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."

It should be noted that the foregoing constitutional provision was adopted at an election held November 4, 1902. 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.

Pursuant to Section 26 of Article X, the legislature enacted Section 9724 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. Subsequently this section was amended so as to purportedly authorize the investment of such fund in levee and drainage district bonds. We shall not pass upon the constitutionality of this amendment. It is certain, however, that Section 9724 was enacted for the purpose of authorizing the board of fund commissioners to invest the applicable funds in these bonds. No authority is given to invest the funds in State Bonds or in United States Bonds. Without going into the apparent conflict between these constitutional and statutory provisions, no authority to invest the public school and seminary funds in State bonds is placed in the Board of Fund Commissioners.

In our investigation of this law we have not overlooked the provisions of Section 11464, Revised Statutes Missouri 1929, which authorized 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 subdivisions of Section 44 of Article IV of the Constitution. Needless to say, the building bonds are issued pursuant to authority of the fourth subdivision of Section 44 of Article IV, and therefore this section is not applicable to the instant problem.

CONCLUSION

It is, therefore, the opinion of this office that the State Board of Fund Commissioners is without

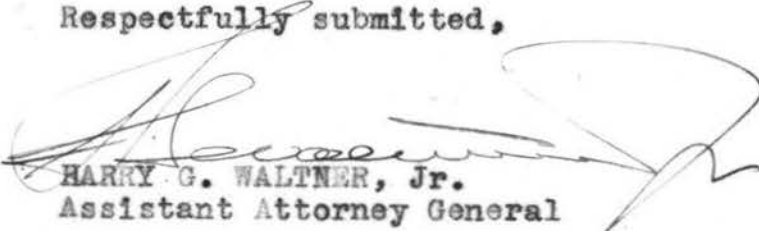
Honorable Forrest Smith

-6-

March 28, 1936

authority to purchase state bonds for the public school fund.

Respectfully submitted,



HARRY G. WALTNER, Jr.
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General

HGW:LC