



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. 0-6021
Re: May the City of Taylor be
authorized by a charter
amendment adopted by a
majority of the qualified
voters of said city to levy
taxes for municipal purposes
not exceeding \$2.50 and for
school purposes not exceed-
ing \$1.50?

We are in receipt of the following letter from Hon-
orable L. A. Woods, State Superintendent, requesting an opinion
on the questions stated therein:

"The management of the schools at Taylor desire
an increase in taxes for school purposes and have
requested me to secure your opinion with reference
to the question propounded below. Since I am inter-
ested in seeing that teachers are adequately paid
and there is a possibility of bonds being offered
for sale the validity of which will be affected by
the proposed action outlined below, I respectfully
request you to answer the following question.

"May City of Taylor be authorized by a charter
amendment adopted by a majority of the qualified
voters of said city to levy taxes for municipal pur-
poses not exceeding \$2.50 and for school purposes
not exceeding \$1.50?

"The city attorney of Taylor has furnished me
with the following information and I give same to
you in order that you may be able to answer the fore-
going question.

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"Being a city with more than five thousand population, City of Taylor adopted a Home Rule charter in the year 1914, as provided in Section 5, Article 11, Constitution of Texas. Prior to that time the boundaries of Taylor Independent School District were the same as the boundaries of City of Taylor and the city attorney assumes the school district was created by general or special law or the incorporated City of Taylor constituted such separate and independent school district within the provisions of Section 3, Article 7, Constitution of Texas. He is unable to ascertain from the City's records just how this independent district was created, but he assumes such records are available to you at Austin.

"Taylor's original Home Rule charter contained the following provision in Article XV:

"All laws in force, pertaining to the public free schools of the City of Taylor are hereby retained in full force and effect, and said schools shall be continued, managed and controlled as heretofore, and the trustees of the said public free schools shall be elected according to the provision of the above mentioned laws retained in full force and effect. Means for the support and maintenance of the public free schools and for the purpose of procuring grounds and constructing and improving buildings for such public free schools shall be obtained according to the laws now in effect relating to such public free schools."

"Article XV was changed by duly adopted charter amendment and now reads as follows:

"All laws now in force pertaining to the public free schools of the City of Taylor, Texas, except as otherwise in this Charter provided, are hereby retained in full force and effect, and said school shall be continued, managed, and controlled as heretofore, and the trustees of said public free schools shall be elected according to

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the provisions of the above mentioned laws so retained in full force and effect. Means for the support and maintenance of the public free schools and for the purpose of procuring grounds and erecting and equipping buildings for such public free schools shall be obtained as provided under Article XII of this Charter.'

"Article XII of the Home Rule charter originally provided for a tax of \$2.00 on the \$100.00 valuation, \$1.00 for all lawful purposes other than for school purposes, and \$1.00 for school purposes, but by charter amendment duly adopted, Article XII now reads as follows:

"The Board of Commissioners of the City of Taylor, Texas, shall have power, and is hereby authorized annually to levy and collect, for general and all lawful purposes, and for the purpose of paying the interest on and creating a sinking fund for all outstanding and future indebtedness of the City of Taylor, Texas, and for the purchase of school grounds, erecting and equipping school buildings and the maintenance of the public free schools of said City of Taylor, Texas, an ad valorem tax of not to exceed Two and 20/100 (\$2.20) Dollars on each one hundred dollars of assessed valuation of all real and personal property within the City limits of said City of Taylor, Texas, not exempt from taxation by the Constitution and laws of this State.

"Of said total amount of two and 20/100 (\$2.20) Dollars tax herein authorized to be so annually levied and collected, One and 20/100 (\$1.20) Dollars on the One Hundred Dollars valuation of said real and personal property, or so much thereof, as, from time to time may be necessary, may be levied and collected, annually for general and all lawful purposes, other than for school purposes as hereinafter provided.

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And the Board of Commissioners is hereby authorized to pledge the credit of said City and issue bonds therefor and use so much of said One and 20/100 (\$1.20) Dollars of said tax so authorized as it may deem necessary and proper for the payment of the interest on and create a sinking fund to pay off at maturity thereof all outstanding and future indebtedness of said City.

