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ATTORNEY GENERAL

See 110-1442  
as there is no so far  
no conflict  
0-7323

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

Dear Sir:

Opinion No. O-4798  
Re: Whether a superintendent of  
an independent school district  
may serve as tax assessor-  
collector for that school  
district.

In your letter of October 22, 1942, you request  
our opinion on the following submitted question:

"Is it legal for a superintendent of an  
independent school district to serve as tax  
assessor-collector for that school district?"

Section 40 of Article XVI of the Constitution of  
Texas provides, in part, as follows:

"No person shall hold or exercise at the  
same time, more than one civil office of em-  
olument . . ."

Various exceptions immaterial here are provided for in the  
article.

Article 2781, Vernon's Annotated Civil Statutes,  
authorizes the board of trustees of an independent district  
to employ a school superintendent. Said statute provides  
as follows:

"The Board of Trustees of any city or  
town or any independent school district may  
employ a superintendent, principal, teacher,

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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 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. Acts 1905, p. 263; Acts 1923, p. 260; Acts 1930, 41st Leg., 5th C. S., p. 123, ch. 8, sec. 1." (Underlining ours.)

Under the wording of said Article 2781, it is clear that the duty of employing an independent school district superintendent is vested in the district board of trustees, and that this employment is consummated by contract. The superintendent's rights are measured solely by the terms of his contract of employment; the relationship is purely contractual. His position is that of an employee, resting on the contract of employment, and not that of a public officer. *Wootz v. Balyce*, 236 N. W. 358, 75 A. L. R. 1347; *Clune v. School District*, 166 N. W. 11, 6 A. L. R. 736; *Heath v. Johnson*, 15 S. E. 980; *State ex rel Lewellen v. Smith*, 69 N. W. 114; Attorney General Opinion No. 0-4020. Although these cases deal with the employment of public school teachers and school principals, they are submitted as presenting principles of law applicable to the employment of an independent school district superintendent. A public office is something very different from a public contract. 34 Tex. Jur., p. 324.

We conclude from these authorities that a superintendent of an independent school district is not an officer within the meaning of Article XVI, Section 40, Constitution of Texas.

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Article 2779, Vernon's Annotated Civil Statutes, reads as follows:

"Said trustees (independent school district trustees) shall meet within twenty days after the election, or as soon thereafter as is possible, for the purpose of organizing. A majority of said board shall constitute a quorum to do business. They shall choose from their number a president, and they shall choose a secretary, a treasurer, assessor and collector of taxes, and other necessary officers and committees. Acts 1905, p. 263." (Underscoring ours.)

Article 2791, Vernon's Annotated Civil Statutes provides, in part, as follows:

"The district tax assessor and collector shall have the same power and shall perform the same duties with reference to the assessment and collection of taxes for free school purposes that are conferred by law upon the city marshall of incorporated towns or villages, and he shall receive such compensation for his services as the board of trustees may allow, except in cities or towns provided for, not to exceed four per cent of the whole amount of taxes received by him. He shall give bond in double the estimated amount of taxes coming annually into his hands, payable to and to be approved by the president of the board, conditioned for the faithful discharge of his duties, and that he will pay over to the treasurer of the board all funds coming into his hands by virtue of his office as such assessor and collector . . . Acts 1905, p. 263; Acts 1923, 2nd C. S., p. 78."

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The above pertinent statutes provide for the appointment of a district tax assessor and collector, fix the official duties to be performed by him as an officer, fix his compensation and likewise provide for an official bond for said officer.

In the case of *Fruitt v. Glen Rose Independent School District No. 1*, (Conn. App.) 84 S. W. (2d) 1004, it was held that the office of tax collector for an independent school district was one of emolument within the scope of Article XVI, Sec. 49, Constitution of Texas. See also *Martin v. Grandview*, 266 S. W. 607; *Taylor v. Brewster County*, 144 S. W. (2d) 314; Attorney General Opinion No. C-4663 which held that a tax assessor-collector for an independent school district is such an officer as comes within the scope of Article XVI, Sec. 14, Constitution of Texas.

It follows, therefore, that the Constitutional provision relative to double office holding is not applicable.

In view of the foregoing statutes and authorities, it is our opinion that a superintendent of an independent school district may serve legally as the tax assessor-collector for that school district. Thus, we are in accord with a former opinion of the department to the same effect, dated March 26, 1920, and addressed to Miss Annie Webb Blanton, State Superintendent of Public Instruction.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Chester E. Allison*

Chester E. Allison  
Assistant

ld

APPROVED NOV 23, 1948

*E. P. Gerald E. Mann*

ATTORNEY GENERAL OF TEXAS

