



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. 0-4185  
Re: Whether County Superintendent  
of Harris County may (1) employ  
assistants under Article 2700-1,  
V.A.C.S.; (2) receive as travel-  
ing expenses an amount not to  
exceed \$900 per year, under Ar-  
ticle 2700-a, V.A.C.S.

We have received your letter of recent date in  
which you ask the opinion of this department on the above  
captioned question.

House Bill 364 (Acts 1941, 47th Leg., R.S. H. B.  
364; Article 2700-1, V.A.C.S.) is an Act fixing the salaries  
of elective county superintendents, providing for the employ-  
ment of assistants and supervisors and fixing their compensa-  
tion, and providing for office and traveling expenses of the  
county superintendent.

The County Superintendent of Harris County is not  
an elective officer, but is appointed under the terms of  
Article 2689b, V. A. C. S., which reads as follows:

"In all counties having a population in  
excess of three hundred and fifty thousand  
(350,000) inhabitants, according to the last  
available Federal census, the County Superin-  
tendent shall be appointed by the Board of Coun-  
ty School Trustees and shall hold office for  
four (4) years."

His salary is set at \$4,800.00 per annum by Sec-  
tion 1, Article 2700-a, V. A. C. S., which provides as follows:

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"Sec. 1. That the salary of the Superintendent of Public Instruction in all counties in Texas having 210,000 population or more according to the last preceding Federal census, shall be from and after the passage of this act the sum of \$4,800.00 (forty-eight hundred dollars) per annum and the same is fixed by this act at the (that) sum."

Harris County levies a special school tax under the terms of Article 2790-a, V.A.C.S. This Article authorizes each county having a population of 350,000 inhabitants or more, upon a vote of the qualified property taxpaying voters, to levy, assess, and collect a tax not to exceed one cent on the one hundred dollars valuation of the taxable property in the county for the purpose of creating an equalization fund for the public free schools in such county. Section 10 of Article 2790-e reads as follows:

"Sec. 10. In the event that the tax herein provided for shall be authorized by the voters of the county to which this Act applies, then the County Superintendent's salary and all expenses of maintaining his office shall be paid out of the funds realized from the collection of the tax herein provided for."

It is apparent that Article 2700-1 insofar as it fixes the salaries of elective county superintendents is not applicable to the County Superintendent of Harris County. In the first place, he is an appointive, not an elective, officer, and his salary is fixed by Article 2700-a. In the second place, the repealing clause of Article 2700-1 specifically provides "that the repealing clause shall not apply to any county that levies a special tax for the maintenance of the office of County Superintendent in whole or in part."

That part of Article 2700-1 relating to the employment of assistants reads as follows:

". . . The County Superintendent, with the approval and the confirmation of the County Board of Education, may employ a competent assistant to the County Superintendent at an annual salary not to exceed Two Thousand Dollars (\$2,000) and may

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also employ such other assistants as necessary provided the aggregate amount of the salaries of such other assistants shall not exceed Twelve Hundred Dollars (\$1200) annually; and the County Board of Education may make further provisions as it deems necessary for office and traveling expenses of the County Superintendent; provided that expenditures for office and traveling expenses of the County Superintendent shall not be less than Three Hundred Dollars (\$300) and not more than Eight Hundred Dollars (\$800) per annum, such expense shall first be proven by affidavit therefor, and said Board is hereby authorized to fix the salary of such assistants and pay same out of the same funds from which the salary and expenses of the County Superintendent are paid."

May the County Superintendent of Harris County employ assistants under the above quoted provision? We are of the opinion that he may. There is just as much need for assistants in the office of an appointive county superintendent as there is in the office of an elective one, and even more so where the county is a large one. That this construction is the one intended by the Legislature is shown by the provision, ". . . said Board is hereby authorized to fix the salary of such assistants and pay same out of the same funds from which the salary and expenses of the County Superintendent are paid." The salaries of the elective county superintendent under Article 2700-1 are payable out of the State Available School Fund. If the Legislature had meant to limit the employment of assistants under this Article to elective county superintendents, then it could have easily provided that the salaries of the assistants would be payable out of the State Available School Fund. Instead, it provided that such salaries would be paid in the same manner and out of the same funds as the salary of the county superintendent. Thus, where the salary of the county superintendent is paid out of funds realized from a special tax, then the salary of an assistant would be paid from the same funds. Your first question is, therefore, answered in the affirmative.

Your second question deals with the traveling expenses of the County Superintendent of Harris County. On June

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19, 1940, this department rendered Opinion No. O-2441 to Honorable L. A. Woods, State Superintendent of Public Instruction, regarding the traveling expenses of the County Superintendent of Harris County. The identical questions in which you are interested were fully discussed and answered in that opinion. We enclose a copy of such opinion for your consideration.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *George W. Sparks*  
George W. Sparks  
Assistant

APPROVED DEC 12, 1941

*George W. Sparks*  
ATTORNEY GENERAL

GWS:LM

ENCLOSURE

