OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

March 1, 1939

Mr. Joe C. Gladney
Criminal District Attorney
Rusk County
Henderson, Texas

Dear Sir:

Opinion No. O-563
Re: Apportionment of County-wide Equalization Tax to County Line School District Under Article 2744e Civil Statutes

We have carefully considered the question submitted in your letter of February 2, and again presented in your brief sent us with your letter of February 15.

We wish to express our sincere appreciation and respect for the excellent brief you prepared on this question, which has been of inestimable assistance to us.

The question as stated in your letter of February 2 is:

"Rusk county has levied and collected the County-wide Equalization Tax authorized by said Article 2744e, and a distribution of the funds derived therefrom is to be made within a few days. In all probability, there will be some question as to the apportionment to be made to the several school districts near the county line and which school districts extend beyond the boundary of Rusk county and embrace a part of the adjoining county where said tax is not levied and collected. There are to be found in such county line school districts a large number of pupils, who, though they are regularly enrolled on the school census rolls of the school district, are not residents of Rusk county, even though the district is compelled to provide educational opportunities for them.

"Consequently the following question arises: Is the County Board of School Trustees authorized

under the provisions of Article 2744e to distribute the money collected from the tax on a per capita apportionment confining the number of per capitas to those pupils only who are actual residents of Rusk county? Or, to put the question in different words: Shall the County Board of School Trustees distribute the money collected to the common and independent school districts of the county on a per capita basis, that is, according to the number of regularly enrolled pupils on the scholastic census roll living within said school district, regardless of whether such regularly enrolled pupils are residing out of Rusk county and in an adjoining county where such tax is not being levied or collected?"

Article 2744e, Revised Statutes (being Chapter 231, p. 454, of the Acts of the Forty-fifth Legislature, 1937) provides that certain counties in the prescribed classification, may, upon election approving same, assess and collect a county-wide equalization tax of twenty-five cents per $100.00 valuation, the proceeds of such tax (under Section 6 of the Act) to be distributed "to the common and independent school districts of the county on the same basis that the State per capita apportionment is distributed among said common and independent school district."

The Act itself prescribes the basis of "the State per capita apportionment" as the rule by which this county-wide tax is to be distributed. We must look, therefore, to the rules governing "the State per capita apportionment" as a guide in determining the instant question.

Article 7, Section 5, of the Constitution of Texas provides "* * * and the available school fund herein provided shall be distributed to the several counties (underlining ours) according to their scholastic population and applied in such manner as may be provided by law." The Legislature prescribed the procedure for carrying out the purposes of this provision of the Constitution by Article 2663, R. S. 1925, which reads in part:

"On the first of each month, the State Superintendent shall prorate to the several counties, cities and towns and school districts constituting separate school organizations,

according to the scholastic population of each, the available school money collected during the preceding month * * *"

In construing the meaning and intent of this statute we must bear in mind the constitutional provision to which it relates. Under the statute the State Superintendent may remit funds directly to the "separate school organizations" which constitute the educational system of a county. BUT - when any question of proration between counties arises - the constitutional provision must be followed, and it requires equality of distribution among counties based on scholastic population. Such a question of apportionment of the available school fund under the Constitution arises in the case of every county-line school district. It cannot be seriously contended that such a county-line district would be entitled to claim its share of the available school fund as allotted to each county, based upon the scholastic population of the district in both counties. Such a procedure would give to county-line districts lying in two counties twice the proportion of the available fund allotted to districts lying wholly within one county. It follows, therefore, that a county-line school district may receive its proportionate share of the State available school fund allotted to each county (under the Constitution) on the basis of such district's Scholastic population in such county only.

Inasmuch as Article 2744e expressly provides that the proceeds of the county-wide tax therein provided shall be distributed "on the same basis that the State per capita apportionment is distributed" it would seem to follow that a county-line school district would be entitled to claim its share of a county-wide tax based only on its scholastic population in that county. Applying this principle to the specific situation outlined in your brief, of the Carlisle School District which lies partly in Cherokee and partly in Rusk County, it is our opinion that the Carlisle District is entitled to share in the proceeds of the Rusk county equalization tax, based only on its scholastic population in Rusk county and not on its scholastic population in both counties.

We have been forced to this conclusion not merely by reason of the application of the "basis" set out in the statute itself, as outlined above- but also for the reason

that we would have serious doubts as to the constitutionality of Article 2744o, if the contrary application were made. If the Carlisle School District is to share in the proceeds of a tax on property in Rusk county, based on its scholastic population in both Rusk and Cherokee counties - then Rusk county taxes would be used to educate Cherokee county children. Such diversion of the taxes or assets would prejudice the rights of Rusk county taxpayers. Terrell vs. Middleton, Tex. S. Ct. 1917, 191 S. W. 1138; Board of School Trustees of Laredo vs. Webb County, 64 S. W. 456, writ of error refused.

