OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Overruled by O-7241 insofar as it conflicts

Honorable L. A. Woods
State Superintendent of Public Instruction
Austin, Texas

Dear Sir:

O-4605

Opinion Number O-4605
Re: Eligibility of school districts for rural aid under special provisos of H.B.284, Acts 47th Leg.

On July 20, 1942, this department rendered Opinion No. O-4705 which held that Madisonville Independent School District was not eligible for tuition aid under Section 1 of Article IV of the current rural aid bill (Acts 1941, 47th Leg., R. S., H. B. 284) because of the fact that said school district did not meet the eligibility requirements set out in Section 1 of Article I of the Act. You now wish to know "if any of the special provisions of the Act attempting to provide either salary, transportation, or tuition aid to any school district would be valid unless said district met all eligibility requirements as prescribed in Article 1." Specifically, you inquire about the following provisions, the first under Article IV (High School Tuition Aid) and the second, third, and fourth under Article V (Transportation Aid):

1. "Provided further that in consolidated districts comprising nine hundred (900) square miles or more of territory the above limitations and restrictions shall not apply, but instead a straight tuition payment of Seven Dollars and Fifty Cents ($7.50) per month per pupil shall be paid on all high school pupils enumerated in the consolidated district and living within the present boundaries of any territory annexed or otherwise consolidated to the central receiving high school".

NO COMMUNICATION IS TO BE CONSTRUED AS A DEPARTMENTAL OPINION UNLESS APPROVED BY THE ATTORNEY GENERAL OR FIRST ASSISTANT

2. "provided, however, all school districts conforming to county unit system of transportation and receiving no other type of aid, either tuition or salary, and comprising three (3) or more consolidated districts containing fifty (50) square miles or more of territory and employing three (3) or more less teachers than such school district teacher-pupil quota would permit may receive transportation aid only on a transportation budget showing need therefor on the basis of Two Dollars ($2) per month on all high school pupils who reside two and one-half (2½) miles or more from the school attended and One Dollar and Fifty Cents ($1.50) per month on all elementary pupils residing two and one-half (2½) miles or more from its nearest grade school within such district."

3. " * * * and providing further that all school districts containing one hundred (100) square miles of territory or more may receive Two Dollars ($2) per month per pupil as transportation aid when there is a need shown therefor as provided herein and when same is recommended by the Director of Equalization and approved by the Joint Legislative Advisory Committee."

4. "Provided that transportation aid of One Dollar ($1) per month per pupil transported more than two and one half (2½) miles shall be paid to all school districts that contain nine hundred (900) square miles or more of territory and that operate twenty-five (25) or more buses and that levy a school tax of One Dollar and Fifty Cents ($1.50) on each one hundred dollars valuation; provided further that such aid shall be paid regardless of all other limitations or restrictions imposed in this Act."

Article I of the rural aid bill is entitled "ELIGIBILITY FOR AID." Section 1 of Article I reads as follows:

> "Scholastic Population Of The District.— State aid under the provisions of this Act shall be distributed in such a way as to assist all school districts which have not fewer than twenty (20) nor more than five hundred (500) original enumerated scholastics within the grades classified to be taught remaining in the district after transfers out, and consolidated and/or rural high school districts which have an average of not more than two hundred (200) scholastics of each original district composing the consolidated and/or rural high school district unit; provided that the maximum limitations as to scholastic population for eligibility herein set forth shall not apply for any type of aid to any school district which is nine (9) miles or more in length or contains forty-eight (48) square miles of territory or more, provided there is not located in such district an incorporated city or town having a population of more than thirty-six hundred (3600) inhabitants, according to the last preceding Federal Census. Districts maintaining a school at home and having less than an average of one (1) enumerated scholastic per square mile are exempt from said minimum scholastic requirement and are eligible for aid for only one teacher unless a geographical barrier necessitates the operation of two schools for the same race in said district, such geographical barrier to be determined by the State Department of Education subject to the approval of the Joint Legislative Advisory Committee. If they can show budgetary need therefor, all other districts having less than said minimum scholastic requirement, shall be eligible for only tuition and transportation aid to the nearest accredited school on enumerated scholastics whose grades are not taught in such district."

In Opinion No. O-4705 we held that as the scholastic population of the school district under consideration exceeded

the population limitation of Section 1, the school district did not meet the eligibility requirements of Section 1. This fact disqualified the school district to receive aid even though it came within the terms of a special proviso standing alone.

In harmony with our ruling in Opinion No. O-4705, it is our further opinion that school districts which come within the terms of the first three above quoted provisos are ineligible to receive equalization aid unless such school districts meet the eligibility requirements of Section 1, Article I.

It might be argued that the words "the above limitations and restrictions shall not apply" appearing in the first quoted proviso (Article IV) would free a district from the necessity of meeting the general eligibility requirements of Article I. We think it clear that such words apply only to the limitations and restrictions of Article IV when it prescribes the conditions under which tuition aid will be granted. This becomes apparent, first, by the verbiage of Article IV and the proviso clause itself, and, second, by the wording and arrangement of provisions of the entire bill; that is, the eligibility of districts for participation in equalization benefits is dealt with in one article (Article I), and the various types of aid are covered by separate and distinct articles (Article III, Salary Aid; Article IV, High School Tuition Aid; and Article V, Transportation Aid). However, if the contention is made that such words lift districts within this proviso from the eligibility requirements of Section 1 of Article I (with which possible contention we would in no way agree), then the discussion appearing hereafter relative to the fourth quoted proviso would apply.

We think that the fourth quoted proviso presents a much more serious question in view of the words, "provided further that such aid shall be paid regardless of all other limitations or restrictions imposed in this Act." This language would remove a school district coming within the terms of the proviso from the restrictions and requirements imposed elsewhere in the Act if the same can legally be done. But it is our opinion that such proviso is a special or local law in contravention of that part of Section 56 of Article III, Constitution of Texas, which reads

as follows:

> "Sec. 56. The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing:
>
> " * * *
>
> "Regulating the affairs of counties, cities, towns, wards or school districts;
>
> " * * * "

The Commission of Appeals in the case of Bexar County v. Tynan et. al., 97 S. W. (2d) 467, made the following statement concerning this constitutional provision:

> "It is well recognized that 'in determining whether a law is public, general, special or local the courts will look to its substance and practical operation rather than to its title, form and phraseology, because otherwise prohibitions of the fundamental law against special legislation would be nugatory.' "

And the Supreme Court in the case of Hiller et al. v. El Paso County, 150 S. W. (2d) 1000, had the following to say about Section 56 of Article III:

> "The purpose of this constitutional inhibition against the enactment of local or special laws is a wholesome one. It is intended to prevent the granting of special privileges and to secure uniformity of law throughout the State as far as possible. It is said that at an early period in many of the states the practice of enacting special and local laws became 'an efficient means for the easy enactment of laws for the advancement of personal rather than public interests, and encouraged

> the reprehensible practice of trading and "logrolling." ' It was for the suppression of such practices that such a provision was adopted in this and many of the other states of the Union. 25 R.C.L., p. 880, sec. 68."

We are informed that only one school district in this State meets or could possibly meet the terms of this proviso; namely, the Edinburg Independent School District. We can perceive no real basis for this purported classification. It was obviously passed for the benefit of one school district. For the reasons given in the cited cases it is our opinion that the proviso is unconstitutional and void and that, therefore, no moneys may be paid under the same.

This opinion is limited in its conclusions to the specific provisions considered.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By George W. Sparks

George W. Sparks
Assistant

GWS/s

E.P.

APPROVED DEC 3, 1942

Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY RWF
CHAIRMAN