



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. O-3466
Re: Contract between Milano
Independent School Dis-
trict and its superin-
tendent.

We have your letter of April 26, 1941, outlining
the following facts:

"The Milano Public School is an independent
school district, having less than 5,000 scholas-
tics. At the regular meeting of the Board of
Trustees on January 4, 1938, a motion was made
and carried to elect C. H. Heath as Superintendent
of Schools for the next two-year term.

"At a called meeting of the Board on October
27, 1938, a motion was made and carried to extend
the contract of C. H. Heath to include the years
1940-1941 and 1941-42."

And you request our opinion in response to this
question:

"Is the remaining year of the extended con-
tract referred to above valid and binding upon
the Milano Board of Trustees?"

Said school district was created by special act
of the Legislature in 1917. H. B. 95, Ch. 38, p. 592, let
C. S. 35th Leg. Sections 2 and 3 of said Special Act read
as follows:

"Sec. 2. Said Milano Independent School District shall have and enjoy all the rights, powers, privileges and duties conferred and imposed upon independent school districts incorporated under the General Laws of the State of Texas.

"Sec. 3. The management and control of all school affairs of the Milano Independent School District as created by this Act shall be vested in a Board of seven Trustees, who shall be elected by the qualified voters of said Independent School District at the time and in the manner provided by the General Statutes for the election of trustees in independent school districts; provided that immediately upon the taking effect of this Act the county judge of Milam county shall order an election to be held in said Independent School District for the purpose of electing seven school trustees. Said trustees when elected shall meet and organize as provided by the General Statutes and shall determine by law which three shall serve for two years or until the first Saturday in April, 1919, and which four shall serve for one year or until the first Saturday in April 1918; and their successors shall be elected from time to time as provided by the General Statutes governing trustee elections in independent school districts."

The boundaries of the District were enlarged by H. B. 170, 4th C. S., 35th Legislature. We assume that the District still operates under the above special acts. Article 2781, Revised Civil Statutes, reads:

"The Board of Trustees of any city or town or any independent school district may employ a superintendent, principal, teacher, or other executive officers in the schools therein for a term not to exceed three years, provided that the Board of Trustees of an independent school district which had a scholastic population of 5,000 or more in the last preceding scholastic year may employ a superintendent, principal, teacher, or other executive officers in the schools therein for a

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term not to exceed five years. All twelve-month contracts made by trustees of independent school districts with employees herein mentioned shall begin on July first and end on June 30th of the year terminating the contract."

Assuming that no other contract stood in the way, on October 27, 1938, could the parties have made a contract covering the three school years 1939-1940, 1940-1941 and 1941-1942? If so, we think that by mutual consent they could amend their existing contract so as to make the contract cover that period of time. Otherwise not. It resolves itself down to the question as to when the three year contract mentioned in Article 2781 may start.

Is the three years to be measured from the date of this contract? We do not think so. For, in actual practice, it would be a limitation of two years. Most such contracts are made, and manifestly it is good practice that they should be made before schools close in the spring. To hold that the three years would start from the date of the contract would have such contracts ending while school is in session. We do not believe such a construction should be adopted unless compelled, and in our opinion it is not.

Does the three year provision apply only to the length of the term of the contract, thus leaving the parties to make a contract covering any three year period in the future, say a term beginning in September 1945? Likewise we do not believe that was intended, such construction would be unwholesome and is not compelled.

The meaning left is that the limitation is to a period of three years beginning with the next ensuing school year. To us this construction seems the most reasonable. The next ensuing school year after October 27, 1938, was the year 1939-1940. And the school year 1941-1942 is the third year of the contract. Our affirmative answer follows to your question.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Glen R. Lewis
Glen R. Lewis

Assistant

APPROVED MAY 8, 1942

Tom Miller
FIRST ASSISTANT
ATTORNEY GENERAL

GRL:lh