"Of the said total of Two and 20/100 (\$2.20) Dollars tax herein authorized to be so annually levied and collected One Dollar, or so much thereof as may be necessary, shall be used for school purposes only, as follows: For the purpose of purchasing school grounds, erecting and equipping school buildings for said public free schools of said City and for the maintenance of said public free schools, and the said Board of Commissioners is hereby authorized to issue bonds of the said City of Taylor, Texas, and from time to time levy and provide for the collection of such tax, not to exceed fifty cents on the One Hundred Dollar valuation as may be necessary to provide for paying the interest on and create a sinking fund sufficient to pay off at maturity, all outstanding and future indebtedness of the said City of Taylor, Texas, incurred for, or on behalf of said public schools of the said City of Taylor, Texas.

"The Board of Commissioners is hereby authorized to issue bonds of the said City of Taylor, Texas, for the purchase of school grounds, and erecting and equipping school buildings.

"The balance of said One Dollar of said tax to be so used for school purpose, not used to pay interest on and create a sinking fund to pay off the outstanding and future bonded indebtedness of said City incurred for school purposes, or so

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much thereof, as from time to time, may be necessary, shall be levied and collected annually, to provide a fund for the maintenance of said public free schools of said City.

"No bonds, however, shall be issued by said Board of Commissioners for any purpose whatever, without first having been authorized so to do by a majority vote of the qualified property tax paying voters of said City voting at an election called for that purpose."

"Prior to the adoption of the above quoted amendment of Article XII, the school had its own tax assessor and collector and board of equalization but since said amendment was adopted the school taxes have been levied by the Board of Commissioners and assessments and collections handled by the City's tax assessor and collector and board of equalization.

"Basing his opinion principally upon Sections 115 et seq. in the article on Schools, 37 Tex. Jur., 990, et seq. and authorities there cited, it is the city attorney's opinion that City of Taylor may adopt a charter amendment authorizing a school tax in excess of \$1.00 and a tax up to \$2.50 for municipal purposes.

"Will you kindly give me your opinion with reference to this question at your earliest convenience?"

We assume that the City of Taylor has assumed control of the schools or that such control was placed under the City by a former charter granted by the Legislature; it is immaterial either way -- the City of Taylor at this time is acting in a dual capacity, and has dual powers. It is a municipal corporation and it is an independent school district. *City of Rockdale v. Cureton*, 111 Tex. 136, 229 S. W. 852.

The question of the distinction between a city as an ordinary municipality and as a separate and independent school district was considered in the case of the *City of Fort Worth v. Zane-Cetti* (Com. App.) 278 S. W. 183. In that

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case Zane-Cetti sought to enjoin the collection of a tax of 86¢ on each one hundred dollars of taxable values "for the maintenance and use of the public free schools of the City of Fort Worth for each current year," on the ground that at the election at which the charter amendment authorizing the tax was adopted the voters were not limited to qualified property tax-paying voters as required by Section 3 of Article 7 of the Constitution. It was held by the Court in that case that a tax for school purposes was limited to those voters authorized to vote for school taxes under Section 3, Article 7 of the Constitution. In an election to amend a charter any qualified voter may vote, but only qualified voters who are property taxpayers may vote on the question of authorizing a tax for school purposes.

From the foregoing it will be seen that a city of more than 5,000 population may amend its Charter by a majority vote of the qualified voters of such city to authorize the levy of taxes for municipal purposes not to exceed \$2.50 on each one hundred dollars valuation of property, but that it can not amend the Charter to authorize the levy of a school tax unless said amendment shall provide that said school tax shall be submitted to a vote of the property tax payers of the school district. The Constitution does not place any limit on the rate which a city may levy as an independent school district. As far as the Constitution is concerned, the city may levy school taxes at any rate authorized by the qualified property tax-paying voters. Article 7, Section 3 of the Constitution. However, there is a Statutory limitation on all school districts of one dollar on the one hundred dollars valuation of taxable property. Article 2784, Vernon's Annotated Statutes. We call attention to Article 1165, Vernon's Annotated Civil Statutes, wherein is found the following language:

"... No charter or any ordinances passed under said charter shall contain any provision inconsistent with the Constitution or general laws of this State;"

Since the general law contains the above-mentioned limitation of one dollar on the one hundred dollars valuation, we think a charter limitation of one and one-half dollars on the one hundred dollars valuation would be inconsistent with the general law.

Very truly yours

ATTORNEY GENERAL OF TEXAS

(Signature)
 ATTORNEY GENERAL OF TEXAS

(Signature)
 C. F. Gibson

Assistant

APPROVED
 OPINION
 COMMITTEE

BY *(Signature)*
 CHAIRMAN

(ACKED)

OK
 J.D.