



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Charles H. Slaughter  
County Attorney  
Martin County  
Stanton, Texas

Dear Sir:

Opinion No. 0-2808

Re: Proper disposition of  
the tax money collected  
by the Pleasant Valley  
Common School District  
subsequent to the con-  
solidation of such com-  
mon school district with  
the Klondyke Independent  
School District.

You request an opinion of this department as to the proper disposition that should be made of the tax money collected by the County Tax-Collector of Martin County for the Pleasant Valley Common School District subsequent to the consolidation of such common school district with the Klondyke Independent School District. The facts in your case are as follows:

On February 6, 1939, the Pleasant Valley Common School District existed as such in Martin County and had on one side of its boundary line a contiguous independent school district, the Klondyke Independent School District in Dawson County. On February 6, 1939, the County Board of Martin County entered an order on the Minutes of such Board purporting to change the Pleasant Valley District from a common school district to an independent school district.

On March 18, 1939, the County Judge of Martin County called an election to determine whether or not the Pleasant Valley Independent School District should be consolidated with the Klondyke Independent School District in Dawson County. A like election for a like purpose was called by the County Judge of Dawson County on the same date in the Klondyke District. The two elections were held and at each election, the result was in favor of consolidation. The Commissioners' Courts of

Honorable Charles H. Slaughter, page 2

the respective counties so declared and certified the results.

The election was assailed in court by certain taxpayers and voters on the grounds that the common school district had previously been, by order of the County Board, changed into an independent school district and that there was no authority in law to consolidate the two independent school districts. The El Paso Court of Civil Appeals in the case of Pleasant Valley Common School District No. 7, et al., vs. Story, 142 S. W. (2d) 288, held that the order of the County Board of Martin County, which attempted to change the common school district into an independent school district was void and that in reality the election on March 18, 1939, was for purposes of consolidating a common school district and a contiguous independent school district. The court held this election valid and held the consolidation proper. The court stated as follows:

"Section 5b of Art. 2742b authorizes the consolidation of a common school district in one county with a contiguous independent district in another. The procedure prescribed by law seems to have been complied with in all material respects. Pleasant Valley was, before the election, a common school district contiguous to the Klondyke Independent District in Dawson County."

Rehearing was denied in the case on June 20, 1940. Application for writ of error was made to the Supreme Court and was refused on September 13, 1940. Motion for rehearing therein was denied.

Prior to March 18, 1939, the date of the consolidation, the County Commissioners of Martin County had assessed the taxes for the Pleasant Valley Common School District for the year 1939. Part of the taxes assessed were for the purpose of paying the interest and sinking fund of a \$2,500.00 bond issue. The rest was for maintenance. During the months of October to January 1940, the taxes which had been assessed prior to the consolidation election were collected by the County Tax Collector of Martin County and such money is now in the hands of said county tax collector. Also on January 1, 1940, like school taxes, in the Pleasant Valley Common School District of Martin County were levied but such taxes have as yet not been collected due to the fact that the Appellate Courts held the consolidation of March 18, 1939, to be valid.

In your letter you ask two questions:

1. What disposition should be made of the money collected during October, November and December, 1939, as taxes which were assessed prior to the consolidation election?

In respect to this question, you advise that the Consolidated Independent School District has held no election to assume the bonded indebtedness of the Pleasant Valley Common School District and has also not held an election for purposes of levying a new tax of such Consolidated Independent School District.

As stated by the El Paso Court of Civil Appeals in the Pleasant Valley Common School District Case, supra, the consolidation was authorized under the terms of Section 5b of Article 2742b, which reads as follows:

"In the manner prescribed by general law, Article 2806, Revised Statutes, 1925, providing for the consolidation of school districts by election, Common School and Common County-line Districts may be consolidated, and Common School and Common County-line School Districts may be consolidated with a contiguous Independent District in the same or in an adjoining County, provided that when the proposition is to consolidate districts having territory in two or more adjoining Counties, the petitions and election orders prescribed in Article 2806, Revised Statutes, 1925, shall be addressed to and issued by the County Judge of each County for and in behalf of each district wholly in his County or over which his County has jurisdiction for administrative purposes, and the County Commissioners' Court of each County shall canvass the returns of the election in each district lying wholly within the County or under its jurisdiction for administrative purposes, and declare the results, as in the case of the consolidation of districts lying wholly within one County; and when the results are so declared the consolidation of the districts shall thereby become effective." ( Underscoring ours)

Section 11 of said Article reads as follows:

"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 effected 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."

