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OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

February 17, 1939

Honorable L. A. Woods  
State Superintendent  
Department of Education  
Austin, Texas

Dear Sir:

Opinion No. 0-151

Re: Have county trustees authority to detach territory from district after election has been called involving consolidation or grouping of district with another.

Your request for an opinion, dated January 16, 1939, on this question has been held in abeyance pending further study of a decision by the Court of Civil Appeals at Galveston.

Your request is as follows:

"Your ruling on the following question will be appreciated:

"On December 10, 1938, the Camp Springs C. S. of Scurry County voted to consolidate with the Hobbs Independent School District of Fisher County, Texas. The vote was favoring the consolidation. The Commissioners Court of Scurry County, however, failed to canvass the returns of the election at its next regular session of the court. On January 7, 1939, the County Board of Scurry County met in called session, and detached approximately twelve sections of land from the Camp Springs District and added same to two other common school districts. Did the County Board of Scurry County have the authority to detach said territory after the election for consolidation had been held, and before the new district had been declared by the Commissioners' Court?"

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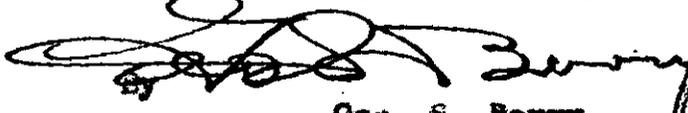
In reply thereto, this is to advise that we have investigated this case from the facts given to us as disclosed by the communications and other written matter in our file in connection with this request, and we are of the opinion that the Supreme Court of Texas has definitely answered the question in the case of State v. Baker, 40 S. W. (2d) 41, wherein the court stated:

"It is our opinion that, even if it be conceded that the orders of the county board with reference to the territory of district No. 16 would have been in all respects legal in the absence of the pending election, still the right of the people to vote on incorporation, having been first lawfully invoked, would not be interfered with or defeated by the county board pending the holding of the election, and the declaration of its result. This is certainly the correct rule, even if it be conceded that the power of the county board and the right of the people were co-ordinate or equal."

This case is identically in point, and we, therefore, hold that the county board of school trustees was without authority to detach any part of the territory pending the election called.

Yours very truly

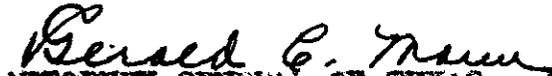
ATTORNEY GENERAL OF TEXAS



Geo. S. Berry  
Assistant

GSB:H

APPROVED

  
ATTORNEY GENERAL OF TEXAS

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