



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
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ATTORNEY GENERAL

Honorable C. Burtt Potter
County Attorney
San Patricio County
Sinton, Texas

Dear Sir:

Opinion No. 0-4726

Re: Whether board of trustees of school district may use local funds to complete unfinished school building.

We have received your letter of recent date in which you enclose a letter from Mr. H. E. Waldrip, President of the Board of Trustees of the Sinton Independent School District. We quote the following from Mr. Waldrip's letter:

"The Sinton Independent School District voted bonds to the extent of \$20,000 for the purpose of constructing an elementary school building of materials of other than wood, and to equip the building. At the time the bond issue was voted the School District had a committal from the N Y A for assistance on the project.

"The School Districts application to the NYA was approved, but Congress failed to make an appropriation for the N Y A and for that reason the N Y A could not assist in the project.

"The School District through the Board of Trustees attempted to carry out the wishes of the Tax Payers who authorized the bond issue by contracting for the construction of as nearly as possible the complete building, but could only finish the exterior and make four class rooms tenable for classes.

"The District has in the Local Fund \$23,000.00 and the Trustees wish to use \$5,000 of this fund in completing three more class rooms in the unfinished building. Is it lawful to use the \$5,000 for this purpose?"

Article 2827, Revised Civil Statutes, provides the purpose for which school funds may be expended. Section 2 of Article 2827 provides as follows:

"The public free school funds shall not be expended except for the following purposes:

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"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."

See also Article 2784, Revised Civil Statutes, which sets forth the purposes for which the trustees of a school district may levy taxes.

We assume that \$23,000 balance is money realized from a tax levied for the maintenance of the school district. Article 2784. We also assume that the \$5,000 proposed to be expended represents surplus moneys in the maintenance fund.

In the case of *Madeley et al v. Trustees of Conroe Independent School District et al*, 130 S. W. (2d) 929 (Writ of Error dismissed, Judgment correct), one of the questions passed upon by the court was the authority of the trustees of the district to use the surplus in the maintenance fund for erecting and equipping school buildings. The court held that the local tax levied and collected by the trustees of an independent school district for the maintenance of the schools can be used only for the purposes of maintenance, "to the extent needed for that purpose. . . ." Articles 2784, 2827, supra. However, the court made the following statement regarding the use of surplus moneys in the maintenance fund:

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". . . . What shall the Trustees do with this surplus? It cannot be expended in the support and

maintenance of the public free schools, for it is not needed for that purpose; it cannot be diverted from public free school purposes, for under the Constitution it was collected for that purpose. It cannot be returned to the tax payers.

"Its allocation to the maintenance fund was by legislative edict for the purpose of supporting and maintaining the public free school. When that purpose has been effectuated, the fund is no longer subject to the control of the statutes, for the purpose of the statutes has been fully effectuated. If and when the statutes cease to control the fund, then it becomes a constitutional fund and not a statutory fund, and may be used by the trustees for the constitutional purposes; one of the constitutional purposes is 'the erection and equipment of school buildings' within the district.

. . . ." Article VII, Section 3, Constitution of Texas. See also Adams v. Miles, 300 S.W. 211, 41 S. W. (2d) 21.

In view of the foregoing you are respectfully advised that the fund collected for the support and maintenance of the public free schools to the extent that it is needed for that purpose may not be diverted to any other purpose. Therefore, the maintenance fund to the extent that it is needed for that purpose may not be used for the erection and equipping of school buildings. However, the surplus in the maintenance fund may be used for such purposes. It follows that if the \$5,000 proposed to be expended is a surplus in the maintenance fund, your question should be answered in the affirmative.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/George W. Sparks
George W. Sparks
Assistant

GWS:nw:wc

APPROVED AUG 13, 1942
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWF Chairman