



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GERALD C. MANN
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ATTORNEY GENERAL

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

Dear Sir:

Opinion Number 0-4858

Re: Payment of salary of school superintendent where school district receives rural aid.

We have received your letters of August 28, 1942 and September 17, 1942. We quote the following from the first mentioned letter:

"An Independent School District entered into a two year contract on a 12 month a year salary basis. The District paid such salary to the Superintendent for the first year of such contract, but at the end of the first year, due to the scale fixed in the State Aid contract with the Department of Education, refused to pay same the second year.

"The question is, may the District pay the Superintendent of such District on a 24 month basis under such contract or is such contract invalid due to such provision in view of the fact that the school is receiving State Aid?"

Your letter of September 17, 1942, reads, in part, as follows:

"The independent school district entered into a two year written contract with the Supt. of the independent school district. He served one year under the provisions of the contract relative to pay. The second year, he fulfilled his contract with his services, however, the board refused to pay him the salary provided in the contract, on the grounds that the contract conflicted with Articles 1, 2, 3, 4, 5 and 6 of the Equalization Aid Law of Texas, cited in Public School Laws of Texas, pages 234-237. The salary is immaterial and the board is willing to pay the difference between the provision of such law and the contract amount, if they may do so legally.

"The contract having been executed and entered between the school district and the superintendent and same properly approved, same is not controversial. * * *".

Article I of the current rural aid bill (Acts 1941, 47th Leg., R.S., Ch. 549, H.B. 284, p. 880) sets out the factors which determine whether a school is eligible to receive rural aid under the bill. Section 1 of Article 1 sets out the scholastic population requirements. Section 2 provides that no school district shall be eligible to receive aid unless it votes, levies and collects a local maintenance tax of not less than 50¢ on the one hundred dollars of property valuation, which valuation shall not be less than that for State and county purposes. We quote the following from Section 2:

"* * * The income from such a maintenance tax in excess of the required fifty cents (50¢) maintenance tax must first be used to retire indebtedness, if any, in the local and equalization (Rural Aid) school funds. After the indebtedness in these funds, if any, has been retired the income from this maintenance tax in excess of the required fifty cents (50¢) maintenance tax may be used at the discretion of the local school authorities of the district for any lawful school purposes. Provided that no local funds may be used to increase teachers' salaries directly or indirectly above the salary schedule provided for in this Act. Any or all maintenance tax above fifty cents (50¢) may not be included in the calculation of need for aid but shall be reported in the budget. * * * (Emphasis supplied).

Article III of the current rural aid bill deals with salary aid. Section 1 of Article III defines teacher-pupil quota. Section 2 reads as follows:

"Salary Schedule And Length of Term. No part of the aid herein provided shall be used for increasing the monthly salary of any teacher, except as herein authorized, and funds provided for in this Act shall be used for the exclusive purpose of extending the length of the school term of the schools situated in the district receiving such aid on the basis of a schedule of teachers' salaries as determined by the State Board of Education for the school year 1938-39. The annual salary of teachers in accredited

schools shall be the monthly salary as determined by such schedule multiplied by nine (9). The annual salary of teachers in unaccredited schools shall be the monthly salary as determined by said schedule multiplied by eight (8). The annual salary of Superintendents of accredited schools with eight (8) or more recognized affiliated credits and entitled to six (6) teachers or more under Section 1 of this Article, Vocational Agriculture teachers, and Trades and Industries teachers shall be the monthly salary as determined by said schedule multiplied by twelve (12). The annual salary of Home Economics teachers shall be the monthly salary as determined by said schedule multiplied by ten (10). All such authorized salaries may be paid in twelve (12) equal payments, which shall not exceed the contract or the salary schedule, beginning with September 1st of each year. Salaries of Superintendents and Vocational teachers may begin on July 1st rather than September 1st. All schools of the accredited class receiving aid shall provide a term of approximately nine (9) months, and schools of the unaccredited class receiving aid shall provide a term of approximately eight (8) months. An accredited school is herein defined as a school teaching either the elementary grades, the elementary grades plus two (2) years of high school, or the elementary grades and four (4) years of high school and recognized by the State Department of Education as doing standard work. Should any school district eligible to receive aid under the provisions of this Act maintain a salary schedule in excess of the salary schedule, as determined by the State Board of Education for the school year 1938-39, the amount of aid received by such school district shall be reduced by the amount of such excess. (Emphasis supplied).

Although we do not know the salary of the superintendent under his contract with the district, we presume that it is in excess of that fixed in the schedule as determined by the State Board of Education for the school year 1938-39, mentioned in Section 2 of Article III.

We assume that the independent school district under consideration was incorporated under the general law and that the laws applicable to independent school districts are applicable to this district. Article 2781, Vernon's Annotated Civil

Statutes, authorizes the board of trustees of an independent district to employ a school superintendent. Said article provides as follows:

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

Thus we see that the board of trustees may employ a superintendent for a term not to exceed three years. You state in your letter that the contract was properly executed and approved. We assume that all the requirements of law were met and that the services of the superintendent under the contract were satisfactory.

We are informed by the State Department of Education that those school districts applying for rural aid are required to submit budgets showing their revenues and proposed expenditures. Then rural aid is granted to supply additional revenue to balance the approved budget and operate the school as set out under the bill. Theoretically at least, the district will have no additional funds after the items enumerated in the budget are expended. Under Section 2 of Article III, where a school district maintains a salary schedule in excess of the schedule determined by the State Board of Education the amount of such excess shall be subtracted from the amount of aid to be received by said district.

There is nothing compelling school districts to accept rural aid. Article XIV of the Act provides a penalty for violation of the terms of the Act, but such penalty applies only to the right to receive rural aid.

The fact that a superintendent's salary as set by his contract of employment exceeds the amount in the salary sched-

ule as determined by the State Board of Education would in itself in no way affect either the legality of the contract or the liability of the district under the contract. At most such fact would affect only the eligibility of the district for participation in the rural aid benefits.

Very truly yours

ATTORNEY GENERAL OF TEXAS

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

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APPROVED SEP 29, 1942
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman