



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. O-4915

Re: Whether State Superintendant must approve transfer agreement under Section 2, Article VIII of current rural aid bill (Acts 1941, 47th Leg., R. S., Ch. 549, H. B. 224, p. 880)

We have received your letter of recent date which we quote in part as follows:

"Article 2657 of the Revised Civil Statutes grants to the State Superintendent of Public Instruction certain prerogatives among which is the following:

"... in all cases wherein the provisions of the school law may require interpretation in order to carry out the designs expressed therein, also in cases that may arise in which the law has no provisions, and where necessity requires some rule in order that there may be no hardships to individuals, and no delays or inconvenience in the management of school affairs. (Acts 1905, 29th Leg., R. S. Ch. 124, Sec. 25, p. 271.)"

"Article 2699, Revised Civil Statutes, provides in part:

"... and provided further that all the children residing in a school

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district may be transferred to another district, or to an independent district, upon such terms as may be agreed upon by the trustees of said districts interested. (Acts 1905, 29th Leg., R. S. Ch. 124, Sec. 92, p. 288)'

"Section 2, Article 8 of the Rural Aid Law, page 243 of the Public School Laws of Texas, reads as follows:

"For the school years thereafter, upon the agreement of the Board of Trustees of the Districts concerned or on petition signed by a majority of the qualified voters of the district and subject to the approval of the County Superintendent and the State Superintendent, a district which may be unable to maintain a satisfactory school may transfer its entire scholastic enrollment for one year to an accredited school of higher rank.'

"My interpretation of this Section 2 is that it contains two ways by which school children may be transferred for the duration of one year: first, it may be done by an agreement between the two boards of trustees concerned; and second, on petition signed by a majority of the qualified voters of the district and subject to the approval of the County Superintendent and State Superintendent. My interpretation with reference to this section of the law is corroborated by the last proviso in Article 2699, as quoted above. It seems to me that any other construction than this would do violence to the general statute just referred to.

"I do not believe there is any conflict between the two statutes. One is supplementary to the other, and method number two of transferring as referred to herein is an addition to number one as corroborated by the general statute.

"Do you agree with me on this interpretation?
If not, why not?"

You wish to know whether you, as State Superintendent, must under Section 2 above quoted approve the transfer when the boards of trustees of the districts involved have agreed to such transfer. It is our opinion that your approval is required.

In the case of McCorkel, County Superintendent v. District Trustees of Robinson Springs School Dist. No. 76 of Comanche County et al., 121 S. W. (2d) 1048, the court had before it for consideration the following provision of the 1937 rural aid bill (Acts 1937, Ch. 474, Sec. 17):

"Transfer of Entire District. On the agreement of the board of trustees of the districts concerned or on petition signed by a majority of the qualified voters of the district and subject to the approval of the County Superintendent and State Superintendent, the trustees of a district which may be unable to maintain a satisfactory school may transfer its entire scholastic enrollment, or any number of grades thereof, to a convenient school of higher rank, and in such event, all of the funds of the district, including the State aid to which the district would otherwise be entitled under the provisions of this Act, or such proportionate part thereof as may be necessary, may be used in carrying out said agreement."

One can readily see the similarity of this provision and the one under consideration. In fact, with the exception of the word "the" inserted in the 1941 act, the language providing for the approval of the transfer by the State Superintendent is the same in both acts. The court held that the approval of the county superintendent and the State Superintendent was required whether the transfer was made on agreement of the trustees or on the petition signed by a majority of the qualified voters. We quote the following from the opinion of the court:

". . . It (Section 17) simply authorizes the trustees of certain districts which may be unable to maintain a satisfactory school therein to make the transfer provided for, subject to the conditions specified, among which being that the transfer be subject to the approval of the County Superintendent and State Superintendent. . . .

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" . . . Also, in either case, we think the transfer is to be made 'subject to the approval of the County Superintendent and State Superintendent.'" (Parenthetical insertion added)

We are of the opinion that this case precludes any holding other than that the approval of the State Superintendent is required on all transfers made under Section 2 of Article VIII. You have informed us that you have heretofore approved all transfers made under Article VIII. You have, therefore, met the requirements of the rural aid bill.

We do not think that the conclusion which we have reached means that there is any conflict in Section 2 and the general law. Section 2 merely sets up a way in which the entire enrollment of a school may be transferred under the condition specified, and provision is made for the payment of aid to the receiving district. It is too elementary to require citation of authority that before money can be paid out under an item of appropriation, the terms under which the appropriation is made must be met. Both the statutes which you cite in your letter were in the statute books at the time that the McCorkel case was decided. As we have stated before, it is our opinion that the McCorkel case is binding on this department as to the conclusion announced.

You are, therefore, respectfully advised that the approval of the State Superintendent is required on all transfers made under Section 2 of Article VIII of the rural aid bill whether the transfer is on agreement of the trustees or on petition of the qualified voters. The answer to your question is a negative one for the reasons heretofore given.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

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

GWS:ld

APPROVED OCT 19, 1942
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION COMMITTEE
BY BNB
CHAIRMAN