



**THE ATTORNEY GENERAL  
OF TEXAS**

GROVER SELLERS  
~~JAMES S. BAKER~~  
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable W. B. King, Accountant  
Joint Legislative Committee  
Austin 11, Texas

Dear Sir:

Opinion No. O-5928  
Re: Interpretation of Section 4,  
Article 1, House Bill 176,  
48th Legislature.

Your communication addressed to this department  
and dated March 22, 1944, reads as follows:

"Will you please answer the questions set forth  
below pertaining to House Bill No. 176, Section 4 of  
the Equalization Aid Law of Texas.

"We quote the following from Section 4:

"Sixty-five per cent (65%) average  
daily attendance shall be based for  
the entire school term or, at the  
election of the Schools and with the  
approval of the Legislative Accountant,  
may be based upon the first four months  
thereof."

"The law itself, in no respect, offers any clarity  
to us concerning the auditing of applications for average  
daily attendance purposes; and we feel it imperative  
to have a clarification of this particular Section.

"There is a variance of ten days between a school  
month and a calendar month; and in this instance,  
the law does not specify which of these months, the  
school or the calendar, shall be used in computing  
average daily attendance 'based on the first four  
months of the school term.' Pursuant to this, a ques-  
tion arises as to whether this 'four months period'  
begins with the opening of school or whether it pertains  
to the actual number of days that the school has oper-  
ated. (For example, many schools begin the term in  
the month of August teach for a period of one month or  
six weeks, and temporarily close for crop harvestings).

"In summation, we respectfully submit the following:

- "(1) What constitutes four (4) months as spoken of in Section 4, House Bill Number 176, Acts of the 48th Legislature?
- "(2) Is this four (4) months period (as mentioned above) to be based on the actual number of days during which the school operates and is available for scholastic attendance or could holidays and periodic recesses, be excluded in compiling the average daily attendance?
- "(3) Considering any holding which you make, could a school district submit additional Average Daily Attendance reports, if after its election to file a report at the end of the first 4 months, it failed to meet the requirements set forth otherwise in the law?"

The Section 4 referred to in your communication is Section 4 of Article 1 of said House Bill 176.

Article 23, Revised Civil Statutes, provides, in part, as follows:

"The following meaning shall be given to each of the following words, unless a different meaning is apparent from the context:

"\* \* \*

"(15) 'Month' means a calendar month.

"(16) 'Year' means a calendar year."

In the case of McKinney v. State, (Court of Crim. Appeals of Texas) 66 S. W. 769, it was held that "a month, as used in the civil statutes, is a calendar month, and is determined arbitrarily by the number of days that the calendar gives to each particular month; that is, thirty-one days for January; twenty-eight days for February, except leap year, etc." The same case holds, however, that when used in a criminal statute, the words "one month" mean thirty days.

It should be observed, however, that the meaning to be given to each of the words covered by Article 23, supra, shall be given as therein set forth, unless a different meaning is apparent from the context.

It should likewise be observed that Section 4 of Article 1 of H. B. 176, 48th Legislature, is part of the current bill providing for State aid to public schools, and deals with average daily school attendance. The context of the entire bill has reference to school matters. Therefore, it is clear to our minds that the words "first four months thereof," as used in Section 4, supra, and quoted in your communication to this department, have reference to school months rather than calendar months.

What, then, is a school month?

Article 2906, Revised Civil Statutes, reads as follows:

"Public schools shall be taught for five days in each week. Schools shall not be closed on legal holidays unless so ordered by the trustees. A School month shall consist of not less than twenty school days, inclusive of holidays, and shall be taught for not less than seven hours each day, including intermissions and recesses." (Emphasis ours)

The statute, while fixing twenty as the minimum number of school days in a school month, does not fix the maximum number of such days. It is therefore, in this respect, ambiguous and uncertain. Construction is required to determine its meaning. 39 Tex. Jur., p. 160, par. 88.

"The courts will ordinarily adopt and uphold a construction placed upon a statute by an executive officer or department charged with its administration, if the statute is ambiguous or uncertain, and the construction so given it is reasonable." 39 Tex. Jur. pp. 235-236, par. 126.

