



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

**GROVER SELLERS**  
ATTORNEY GENERAL

Honorable A. W. Salyars  
County Attorney  
Dallas County  
Dalhart, Texas

Dear Sir:

Opinion No. 0-5989

Re: Are the elections and terms of office of the trustees of Dalhart Consolidated Independent School District controlled by the special act of the Legislature creating said District? And another question.

We are in receipt of your letter requesting an opinion on the above questions together with your opinion as to the correct answer to same. We think your conclusions on both questions are correct. Your letter is as follows:

"Please render me an opinion on my questions hereinafter stated concerning the following fact situation:

"The called session of the 36th Legislature in 1920 passed House Bill Number 67 whereby the Dalhart Consolidated Independent School District was formed and created and which bill has not been repealed, altered or changed by any subsequent acts of the Legislature.

"Sections 4, 5, and 6 of said act have to do with the Board of Trustees for said School District, its officers, and the terms of office of said officers, and trustees, which sections are as follows:

Honorable A. W. Salyers Page 2

"Sec. 4. The control and management of the Dalhart Consolidated Independent School District is hereby vested in a Board of seven (7) trustees as above provided, viz: O. W. Raillard, Frank B. Farwell, Frank M. Tatum, George E. Walker, Roy W. Thompson, F. E. Thomas, and R. U. Counts, and their successors in office.

"Sec. 5. Said trustees shall organize as soon after this Act takes effect, as may be practicable, by electing from their number a president, vice-president, and secretary, and may also elect or appoint such other officers and employees as they may deem necessary, who may or may not be members of said Board, and may, if said Board elects so to do, provide for the assessment and collection of taxes by its own assessor and collector, otherwise said school taxes shall be assessed and collected as provided by the General Law, by the County Assessor and Collector of taxes.

"Sec. 6. The term of office of the seven (7) trustees above named shall be divided into two (2) divisions, as follows: The first three named to serve until the general election of trustees for Independent School Districts, held as provided by law, in the year 1921, and the last four named trustees to serve until the general election of trustees, as provided by law, in the year 1922, and until their successors shall be elected, and shall qualify.'

"My questions arise out of the provisions of said Section 6. For a number of years following the passage of this Act the school trustees of said District were elected as provided in said Section 6, that is three trustees were elected in one year for a two year term, and in the following year four trustees were elected for a two year term, and so on in rotation. However several years ago the provisions of said Section 6 were ignored by the trustees of said School District and instead of electing trustees as

Honorable A. W. Salyars Page 3

provided therein the practise of electing trustees for three year terms was begun; two elected one year, two elected the following year, and three the following year, all for a three year term and so on in rotation. That practise began over twelve years ago and obtains today.

"All trustees serving now were elected under the present arrangement.

"Two questions of local interest have presented themselves.

"Are the elections and terms of office of the trustees of Dalhart Consolidated Independent School District controlled by the special act of the Legislature creating said District?

"If the above question is answered in the affirmative please answer this question: Are the trustees who are now serving and who were elected for three year terms de facto officers?

"I am of the opinion that both questions should be answered in the affirmative. It is my contention that there has been no law passed since the enactment of the Special Act which would change or have any effect whatsoever on Section 6 of said Special Act. There have been several laws passed whereby provisions were made for the election of trustees. Most of these acts or articles have to do with particular Districts, and this School District in question is not subject to the provisions of any of them because of the fact that the largest city in this School District is Dalhart, Texas with a population of 4,691 according to the last Federal Census. The only articles that might have applied to the Dalhart Consolidated Independent School District, in my opinion, are Articles 2774a, 2757 and 2758. I do not believe they apply because Article 2774a provides for Districts created in a certain manner other than by Special Act of the Legislature, and the Dalhart Consolidated Independent School District was in existence prior to the enactment of Article 2774a and had followed

Honorable A. W. Salyars Page 4

Section 6 creating said District for several years. Article 2758 would not apply in that Dalhart Consolidated Independent School District was created by a Special Act and not as provided in Article 2757.

"The following cases seem to hold quite clearly that provisions of Special Acts creating school districts control over general school laws. I have failed to find any general law superceding or attempting to change the Special Act in question since its enactment. I refer you to the following cases; 256 S.W. 672; 277 S. W. 751; and particularly to Section 7 thereof on page 754; 266 S. W. 607; 238 S. W. 1026; 204 S. W. 115; 203 S. W. 1178; 277 S. W. 97; 61 S. W. 114; 65 S. W. (2) 414; your opinion No. 0-593; and 85 S. W. (2) 853. In the last cited case, Smith vs. Morton Independent School District, decided by the Court of Civil Appeals of Amarillo, Texas, in 1935, the Court upheld the Special Act creating said District insofar as it provided for the election of three trustees and held that the election in said District of six trustees was unauthorized. That Court went further and held that the six trustees were not de facto officers because there was no de jure office. I quite agree with that holding, but I believe the facts in my case clearly show the trustees to be de facto because the Special Act provided for seven trustees and seven trustees have been elected, are recognized as such and are holding office. I have no trouble with the second question propounded to you, but I do need the weight of your opinion on it.

"I am enclosing a copy of the Special Act creating the Dalhart Consolidated Independent School District, which you may use for reference and convenience."

We have heretofore discussed a similar question in opinion No. 0-593, a copy of which opinion we enclose herewith.

Honorable A. W. Slayars Page 5

We wish to thank you for giving us the benefit of your research in connection with the questions propounded by you.

Yours very truly

ATTORNEY GENERAL OF TEXAS

*C. F. Gibson*

By C. F. Gibson  
Assistant



CFG:ned

APPROVED MAY 6, 1944  
*C. J. Blackburn*  
(Acting) ATTORNEY GENERAL OF TEXAS