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October 28, 1971

DEPARTMENT OF LAW LETTER OPINION NO. 71-29-L (R-91)

REQUESTED BY: THE HONORABLE ERNEST GARFIELD  
Arizona State Treasurer

QUESTION: Is amortization of a premium or discount over the life of an obligation in which an investment of permanent funds is made inconsistent with the "inviolability" clause of the Enabling Act?

ANSWER: No.

We understand the following to be an accurate account of the facts which precipitated your request:

1. Monies in the Permanent Endowment Fund are invested by the State Treasurer in accordance with the applicable provisions of A.R.S. §§ 35-351, et seq.

2. Some of said transactions by the State Treasurer involve investments in obligations at either (A) a premium (the amount of money invested which exceeds the face value of the obligation in which the investment is made); or (B) a discount (the amount of money by which the face value of the obligation in which the investment is made exceeds the amount of money invested).

The question raised by your letter is whether or not amortization of a premium or discount over the life of an obligation is lawful -- (in particular, whether or not amortization of a premium or discount over the life of an obligation is inconsistent with the applicable provisions of the Enabling Act).

The applicable provisions of the Enabling Act read in part as follows:

"Sec. 27. . . . [F]ive per centum of the proceeds of sales of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to such sales, shall be paid to the said State to be used as a permanent inviolable fund, the interest of which only shall be expended for the support of the common schools within said State." (Emphasis added.)

"Sec. 28. \* \* \* The state treasurer shall keep all such moneys invested in safe, interest-bearing securities, which securities shall be approved by the governor and secretary of state of said proposed State, and shall at all times be under a good and sufficient bond or bonds conditioned for the faithful performance of his duties in regard thereto, as defined by this Act and the laws of the State not in conflict herewith.\* \* \*"

In our opinion, the word "inviolable", as used in the above-quoted language of the Enabling Act means that the principal of the Permanent Endowment Fund shall not, for any reason, be permanently impaired. Support for our interpretation is contained in the written opinion rendered by the Montana Supreme Court in In re Montana Trust & Legacy Fund, 388 P.2d 366 (1964). And no provision of the Enabling Act limits the time within which the invested funds shall be returned to the Permanent Endowment Fund.

Accordingly, consistent with the above-quoted provisions of the Enabling Act, whenever monies in the Permanent Fund are invested at a premium, the income resulting from the investment shall be used to restore the temporary loss of principal, and, whenever monies in the Permanent Endowment Fund are invested at a discount, the appropriate adjustment

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must be made to assure to the common schools full enjoyment of the "interest", as that term is used in Section 27 of the Enabling Act.

It is our opinion, however, that the choice of a responsible procedure by which either the restoration or adjustment is accomplished involves a determination of the most sound and efficient accounting practice. Accordingly, in direct response to the question raised, it is our opinion that amortization of a premium or discount over the life of an obligation is not inconsistent with the provisions of the Enabling Act. In our opinion, the choice of accounting practice to be employed does not, in this instance, present a legal problem.

Respectfully submitted,

*Gary K. Nelson*  
*by F.S.*

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The Attorney General

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