



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

May 8, 1939

Honorable T. M. Trimble
First Assistant State Superintendent
Austin, Texas

Dear Sir:

Opinion No. 0-710

Re: Questions relating to the bonded indebtedness of the Sudan Independent School District as it affects that portion of said district subsequently taken into the Springlake Independent School District, all in Lamb County.

We are in receipt of your letter of April 25, 1939, wherein you enclose letter of April 12, 1939, addressed to you by F. O. Boles, County School Superintendent of Lamb County, Texas, wherein he asked certain questions as indicated above. We shall not set out the questions in full asked by Mr. Boles in his letter, but we shall paraphrase them and endeavor to answer all the questions which are troubling Mr. Boles in this opinion.

The facts relating to the creation of the new school district here involved will first be stated.

The Sudan Independent School District was created by Acts 1921, House Bill No. 166, Chapter 35, page 121, Thirty-Seventh Legislature, First Called Session. In 1923, House Bill No. 235, Chapter 19, page 76, Thirty-Eighth Legislature, Regular Session, effective March 4, 1923, amended the prior Act so as to define more clearly the boundaries of the Sudan Independent School District and to validate a \$40,000.00 bond issue of said district authorized at an election held December 31, 1921.

The Springlake Independent School District was created in 1923 by House Bill No. 234, Chapter 43, page 153, Thirty-Eighth Legislature, Regular Session, effective March 24, 1923. This Act provides in part:

"Sec. 5. A part of the territory described in Section 1 of this Act is taken from the Sudan Independent School District of Lamb County,

Honorable T. M. Trimble, May 8, 1939, Page 2

Texas, and said territory so taken away from said Sudan Independent School District shall remain and be chargeable with its prorata part of the indebtedness represented by any bonds heretofore voted by the Sudan Independent School District in proportion as the taxable values of that part of the territory so taken away from the Sudan Independent School District bears to the total taxable values of the Sudan Independent School District according to the last official approved assessment role; provided, however, that the Board of Trustees of the Springlake Independent School District, without the necessity of a petition therefor may order an election in said district to determine whether or not the said district as herein created as a whole shall assume such prorata part of outstanding bonds."

Question No. 1. Does the Act creating the Springlake Independent School District effectively detach that portion of its territory formerly contained in the Sudan Independent School District from the latter district?

We answer this question in the affirmative. The Act creating the Springlake district, which is later in time of enactment and effective date than either of the Acts affecting the Sudan district, expressly does so. As said by Mr. Justice Critz in *Lyford Independent School District vs. Willamar Independent School District* (Tex. Com. App.) 34 S.W. (2d) 854:

"It is settled that a school district has no contract or vested right in laws fixing the boundaries, and cannot assert that a statute reducing its area violates any contract right. *El Dorado Independent School District vs. Tisdale* (Tex. Com. App.) 3 S.W. (2d) 420."

Question No. 2. What obligation, if any, relating to the \$40,000.00 bond issue of the Sudan district attaches to the Springlake district, or that part thereof detached from the Sudan district and made a part of the Springlake district?

Section 5 of the Act creating the Springlake district, quoted above, provides that:

"Said territory so taken away from said Sudan Independent School District shall remain and be chargeable with its prorata part of any bonds

Honorable T. M. Trimble, May 8, 1939, Page 3

heretofore voted by the Sudan Independent School District . . ."

Mr. Boles states in his letter:

"There was no agreement as to assumption of bonded indebtedness so far as the written records show and this copy of the County Board minutes contains the only County record of the transaction. No assumption election was ever ordered or held. The involved territory has been considered a part of the Springlake territory since that date and the matter has not been brought to the attention of the County Board again until this year."

