

Bonds — Sinking Funds — Investment — Order of Retirement.

In purchasing bonds with sinking funds no right is violated by not purchasing in numerical order lowest numbers first.

Mr. I. M. Brandjord,
Commissioner of State Lands,
Helena, Montana.

April 20, 1932.

My dear Mr. Brandjord:

You state that the state board of land commissioners has directed you to obtain an opinion of this office as to whether the state has the right to purchase bonds of Series A and/or B of the State of Montana Educational Bonds, which bonds are dated July 1, 1921, optional July 1, 1931, and due July 1, 1941, and retire the same without regard to the numerical order of the bonds.

It appears that the bonds proposed to be purchased are offered by banks who are holding the same and that the state board of examiners

is anxious to retire as many as it has available funds to do so with by reason of the high rate of interest of the bonds.

The authority for issuing educational bonds of Series A and B is contained in sections 5606 to 5614 of the Revised Codes of Montana of 1921. Section 5614 provides:

"The state board of land commissioners is hereby authorized and directed to invest the permanent fund provided for in the preceding section:

"1st. In the state educational bonds; provided, that they can be purchased at a price not exceeding their par value and accrued interest.

"2nd. In interest bearing warrants of the general fund of the state.

"3rd. In any legally issued bonds of any county, city, town, or school district of the state of Montana; provided, that they can be purchased at a price not exceeding their par value and accrued interest.

"In investing such permanent fund, the state board of land commissioners shall give preference to warrants upon the general fund of the state of Montana, if purchasable."

It may appear upon first reading that the last sentence of this section is in conflict with the portion providing that investment should be made "1st. In the state educational bonds"; etc. However, I do not think that it was intended to be construed in such a way as to require the purchase of state warrants upon the general fund, providing that the bonds, themselves, could be purchased at a price not exceeding their par value and accrued interest.

The purpose of investing the fund is in order that it may not remain idle during the time that the bonds are maturing but should draw interest and thus reduce the interest rate upon the bonds themselves. There is no object in purchasing state warrants when the bonds themselves can be purchased with the sinking fund and thus retired and cancelled.

It is therefore my opinion that where the bonds can be purchased upon the conditions prescribed that the board is not required to give preference to general fund warrants; otherwise bonds could not be retired in this manner as long as there were general fund warrants for investment. The sinking fund is primarily created for the purpose of retiring the bonds and paying the interest until retirement can be made. To require the fund to be invested in warrants when bonds can be retired at par is a diversion of the fund from the primary to a secondary purpose. It is beyond the power of the legislature to do this.

The bonds are now optional, which merely means that the state has the right to exercise the option in calling them at this time if it sees fit to do so. The option is with the state and not with the holder of the bonds. The holder of the bonds has no complaint if the state does not see fit to exercise this option. It is not proposed, as I understand, to exercise the option of calling the bonds but merely to purchase those in the open market offered for sale. In doing so it is not necessary to purchase them in numerical order, lower numbers first.

It is therefore my opinion that no right is violated by reason of the fact that the board may purchase bonds of the higher serial numbers first.

Very truly yours,

L. A. FOOT,

Attorney General.