

Opinion No. 107.**State Highway Treasury Anticipation
Debentures, purchase of—State
Treasurer,—State Board of Examiners
—State Depository Board.**

Held: Any funds in the state highway treasury anticipation debenture interest and redemption fund which have been accumulated in said fund to pay the principal of said debentures, may, on authorization by the state treasurer for the purchase of said debentures or any thereof at any time prior to their maturity but at no more than their par value.

A special statute covering a particular subject matter must be read as an exception to the statute covering the same and other subjects in general terms.

The depository board need not be consulted in the matter of debenture purchases under the provisions of Section 4, Chapter 79, Laws of 1943.

Under the provisions of Section 4, Chapter 79, Laws of 1943, the treasurer acts in a ministerial capacity and acts only upon authority of the Board of Examiners as to debenture purchases.

Section 4, Chapter 79, Laws of 1943, is not in violation of Section 11, Article III of the State Constitution.

August 14, 1943.

Mr. Thomas Carey
State Treasurer
State Capitol
Helena, Montana

Dear Mr. Carey:

You have submitted the following:

"Does any conflict exist between the provisions of Chapter 79, Laws of 1943, and Chapter 68, Laws of 1941? Is it necessary for both the depository board and the board of examiners to authorize the treasurer to purchase state highway anticipation debenture bonds? Under Chapter 79, Laws of 1943, has the treasurer any choice in the matter of investment of the fund, or must

he purchase the bonds if authorized by the board of examiners? Do the amendments to the state highway treasury anticipation debenture act of 1938, made by Chapter 79, Laws of 1943, affect the existing bond contract?"

In answer to your first, second and third questions, Section I of Chapter 68, Laws of 1941, provides among other things:

"Whenever there is any money in any state bond sinking and interest fund, either now existing or hereafter created or established, which is not required for the immediate payment of any bond principal or interest, or which cannot be used for the payment and redemption of bonds, outstanding because of the same not being then redeemable under the option provisions contained therein, the state depository board is hereby authorized to invest such moneys in bonds of the State of Montana, revenue bonds of the State of Montana or bonds of the United States; in bonds issued by any agency or department of the United States, the payment of principal and interest of which bonds is guaranteed by the United States, and in interest bearing warrants drawn against the general fund of the State of Montana. . . ."

Section 4 of Chapter 79, Laws of 1943, provides among other things:

". . . provided further that any funds in said state highway treasury anticipation debenture interest and redemption fund which have been accumulated in said fund to pay the principal of said debentures, may, on authorization by the state board of examiners, be expended by the state treasurer for the purchase of said debentures or any thereof at any time prior to their maturity but at no more than their par value. . . ."

It is my opinion that Chapter 68, supra, is a general statute authorizing the state depository board to invest moneys belonging to the state bond sinking and interest funds in certain classes of securities, while Chapter 79, supra, is a special statute having to do with the purchase of state highway anticipation debentures only. There-

fore the latter statute is controlling and the following rule of law would apply:

"A special statute covering a particular subject matter must be read as an exception to the statute covering the same and other subjects in general terms."

Under the above statutory construction, the depository board need not be consulted in the matter as the authority for the purchase of said debentures is vested in the Board of Examiners. The State Treasurer, being an administrative officer, acts only upon the authority of the board of examiners and has no choice other than to make debenture purchases when authorized by said board so to do.

In answer to your last question whether Chapter 79, Laws of 1943, affects the existing bond contract, I am of the opinion it does not.

Section 11 of Article III of the Constitution of the State of Montana in part provides **no law impairing the obligation of contracts shall be passed by the legislature.**

If Section 79, supra, violates the obligation of the debentures, it cannot be upheld and must be declared invalid, as the legislature can no more impair the obligation of a contract entered into by the state than it can the obligation of a contract made by individuals. I am aware a statute which changes the terms of an agreement by imposing new conditions, or dispensing with those expressed or implied, is repugnant to the Constitution as being a law impairing the obligation of a contract, and the degree of impairment is immaterial. But does the provision in question impair the obligation of the debenture? I think not. The section in question merely provides any funds in the state highway treasury anticipation debenture interest and redemption fund which have accumulated in said fund to pay the principal of said debentures may, on authorization by the State Board of Examiners, be expended by the State Treasurer for the purchase of said debentures or any thereof at any time prior to their maturity but at no more than their par value.

By the purchase of a debenture at par value by the State Treasurer upon authority given to him by the Board of Examiners, the state places itself in

the same position as an individual purchaser with precisely the same right both as to redemption and presentment at maturity. The purchase of a debenture means neither its cancellation nor redemption. Neither does it change the terms of the bond by imposing new conditions, or dispensing with those expressed or implied, nor do I see where the obligation of the debenture would in any way be impaired.

Sincerely yours,
R. V. BOTTOMLY
Attorney General