



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

GROVER SELLERS  
~~XXXXXXXXXXXXXX~~  
WILL WILSON  
ATTORNEY GENERAL

Honorable S. J. Isaacks  
Chairman Judiciary Committee  
House of Representatives  
Austin, Texas

Dear Sir:

Opinion No. 0-6538

Re: Constitutionality of the proposed bill which is set out herein.

Your letter of April 16, 1945, requesting the opinion of this department as to the constitutionality of the bill attached to your inquiry is as follows:

"Will you kindly advise me as chairmen of the Judiciary Committee of the House of Representatives, whether or not the enactment of a bill substantially like the copy of the one enclosed would be in contravention of the constitution providing that local bills must be advertized before the meeting of the Legislature.

"On account of the near approach of the end of the session I will appreciate it if you will give the matter your immediate attention if it is possible for you to do so."

The proposed bill submitted with your request is as follows:

"H. B. No. \_\_\_\_\_

By: \_\_\_\_\_

"A BILL

TO BE ENTITLED

"AN ACT to fix the maximum rate of tax to be levied for school purposes in all Independent School Districts which include within their limits a city or town, incorporated or unincorporated, which according

to the Federal Census of 1940 had a population of not less than Two Thousand Eight Hundred Twenty Five (2825) and not more than Two Thousand Eight Hundred Thirty Five (2835) and not less than One Hundred Thirty Thousand (130,000) and not more than One Hundred Thirty Five Thousand (135,000) in the County, whether organized under General or Special Law, repealing all laws in conflict herewith, both General and Special, and declaring an emergency.

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

"SECTION 1. In any Independent School District having and including within its limits a city or town, incorporated or unincorporated, which according to the Federal Census of 1940 contained a population of not less than Two Thousand Eight Hundred Twenty Five (2825) and not more than Two Thousand Eight Hundred Thirty Five (2835) and in a County containing not less than One Hundred Thirty Thousand (130,000) and not more than One Hundred Thirty Five Thousand (135,000) according to the Federal Census of 1940, the school district trustees of such Independent School District, whether such Independent School District was created under the General laws or any Special Law or laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

"(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One and 75/100 Dollars on the One Hundred (\$100.00) Dollars valuation of taxable property of the District;

"(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such Districts and the purchases of the necessary sites therefor, an ad valorem tax not to exceed Seventy-five (75¢) Cents on the One Hundred (\$100.00) Dollars valuation of taxable property of the School District, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such Districts are empowered to issue for such purpose;

"(3) The amount of maintenance tax, together with the amount of bond tax of any such District

shall never exceed One and 75/100 (\$1.75) Dollars on the One Hundred (\$100.00) Dollars valuation of taxable property within such Districts; and if the rate of bond tax, together with the rate of maintenance tax voted in the District shall at any time exceed One and 75/100 (\$1.75) Dollars on the One Hundred (\$100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One and 75/100 (\$1.75) Dollars;

"(4) No tax shall be levied, collected, abrogated, diminished or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the District for such purpose, at which none but property tax-paying qualified voters of such District shall be entitled to vote.

"SEC. 2. All laws and parts of laws, both General and Special, in conflict herewith are hereby repealed.

"SEC. 3. The importance of this legislation and the crowded condition of the calendar creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days be suspended, and the same is hereby suspended and this Act shall be in force and take effect from and after its passage, and it is so enacted."

Section 57 of Article III of the Constitution provides that no local or special law shall be passed unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, and further requires publication for at least thirty days prior to the introduction into the Legislature of such Bill, as well as exhibition to the Legislature of the evidence of such notice having been published.

In considering the question presented, we must also look to Section 56, Article III of the Constitution. If the proposed bill is a local or special law prohibited by that section of the Constitution, it matters not that the constitutional notice prerequisite to the passage of an authorized local or special law has been given.

Section 56, Article III of the State Constitution is as follows:

"The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing:

". . . . .

"Regulating the affairs of counties, cities, towns, wards or school districts; . . . .

"And in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing special laws for the preservation of the game and fish of this State in certain localities."

Local or special legislation is void if it pertains to a subject expressly forbidden by the provisions of Section 56 of Article III of the Constitution, and is not permitted under any other section of the Constitution, either expressly as an essential or appropriate incident to any subject so permitted.

It is our opinion that the proposed legislation is expressly forbidden by the provisions of Section 56, Article III of the Constitution and is not permitted under any other section of the Constitution. It is, therefore, our opinion that the proposed bill under consideration is unconstitutional.

Prior to 1927, the Constitution, Section 3, Article VII, contained the following language:

"And the Legislature may also provide for the formation of school districts by general or special law without the local notice required in other cases of special legislation."

In 1926, however, this provision was changed to read:

"And the Legislature may also provide for the formation of school districts by general law."

It will readily be seen that inasmuch as Section 3 no longer contains an exemption to the general provisions of Section 56, Article III of the Constitution prohibiting the Legislature from passing local or special laws, the formation of school districts by special laws is not permissible. We merely mention Section 3 of Article VII of the Constitution as it existed prior to 1927 for the purpose of showing that a special law could be enacted for the formation of school districts

without the local notice required in other cases of special legislation. The case of Fritter vs. West, 65 S.W. (2d) 414, (Error refused), holds among other things that a law is unconstitutional which attempts to create in a particular county the offices of county trustees, prescribe the powers and duties of officers in the school district, regulate the management of schools in such district, and raise funds for that purpose.

For authorities supporting our opinion that the proposed bill considered herein is unconstitutional, we direct your attention to the following cases: Oakley et al vs. Kent et al, 181 S.W. (2d) 919; Smith vs. State, 49 S.W. (2d) 739; Clark vs. Finley, 54 S.W. 343; City of Fort Worth vs. Bobbitt, 41 S.W. (2d) 288; Bexar County vs. Tynan, 97 S.W. (2d) 467; Miller et al vs. El Paso County, 150 S.W. (2d) 1000. As heretofore stated, we are of the opinion that the proposed bill contravenes Section 56 of Article III of the Constitution as it is local or special legislation regulating the affairs of school districts. We find that the Legislature has already by general law dealt with the matters contained in the proposed legislation, and the subject is therefore one about which a general law can be made and has been made applicable. For the purposes of this opinion we do not deem it necessary to cite or quote such statute.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By s/Ardell Williams  
Ardell Williams  
Assistant

AW:LJ:wc

APPROVED APR 23, 1945  
s/Grover Sellers  
ATTORNEY GENERAL OF TEXAS

APPROVED Opinion Committee by s/BWB Chairman