It appears, therefore, that no action has been taken for the assumption of any part of the \$40,000.00 indebtedness by the Springlake district in conformity with the above quoted section of the Act creating the Springlake district. Nor has the County Board of Trustees of Lamb County taken any action in this connection as authorized by Acts 1927, Fortieth Legislature, First Called Session, page 228, Chapter 84, which Act is also designated as Article 2742b, Revised Civil Statutes of Texas. We quote from Section 1 of that Act:

"When the boundaries of any school district having an outstanding bonded indebtedness have been changed or its territory divided, or two or more of such districts consolidated, it shall be the duty of the County Board of Trustees to make such an adjustment of such indebtedness and district properties between the districts effected and between the territory divided, detached or added, as may be just and equitable, taking into consideration the value of school properties and the taxable wealth of the districts effected and the territory so divided, detached or added as the case may be. And when said Board has arrived at a satisfactory basis of such an adjustment, it shall have the power to make such orders in relation thereto as shall be conclusive and binding upon the districts and the territory thereby effected."

We also call your attention to that portion of Section 5 of the above quoted Act which created the Springlake district which provides that the Springlake district as a whole may assume this prorata share of the debt declared to be against that portion of the district which was formerly a part of the Sudan district upon an election so deciding held in the Springlake district. This election is expressly authorized to be called by the Trustees of the

Honorable T. M. Trimble, May 8, 1939, Page 4

Springlake district without the necessity of a petition.

Almost the identical situation as here presented arose in the case of Lyford Independent School District vs. Willamar Independent School District (Comm. App. of Tex.) 34 S.W. (2d) 854. In that case the Lyford Independent School District was first created by special act of the Legislature. Thereafter the Willamar Independent School District was created by special act, and the newly created Willamar district was given a part of the territory formerly belonging to the Lyford district. Section 4 of the Act creating the Willamar district provided:

"That the Willamar Independent School District as created by this Act shall pay its share of any indebtedness now due to the Lyford Independent School District to be prorated according to the assessed value of that part of this district which is a part of said Lyford district."

The Commission of Appeals expressed some doubt as to the constitutionality of the Act creating the Willamar district, but said that all such doubt had been removed by a subsequent validating act of the Legislature, being Senate Bill No. 384, Chapter 298, page 666, General Laws, Regular Session, Forty-First Legislature. Said validating act being incorporated in Vernon's Annotated Statutes as Article 2802a. This validating act would apply with equal force to the acts creating the Sudan and the Springlake districts.

The Commission of Appeals resolved all questions relating to the adjustment of bonded indebtedness between the two school districts by referring to Article 2742b, Revised Civil Statutes, Section 9 of which we quoted above. The court used the following language:

"Under Section 9 it is provided that where the boundaries of any school district having an outstanding bonded indebtedness has been changed, or its territory divided, etc., it is the duty of the County Board of Trustees to make a just and equitable adjustment of the properties and indebtednesses involved. Section 10 of the Act provides means and methods of carrying into effect the orders of the County School Board made under Section 9. Section 11 provides for taking care of indebtednesses in cases where necessary refunding bonds are voted down, or the County Board is otherwise unable to arrange an adjustment of such matters. Section 12 is general in its provisions and gives the Board power to arrange such matters in any legal and equit-

Honorable T. M. Trimble, May 8, 1939, Page 5

able manner."

We therefore refer you to Sections 10, 11 and 12 of Article 2742b, Revised Civil Statutes, which we quote as follows:

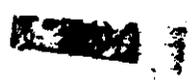
"Sec. 10. To carry into effect orders adjusting bonded indebtedness when changes are made in school districts, the County Board of Trustees shall have the power to order the Trustees of the districts effected, to order an election for the issuing of such refunding bonds as may be necessary to carry out the purpose of such order; and, in such case, it shall be the duty of the district trustee to order such election, cause the same to be held, and, if the proposition is carried, to issue the bonds voted. Such bonds shall be of the same denomination and carry the same interest rate and mature at the same time as the outstanding bonds owing by the district issuing them; and when so issued, shall if possible be exchanged for the outstanding bonds for which the district issuing them shall still be liable, according to the order adjusting such indebtedness; and in cases where such an exchange cannot be made the new bonds of the district, to the amount of the old bonds for which it is still liable and to which no exchange can be made, shall be deposited in the County Treasury to the account of such district. Thereafter taxes shall be levied and assessed only for the payment of interest, sinking fund and principal of the new bonds so issued; and the funds arising from such taxation shall be used to discharge the principal and interest of such new bonds as have been issued and exchanged and such old bonds as have not been exchanged. When taxes are collected applicable to new bonds not exchanged and the proceeds applied to payment on old bonds not exchanged, the corresponding new bonds in the County Treasury shall be credited with such payment and retired as the old unexchanged bonds are retired.