We are not unmindful of the inequality of the tax burden mentioned in your brief between property in the two parts of the Carlisle School District, due to the higher percentage valuation in Cherokee than in Rusk county. As was said in Simpson vs. Pontotoc Common County Line School District No. 31, 275 S. W. 449, to which you have referred us: "Exact equality and uniformity in taxation is probably unattainable * * *". While to permit the Cherokee County scholastics to be counted in distributing the Rusk county equalization tax, might tend to offset the existing inequality, we do not believe this very laudable purpose justifies resort to a means not indicated by the statute nor sanctioned by the constitution.

The reason for the existent inequality of tax burdens between the Cherokee and the Rusk county parts of the district is inherent in the very nature of county-line districts. We cannot try to correct the evil by a strained construction of this statute.

We have given careful consideration to the case of Simpson vs. Pontotoc Common County Line School District, 275 S. W. 449 (writ of error refused) to which you have referred us in your brief. In that case various taxpayers, school children and parents of school children of that part of Llano County which had been included in a county-wide school district with parts of Mason and San Saba counties brought suit to seek to declare the district void. It had been created by special act of the Legislature in 1923 under the express authority of the constitutional amendment, Article 7, Section 3, adopted in 1909. Plaintiffs contended they were injured by the creation of the county line district in that the Llano County School Permanent Fund yields an income of $5.00 per year per scholastic, whereas the Mason and San Saba County school funds yield only fifty cents and $1.00 respectively. The Austin Court of Civil Appeals sustained the trial court's dismissal of the suit

on demurrer, saying:

> "The purpose of the constitutional amendment authorizing county line districts was no doubt to bring larger benefits and increased facilities to the scholastics affected; and it is peculiarly a legislative function in creating such districts, to determine whether these worthy objects will be thereby accomplished. The discretion of that body is not subject to review, except, perhaps, in case of palpable abuse."

Referring to the inequality of value of the school lands in the three counties the court said, at page 452:

> "It is not seriously questioned by appellants that insofar as the inequality in these per capita allotments is concerned, adjustments might be made so as to give to those entitled to the greater per capita the benefit of the excess * * *. Any attempt at an unlawful diversion of the fund or any part thereof may be prevented by appropriate legal action, and such portion of the fund so sought to be diverted thereby protected and held until such time as legal means for its use in behalf of the beneficiaries were provided.
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> "* * * the grants created a trust fund for the benefit of the scholastics of the county which could not be diverted to other purposes or beneficiaries. The administration of the fund within these limitations, is subject to legislative control."

It is clear from the above quoted language of the opinion that the court, by upholding the validity of the special act creating the district, did not sanction the diversion of any of Llano County's permanent school fund for the benefit of Mason and San Saba County school children, but rather expressly stated that this was a trust fund "which could not be diverted to other purposes or beneficiaries." The court contemplated that the administration of the district should take cognizance of the differences in the permanent school funds of the three counties out of which the district was carved when it said:

"* * * we are not prepared to hold that under the ample powers given the trustees of the district in regard to the establishment, maintenance, and control of the schools therein, the benefit of this excess might not be provided for in the way of a longer school term for the scholastics entitled to such excess."

The case of Hume vs. Harris, 40 S. W. (2d) 31 (Tex. Supreme Court, 1931) cited in your brief, holds that the Legislature may, as it did in the Rural Aid Appropriation Act, use for general Appropriations to education, a different basis than that laid down in the Constitution for the distribution of the income from the permanent school fund. It does not follow that any taxing authority, be it a state or a county may expend its tax revenues for purposes beyond its jurisdiction.

In Austin Independent School District vs. Harris, 41 S. W. (2d) 9, the Commission of Appeals held that under Article 2700 of the Civil Statutes, the Austin Independent School District must pay its pro rata share of the salary and expenses of the County School Superintendent. The Court based its decision in part on the fact that the Austin District is "one of the immediate beneficiaries of various duties which the county superintendent is required to perform in the promotion of public school affairs throughout the county." Such justification cannot be made for the expenditure of Rusk County equalization taxes for the benefit of school children in an adjoining county.

The following quotation from Judge Cureton's opinion in Love v. City of Dallas, 40 S. W. (2d) 20, seems to us almost conclusive of the point here at issue: "Since the Constitution does not permit the taxation of the people of a school district for the support of that district, except upon a vote of the people of that district, it is not debatable that the Legislature cannot compel one district to use its funds and properties for the education of scholastics from another district, without just compensation." This principle should apply with equal force as between parts of two counties within a common-line school district.

It has been with extreme reluctance that we have been forced to reach a conclusion contrary to the one so ably presented in your valued brief. In order to clarify

this opinion, we are taking the liberty of attaching a copy of your brief hereto. We are also returning the original of your brief herewith in accordance with your request.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Walter R. Koch
Walter R. Koch
Assistant

WRK:LR

APPROVED:

Gerald C. Mann mgh
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