It is our understanding from the office of the State Superintendent of Public Instruction, that the Department of Education has, since its passage, interpreted Article 2906, Revised Civil Statutes, as defining a school month to mean a month of four weeks consisting of five school days in each week, including holidays, or a total of twenty school days, including holidays, in each school month. Thus, a school term of nine months means one consisting of 180 school days, including holidays. This is not an unreasonable construction. Such departmental construction has for many years been the basic guide in reference to numerous school matters not specifically covered by our statutes. We, therefore, feel compelled to adopt such

construction as being reasonable and proper. See Railroad Commission of Texas v. T. & N. O. R. Co., 42 S. W. (2d) 1091, error refused; State v. Gunter, 81 S. W. 1028, error refused; Cotton v. Commonwealth Loan Co., (Sup. Ct. of Ind.) 190 N. E. 853.

The Indiana case last cited is particularly applicable to a proper interpretation of the word "months," as contained in your first question. The appellants in that case plead usury as a defense in the court below. They urged that the word "month," as used in the statute, meant a calendar month. They relied upon Section 247, Burns' 1926, which read as follows:

"The construction of all statutes of this State (Indiana) shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute; \* \* \*

"Fifth. The word 'month' shall mean a calendar month, and word 'year' shall mean a calendar year, unless otherwise expressed; \* \* \*" (Emphasis ours)

Appellee was a licensee under the petty loan statute of Indiana. Such licensees were originally under the supervision of the Auditor of State. In 1919 the Legislature transferred the supervisory power of the auditor to the State Banking Department. Said Banking Department, through its Division of Industrial Loans, had from time to time issued regulations governing licensees under said statute. One of its printed rules required that "all interest shall be computed on a basis of 30 days to each of the 12 months of the year." Also, "interest shall be computed on the exact amount of money for the actual number of days, not to exceed 30 days to the month."

In disposing of said case, the Court took notice of said departmental interpretation of the statute, as it would take notice of an inferior court's decision. The court further stated: "It (the departmental interpretation) does not bind us in our construction of the statute, but lends support to the contention that the statute may be reasonably construed as intending that thirty days might be treated as a month." In overruling the decision of the Appellate Court of Indiana, in Banc, 184 N. E. 578, the Supreme Court of Indiana in effect adopted the departmental interpretation as above set forth. It held that the word "month" as used in said petty loan statute, had reference to the commercial month of thirty days. While a construction of the statutes providing for forfeitures was also involved in said Supreme Court Opinion, it is obvious that the same conclusion as therein stated would have been reached had such construction not been involved.

Attention is also directed to Article 2903, Revised Civil Statutes, which provides as follows:

"The scholastic year shall commence on the first day of September of each year and end on the thirty-first day of August thereafter."

In view of the foregoing, your questions as submitted, are answered as follows:

(1) Eighty school days, including holidays, constitute four months within the meaning of Section 4, Article 1, H. B. 176, Acts of the 48th Legislature.

(2) Holidays and periodic recesses, during which schools are ordered closed by the trustees, are to be excluded in computing the average daily attendance. Holidays on which schools are taught and not closed by proper order or orders of the trustees, are to be included in such computation.

(3) Based on the wording of the provisions of Section 4, Article 1, H. B. 176, 48th Legislature, it is the opinion of this department that the required sixty-five (65%) per cent average daily attendance is primarily based upon the entire school term. Therefore, a school district which files a report at the end of the first four school months, which report fails to show an average daily attendance of sixty-five (65%) per cent, may thereafter submit a Daily Attendance Report based upon the entire school term.

Let it be understood that the foregoing answers are based on school months and school terms included within a scholastic year, as hereinabove defined.

Very truly yours

ATTORNEY GENERAL OF TEXAS

/s/ L. H. Flewellen

By

L. H. Flewellen  
Assistant

APPROVED APRIL 11, 1944

/s/ G. P. Blackburn

G. P. Blackburn  
Acting Attorney General of Texas

LHF:EP:ELB

APPROVED  
Opinion  
Committee

By B.W.B.  
Chairman