



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GERALD C. MANN
~~MISSOURI~~
ATTORNEY GENERAL

Honorable Arnold Smith
County Attorney
Montgomery County
Conroe, Texas

Dear Sir:

Opinion No. 0-3872

Re: Do the trustees of an independent school district have the authority to employ a full time dentist for the ensuing school year and pay him out of local school funds?

We are in receipt of your letter of August 16, 1941, in which you request the opinion of this department upon the question set out as follows:

"Please advise me whether or not the Trustees of the Willis Independent School District of Willis, Montgomery County, Texas, have the authority to employ a full time dentist for the ensuing school year at a specified salary to be paid on a month to month basis, and whether or not school funds can be expended for such a purpose. . . ."

In your letter you ask whether or not "school funds" can be expended for the purpose mentioned. We assume that by school funds you are referring to local school funds, the expenditure of which are authorized by Article 2827 which reads in part as follows:

"2. Local school funds from district taxes, tuition fees of pupils not entitled to free tuition and other local sources may be used for the purposes enumerated for State and county funds and for purchasing appliances and supplies, for the payment of insurance premiums, janitors and other employes, for buying school sites, buying, building and repairing and renting school houses, and for other purposes necessary in the conduct of the public schools to be determined by the Board of Trustees, the accounts and vouchers for county districts to be approved by the county superintendent; provided, that when the State available school fund in any city or district is

sufficient to maintain the schools thereof in any year for at least eight months, and leave a surplus, such surplus may be expended for the purposes mentioned herein."

It is our opinion that your question is answered in the case City of Dallas vs. Mosely, 286 S.W. 497, by the Dallas Court of Civil Appeals. Certain of the pertinent facts stated by the court are as follows:

"After a careful investigation of the working of health departments in other cities by the school authorities of the city of Dallas, and believing that the efficiency of the city's free schools would thereby be increased, the board of education, by resolution duly adopted, established this department, and it was in force for the school year 1925-26. An appropriation of \$30,000, or so much thereof as necessary, was duly made from the funds derived from the special taxes levied by the city of Dallas for maintaining its public schools, for the establishment and maintenance of said health department. A competent physician was employed as superintendent of this department at a salary of \$4,000 per year, and such physician is required to devote his entire time to this work. A competent woman physician was employed as assistant superintendent at a salary of \$2,500.00 per year, and she is required to devote her entire time to the work. Six women nurses were employed for the school year of nine months, each at a salary of \$125 per month. During a portion of the year a dentist was employed at a salary of \$2,000; such dentist, however, was not in said department at the time of the filing of this suit, and is not now connected therewith, but it is assumed that a competent dentist will be employed in the future.

" "

The court stated as follows:

"Article 2827, 1925 Revised Statutes, places an express limitation on the power of a school board in the expenditure of school funds."

"It is apparent, therefore, that the correct solution of the question under inquiry is dependent largely on whether the said health department, as it is maintained by the said board of education, has for

its primary purpose improving the efficiency of the system of public schools for the city of Dallas.

"We are of the opinion that the school board was acting under an authorized legal discretion when it organized and installed the health department for the purposes for which same was organized, and that it is being conducted for a lawful and commendable purpose, and has increased the efficiency of the school system of the city of Dallas."

The case was affirmed by the Commission of Appeals in 17 S.W. (2d) 36. The court concluded as follows:

"Modern science has conclusively established the fact, and the record in this case conclusively shows, that there is an intimate relation between the mind and the body, and no teacher can intelligently deal with the child's mind who ignores such child's physical condition. It therefore follows, as a matter of course, that money wisely and judiciously expended by the school board within proper limitation to ascertain the child's physical condition is a wise and legitimate expense of the teaching process. It would not only be an injustice to the child to conduct the teaching process without information as to its physical condition, but such a system would be a waste of public funds.

"We are of the opinion that the board of education has the right an power, under the Constitution and laws of this state, and the charter of said city, to exercise sound judgment and discretion to perform and carry out the duties and powers delegated to them by law, and that in exercising such powers, they have not violated any law of this state, or any provision of the charter of said city, in instituting and maintaining the system of medical inspection and health work shown by the record in this case."

It is the opinion of this department, therefore, that the trustees of the independent school district do have the authority to employ a full time dentist for the ensuing school year and to pay him a salary out of the local school funds collected by said school district.

Honorable Arnold Smith, page 4

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Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Billy Goldberg
Billy Goldberg
Assistant

BG:mp:wc

APPROVED AUG 27, 1941
s/Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

Approved Opinion Committee by s/BWB Chairman