We quote the above sections for the purpose of showing that even though the common school district has been consolidated with a contiguous independent school district it is the duty of the Commissioners' Court to see that taxes are levied for the purpose of paying the interest, sinking fund, and discharging the principal of the bonded indebtedness of the former common school district, even though such district has gone out of existence. Such tax is to be levied against the territory that was formerly in such common school district. In this respect the collection of the 1939 tax as to the portion to be used to apply to the bonded indebtedness of the common school district was valid. Also it may be pointed out that this is true because the new consolidated independent school district has not voted to assume the bonded indebtedness of such common school district. In line with the above, the Commission of Appeals of Texas in the case of Pyote Independent School District vs. Dyer, 34 S. W. (2d) 597, stated as follows:

"Also the local board usually levies all bond taxes of an independent district. R. C. S. of Texas 1925, arts. 2784 and 2788. There is one exception to this rule, and in our opinion that exception is not involved here. The exception mentioned is where, after change in school districts, or the creation of new districts out of the old districts, there has been no provision by assumption of the indebtedness or otherwise for the payment of the bonds that are outstanding against the old district, and such facts are certified to the

Honorable Charles H. Slaughter, page 5

commissioners' court by the county school board, then it is the duty of the commissioners' court to annually levy a tax for the purpose of paying the old bonded indebtedness. See section 11, ch. 64, Acts First Called Session, Fortieth Legislature (1927) supra, p. 232 (Vernon's Ann. Civ. St. art. 2742b, § 11)."

As to the portion of the tax levied for maintenance purposes, the following quotation from the Pyote case in discussing a similar tax situation is important:

"It also appears that the taxes levied by the commissioners' court were legal when levied, and that they remained legal throughout the taxpaying period of that year. This being the case, those who paid the taxes levied by the commissioners' court, if any did so, should be protected and credited by such amount as they so paid on the amount they may owe on the taxes voted and levied by the independent district."

In our case the common school district went out of existence on March 18, 1939, or as soon thereafter as the results of the consolidation election were declared. Therefore, the county tax collector had no authority to collect any taxes for such district except the ones discussed for purposes of paying off the bonded indebtedness. It is our opinion that the county tax collector had no authority to collect any of the taxes for the old common school district except the tax for the purpose of paying the bonded indebtedness and interest thereon, and that the procedure prescribed in the Pyote case should be followed as to the taxes that were actually paid -- that is, the independent school district should in the future, credit the taxpayers with the payment of such tax when such district votes and levies a tax. When such independent school district levies a new tax and gives such taxpayers the credit, then this tax money so collected should at that time be turned over to such independent school district.

2. In your second question, you state that the County Commissioners' Court of Martin County, on January 1, 1940, levied a tax for the common school district even though such common school district ceased to exist during March of 1939. The Commissioners' Court was without authority to levy any tax against the property of the old common school district except the one for bond purposes as previously discussed. The commission of Appeals in the Pyote case stated as follows in this connection:

"When the county school board of Ward County entered its order creating Pyote Independent School District out of old Common School District No. 4, the old district ceased to exist and all maintenance taxes theretofore voted by it ceased to be in force. This being the case, no power existed in any tax-levying body to levy further maintenance taxes on the property of the district until the new district should vote such tax in the way and manner provided by law and by the Constitution."

You are advised, therefore, as to the tax levied by the Commissioners' Court for the year 1940, that the portion of it to be used to pay the interest and sinking fund on the bonded indebtedness of the territory of the old common school district should be collected and should be so applied. You are further advised that the assessment as to the remainder of the tax for local maintenance is void and the county tax collector is unauthorized to collect same.

We are enclosing a copy of our Opinion No. 0-1632 which deals with the authority of the newly created independent school district to vote a tax levy for the year 1940.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED DEC 11, 1940  
*Gov. Rell*  
FIRST ASSISTANT  
ATTORNEY GENERAL

By *Billy Goldberg*  
Billy Goldberg  
Assistant

BG:EP

ENCLOSURE

