



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Frank E. Murray  
County Attorney  
Carson County  
Panhandle, Texas

*Submitted by  
0-2419*

Dear Sir:

Opinion No. 0-1521  
Re: Qualification of a school trustee  
to hold that office after having  
been convicted of driving an auto-  
mobile while intoxicated.

Under date of September 30, 1939, you submit for  
the opinion of this department the following question, which  
we quote from your letter.

" \* \* \* Whether or not the conviction of  
a school trustee for driving an automobile while  
intoxicated will disqualify such trustee from  
said office?"

Article 8968, Revised Civil Statutes, provides,  
in part, as follows:

"All convictions by a petit jury of any  
county officers for any felony, \* \* \* shall work  
an immediate removal from office of the officer  
so convicted. Each such judgment of conviction  
shall embody within it an order removing such of-  
ficer."

It is plain that the Legislature intended the  
above statute to apply to any county officer convicted of  
any felony by the very wording of the statute. No room is  
left for any different construction and none can be made.

In *Hendricks v. State ex rel. Eckford*, 49 S. W.  
708, the question involved was whether a school trustee was  
a county officer. That court used the following language:

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"Each of them is an officer in and for the precinct of the county of which his precinct is a part, and consequently of the county itself; and we think there should be no difficulty in construing the Constitution and the statutes as including the officers of the precinct and districts of a county in the general designation of county officers."

The Hendricks case was approved by the Supreme Court of Texas in the case of Bonner v. Belsterling, 104 Tex. 432, and the court uses the following language: "In that case (Hendricks v. State) the district was a subdivision of a county and the trustee derived his authority solely from the general law which applied to the county. He was therefore an officer in the county in the same sense as was a Justice of the peace."

See Fowler et al v. Thomas et al, 275 S. W. 253, and authorities cited therein, holding that a school trustee is a county officer.

We conclude that a school trustee is a county officer within Article 896B, Revised Civil Statutes, 1925,

Article 47, Penal Code, defines a felony in the following language:

"An offense which may - not must - be punishable by death or by confinement in the penitentiary is a felony; \* \* \*"

We also call your attention to the opinion by Judge Hawkins in the case of R. M. Gordon v. State, 135 Tex. Criminal Reports 438, which sets out the provisions of Article 802, Penal Code, as amended, and construing same. The opinion, in part, reads as follows:

"Article 802, P. C., as amended, Acts 1937, 45th Legislature, Chap. 60, p. 108, provides: 'Any person who drives or operates an automobile or any other motor vehicle upon any street or alley, or any other place within the limits of any incorporated city, town, or village or upon any public road or highway in this State while such person is intoxicated, or in any degree under the influence of intoxicating liquor, shall

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upon conviction be confined in the penitentiary for not more than two (2) years or be confined in the county jail for not less than five (5) days nor more than ninety (90) days and fined not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500). The punishment permitted may in the discretion of the court or jury be confinement in the penitentiary and the offense is therefore a felony. If by the terms of the statute the jury is at liberty to inflict some milder punishment than imprisonment in the penitentiary that does not prevent the offense from being a felony. Campbell v. State, 22 Texas Crim. Rep. 262, 2 S. W. 825; Smith v. State, 115 Texas Crim. Rep. 88, 29 S. W. (2d) 350."

We also call your attention to 95 A. L. R. 1115, and authorities cited therein.

We conclude from the authorities cited in this opinion that the conviction of a school trustee for driving an automobile while intoxicated will disqualify such trustee from said office and render him subject to removal therefrom.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Cecil C. Cammack*  
Cecil C. Cammack  
Assistant

CCC:LM

APPROVED OCT 13, 1939

*Robert E. Hays*  
ATTORNEY GENERAL OF TEXAS

*Secretary*

