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MAY 10 2018

OPINION COMMITTEE



FILE # ML-48361-18
I.D. # 48361

TEXAS GENERAL LAND OFFICE

GEORGE P. BUSH, COMMISSIONER

May 10, 2018

RQ-0231-KP

VIA ELECTRONIC MAIL: opinion.committee@oag.texas.gov

Honorable Ken Paxton
Office of the Attorney General
Attention: Opinions Committee
P.O. Box 12548
Austin, TX 78711-0528

Re: Determination as to non-spendable portion – if any – of the Permanent School Fund

Dear General Paxton:

Pursuant to section 402.042 of the Texas Government Code, I am requesting an opinion concerning the government fund balance reporting distinction between non-spendable and restricted amounts; specifically, if some portion of the Permanent School Fund (PSF) is non-spendable, 1) what is that dollar amount, and 2) if that dollar amount is prospectively variable, how should it be determined with respect to future annual revenue classifications?

DISCUSSION

Under article VII of the Texas Constitution, the PSF is defined to include “[a]ll funds, lands and other property heretofore set apart and appropriated for the support of public schools.... and all sums of money that may come from the sale of any portion of the same....,”¹ consisting of “all land appropriated for public schools by this constitution or the other laws of this state, other properties belonging to the [PSF], and all revenue derived from the land or other properties.”² Section 43.001 of the Texas Education Code delineates the PSF as a perpetual endowment for Texas public schools, which, excepting the Available School Fund (ASF)³, consists of

- (1) all land appropriated for the public schools by the constitution and laws of this state;
- (2) all of the unappropriated public domain remaining in this state, including all land recovered by the state by suit or otherwise except pine forest land as defined by Section 88.111;

¹ TEX. CONST. ART. VII, § 2.

² TEX. CONST. ART. VII, § 5a.

³ *Id.* The Available School Fund (ASF) “consists of the distributions made to it from the total return on all investment assets of the Permanent School Fund, the taxes authorized by this constitution or general law to be part of the available school fund, and appropriations made to the available school fund by the legislature.”

- (3) all proceeds from the authorized sale of Permanent School Fund land;
- (4) all proceeds from the lawful sale of any other properties belonging to the Permanent School Fund;
- (5) all investments authorized by Section 43.003 of properties belonging to the Permanent School Fund; and
- (6) all income from the mineral development of Permanent School Fund land, including income from mineral development of riverbeds and other submerged land.⁴

The General Land Office (GLO) is further vested with the discretion to distribute to the ASF annually revenue derived during the year from PSF land or other properties, in an amount not to exceed \$300 million each year,⁵ subject to School Land Board (SLB) approval.⁶

GASB STATEMENT NO. 54

In February of 2009, the Governmental Accounting Standards Board (GASB)⁷ promulgated Statement No. 54, effective as to financial statements for periods beginning after June 15, 2010, and summarized in part as follows:

The objective of this Statement is to enhance the usefulness of fund balance information by providing clearer fund balance classifications that can be more consistently applied and by clarifying the existing governmental fund type definitions. This Statement establishes fund balance classifications that comprise a hierarchy based primarily on the extent to which a government is bound to observe constraints imposed upon the use of the resources reported in governmental funds.

The initial distinction that is made in reporting fund balance information is identifying amounts that are considered *non[-]spendable*, such as fund balance associated with inventories. This Statement also provides for additional classification as *restricted*, committed, assigned and unassigned based on the relative strength of the constraints that control how specific amounts can be spent.⁸

⁴ TEX. EDUC. CODE ANN. § 43.001(a) (West 2017).

⁵ TEX. CONST. ART. VII, § 5g.

⁶ The GLO holds all PSF lands as investments and reports them on the Balance Sheet at Fair Value, except for sovereign lands and minerals pursuant to a review conducted by the State Auditor's Office (SAO) in 2000. These values are provided to the Texas Education Agency (TEA) on a quarterly basis, along with the discretionary real assets investments and cash balances every quarter to calculate the sixteen rolling quarters to determine the distribution to be made to the ASF.

⁷ Established in 1984, GASB is the independent, private-sector organization that establishes accounting and financial reporting standards for U.S. state and local governments that follow Generally Accepted Accounting Principles and subsequently recognize GASB standards as authoritative.

⁸ Available at <http://gasb.org/resources/ccurl/313/494/GASBS%2054.pdf> (emphasis added).

GASB Statement No. 54 further defines the non-spendable fund balance classification to include “amounts that cannot be spent because they are either (a) not in spendable form or (b) legally or contractually required to be maintained intact” as distinguished from a restricted fund balance classification, appropriate “when constraints placed on the use of resources are either:

- a. Externally imposed by creditors (...), grantors, contributors, or laws or regulations of other governments; or
- b. Imposed by law through constitutional provisions or enabling legislation.”⁹

However, GASB Statement No. 54 did not issue relevant statutes, constitutional provisions or corresponding GASB guidelines that provide clear guidance as to any amount of the PSF that is non-spendable, and how to prospectively determine that amount.¹⁰ In other contexts, the Texas Legislature has expressly addressed non-spendable and restricted fund balance classifications. For example, as it pertains to the Texas Public Library Endowment Fund, “the corpus of the endowment fund may not be spent for any purpose[.]” and the Texas State Library and Archives Commission annually “shall remit all or part of the interest and income earned on money in the endowment fund to the comptroller for deposit in the state treasury[.]”¹¹ Similarly, “[n]o portion of the corpus or income of the [Texas Emergency Services Retirement] [F]und may be used for purposes other than the benefit of members, retired emergency personnel, and their beneficiaries.”¹² The Texas Education Code distinctly references “corpus and income” of the PSF, but does so merely to convey that both factor into district-issued bond guarantees and does not further delineate between the fund classifications.¹³

The Legislature clearly expressed its intent to delineate the Texas Public Library Endowment Fund corpus as non-spendable but to date has not created a distinction in the PSF context, which arguably renders the entirety of the PSF as spendable but restricted.¹⁴ I respectfully request guidance to delineate any non-spendable PSF amount, and how to prospectively determine this amount.

Sincerely,



GEORGE P. BUSH

Commissioner, Texas General Land Office

⁹ *Id.*

¹⁰ Notably, upon thoroughly evaluating the issues as briefed herein, representatives from GASB, the Texas Comptroller’s Office and the SAO have voiced their support of this opinion request, particularly given the dearth of applicable legislative guidance.

¹¹ TEX. GOV’T CODE ANN. § 441.071(c) and (d) (West 2017).

¹² TEX. GOV’T CODE ANN. § 865.006 (a) (West 2017).

¹³ TEX. EDUC. CODE ANN. §§ 45.052, 45.252 (West 2017).

¹⁴ Beyond the aforementioned constitutionally authorized discretionary \$300 million-capped annual distribution to the ASF, additional PSF spending restrictions are codified in chapter 51 of the Texas Natural Resources Code. *See* TEX. NAT. RES. CODE ANN. §§ 51.401, 51.402 (West 2017) (respectively establishing the Real Estate Special Fund Account (RESFA) and enumerating allowable expenditures thereunder).