

School District Bonds, Investment In. Bonds of School Districts, Purchase by State.

In Section 3498 the term "permanent school funds" includes all permanent funds of State institutions of learning, and pro-

hibits the investment of such funds in school district bonds which are not the first or only issue of the district.

Helena, Montana, July 13, 1907.

State Board of Land Commissioners,
Helena, Montana.

Gentlemen:—

Your request for an opinion as to whether the permanent funds received from the sale of the lands granted to the State for educational purposes may be invested in bonds issued by a school district of this State, when such bonds are not the only or first bond issue of the district, received.

Section 3498 of the Political Code, as amended by House Bill No. 45, Laws of 1899, page 87, provides that:

"All moneys belonging to the permanent school and permanent university funds, must be invested. * * *

4th. In bonds of school districts within the State of Montana; provided, that before any such funds are so invested the board must be satisfied that the bonds so to be negotiated are the only bonds issued by the school district."

Section 11 of the Enabling Act provides:

"That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than ten dollars per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools."

Section 12, Art. 11. State Constitution provides that:

"The Funds of the State University, and of all other State institutions of learning, from whatsoever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated" etc.

In the light of the above quotations from the Enabling Act and the State Constitution you are advised that the term "permanent school fund," as used in said Section 3498, includes the permanent funds of all the State institutions of learning. In other words, in our opinion, the words "and permanent university", if eliminated from the first two lines of said section 3498, would in no manner change the meaning of that section, for the reason that the term "permanent school funds", as therein used, would not only include the permanent university funds, but all other permanent school funds of the State.

If it could be held that "permanent school fund", as used in said section 3498, simply meant the common school fund, which applies to the proceeds of the sale of Sections 16 and 36, the result would be that the permanent funds of the common school funds and permanent university fund would be invested in school district bonds which were the first issue of the district, and that the permanent funds of the Normal School, Agricultural College, Reform School and other State Institutions of learning, would be used for investing in second bond issues made by school districts, which would be an unjust discrimination against the

latter institutions. But the phrase "permanent school fund" is a much broader term than the phrase "common school fund" and includes not only the common school fund but also the permanent funds of the other state institutions of learning.

Therefore you are advised that the law prohibits your Board from investing in any school district bonds which are not the first or only bonds issued by the district.

However, if the first issue has been made by the district and sold to the State of Montana, as an investment for its permanent funds, or has by subsequent purchase come into the hands of the State as such investment, then, in our opinion, you would have a right to also purchase for any of the permanent funds a second bond issue against such district, provided, of course, it is within the constitutional limit of indebtedness.

Respectfully submitted,
ALBERT J. GALEN,
Attorney General.