



# Current Issues for CSFOs – Investment of School District Funds

Alabama Association of School Business Officials (AASBO)

Tuesday, September 21, 2021

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Kane Burnette's primary practice involves serving as bond counsel to municipalities, counties, boards of education and public corporations throughout Alabama on both publicly underwritten and privately placed tax-exempt financings.

Kane is particularly active in the public education sector, where he has represented both public universities and boards of education on tax and finance matters, and he currently serves on the faculty of the University of Alabama's academy for finance training for new school superintendents and chief school financial officers.

In addition to bond counsel engagements, he has served as company counsel and bank counsel in letter-of-credit backed transactions, as lender's counsel in direct placement transactions and as trustee's counsel. He also advises municipal clients on economic development and incentive matters. Kane has experience in representing governmental bodies in compliance matters before the Internal Revenue Service and the U.S. Securities and Exchange Commission.

As an Alabama-licensed Certified Public Accountant (currently inactive), Kane worked in the Birmingham office of Ernst & Young LLP before attending law school.

**Practices**

- Public Finance
- Distressed Municipal Finance
- Corporate and Securities

**Education**

- University of Alabama School of Law, J.D., 2009, *magna cum laude*
- University of Alabama, Master of Accountancy, 2003
- University of Alabama, B.S., 2002, Accounting *summa cum laude*

**Licensed In**

- Alabama

**Accolades**

- Listed in *Chambers USA*, Banking & Finance: Public Finance, 2020
- Listed in *Mid-South Super Lawyers*, "Rising Stars," Government Finance, 2016-2019
- Listed in *B-Metro*, "Top Lawyers," 2019-2020

**Professional and Community Activities**

- National Association of Bond Lawyers
- American Institute of Certified Public Accountants
- Alabama Society of Certified Public Accountants
- Alabama Council of School Board Attorneys
- Mountain Brook Lacrosse, Treasurer

**You May Not Know**

Kane is from Tuscaloosa, attended Tuscaloosa City Schools and has three degrees from the University of Alabama. He serves on the Board of Trustees of the University of Alabama Chapter of Alpha Tau Omega fraternity.

# Investment of Funds by Boards of Education

- The investment options available to a Board of Education are provided by the Code of Alabama 1975, as amended, as follows:
  - For borrowed funds (issue of school warrants), a Board looks to § 11-81-21 for permissible investments.
  - For all other funds not otherwise needed for current purposes, a Board looks to § 19-3-120 and § 19-3-120.1 for permissible investments.

# Investment of Funds by Boards of Education – Borrowed Funds

- What investments does § 11-81-21 permit (borrowed funds)?
  - Direct obligations of the United States Treasury
  - Certain U.S. agency obligations (FHA, GNMA, HUD, etc.)
  - Deposit accounts and CDs with “qualified public depositories” under the SAFE Act
  - AAA/Aaa rated “pre-refunded” obligations
  - Investment funds at least 65% of the holdings of which are in the previous four categories, and the other 35% of which is in certain other U.S. agency obligations, mortgage products or repurchase agreements

# Investment of Funds by Boards of Education – Other Funds

- What investments do § 19-3-120 / 120.1 permit (other funds)?
  - U.S. Treasury bonds or other interest-bearing obligations
  - Federal Land Bank bonds
  - Bonds or other interest-bearing obligations of any state of the United States
  - Certain G.O. bonds of any Alabama county
  - Certain G.O. warrants (?) of any Alabama BOE
  - Certain first lien real-estate secured obligations
  - FDIC-insured deposits
  - Obligations of the African Development Bank

## Investment of Funds by Boards of Education – Other Funds (continued)

- Investment funds composed of the foregoing investment options
- Prudent investor rule: “a trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.” ( § 19-3B-902)
  - “a trustee’s investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the [whole] trust portfolio.”

# Practical Considerations

- Several of the listed investment options are authorized but are probably not practical
- Board approval for any such investment is also required, in addition to statutory authorization
- Be prudent!
- For investment of borrowed funds, if the borrowing is done on a tax-exempt basis, remember arbitrage considerations:
  - General rule: cannot invest bond proceeds at a yield above the yield on the bonds.
  - Exception: may be able to earn an excess yield for a brief “temporary period.”

# Questions and Answers