"Sec. 11. In cases where changes are made and districts having outstanding bonded indebtedness and where the necessary refunding bonds are voted down or where the County Board of Trustees are otherwise unable to arrange an adjustment or

settlement of such bonded indebtedness, it shall be the duty of the trustees to certify the fact and the territories affected by such changes, to the Commissioners' Court and thereupon it shall become the duty of the Commissioners' Court to thereafter annually levy and cause to be assessed and collected from the taxpayers of such districts as they existed before the changes were made, the tax necessary to pay the interest, the sinking fund and discharge the principal of such indebtedness as it matures. And it shall be the duty of each Independent School District so effected, to cause all funds in its hands, whether sinking funds or otherwise, which have been collected on account of such bonded indebtedness, to be transferred to the County Treasurer of the County in which such district is situated and such district shall thereafter cease to levy and collect any tax on account of such bonds; and it shall be the duty of the County Treasurer to keep the funds so transferred and those arising from taxation, in separate accounts and apply the same only to the discharge of such bonded indebtedness and the interest thereon, as the same matures.

"Sec. 12. Nothing in the provision of this Act shall prevent the County Board of Trustees from arranging any other method for the adjustment and settlement of outstanding bonded indebtedness of school districts in which changes are made but they shall have full power and authority to make any legal and equitable adjustment and settlement in such cases that can be effected."

Applying the above quoted sections of Article 2742b, R.C. S. to the questions asked by Mr. Boles, we respectfully advise that the County Board of School Trustees shall make an adjustment of the indebtedness between the Sudan and the Springlake districts, and it may direct the trustees of the Springlake district to call an election within the said district for the assumption of its prorata share of the \$40,000.00 bonded indebtedness of the Sudan district. Should such an assumption of indebtedness be voted down by the Springlake district, the County Board of School Trustees shall certify the fact to the Commissioners' Court of Lamb County as directed by Section 11, above quoted. The Commissioners' Court of Lamb County shall thereupon "cause to be assessed and collected from the taxpayers of such districts as they existed before the changes were made, the tax necessary to pay the interest, the sinking fund and discharge the principal of such indebtedness as it matures." Section 11, supra.



Honorable T. M. Trimble, May 8, 1939, Page 7

Question No.5. If territory is detached from one school district and added to another, does that territory have an interest in the school properties of the first district (which have been paid for by taxes or bond issues) and is the first district obligated to reimburse the district to which the territory is attached for the prorata interest of the detached territory in the properties of the first school district?

This question is one which the County Board of School Trustees, or the County Commissioners' Court may take into consideration in adjusting the indebtedness between the two districts. However, "there is no authority established by law for determining the value of the consideration to be received by an extended district for assuming such indebtedness" - Brown vs. Truscott Independent School District, 20 S. W. (2d) 214, affirmed by Commission of Appeals, 34 S. W. (2d) 837.

Justice Critz in Lyford Independent School District vs. Willamar Independent School District, 34 S. W. (2d) 854, said:

"We presume from the record that all properties originally owned by the Lyford district were left situated in such district as changed by the Act creating the Willamar district, and there is no dispute between the two districts as to the ownership of these properties."

We accordingly advise you that the Springlake district has no legally enforceable interest in any of the physical properties of the Sudan district.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Walter R. Koch*
Walter R. Koch
Assistant

WRK:FG

APPROVED:

Gray C. Mann
ATTORNEY GENERAL OF TEXAS



See