



**THE ATTORNEY GENERAL
OF TEXAS**

GROVER SELLERS

AUSTIN 11, TEXAS

ATTORNEY GENERAL

Honorable M. S. Munson, Jr.
County Attorney
Wharton County
Wharton, Texas

Dear Sir:

Opinion No. O-6548
Re: Construction of Article 2697,
R.C.S., concerning transferring
school children from one district
to an adjacent district in another
county; appellate jurisdiction there-
under of county board of trustees.

Your request for an opinion has been received and carefully con- sidered by this department, from which we quote as follows:

"The County Superintendent of this County has requested me to write you relative to the proper interpretation of Article 2697, of the Revised Statutes of the State of Texas, concerning the transfer of school children from a district in one county to an adjoining district in another county.

"Article 2695 sets out in detail the procedure to effect a transfer from one district to another in the same county, and further provides that if any district is dissatisfied with any transfer made by the County Super- intendent it may appeal from such action to the County Board of Trustees of said county, who shall have the right to annul and cancel the transfer.

"Article 2697 does not in so many words include this right of appeal, but it does state that the transfer shall be made in the manner provided in Article 2696, and it would appear to me that the procedure should be the same.

"A specific instance has come up in this County and the parents of the child are contending that the County Board of Trustees have nothing to do with the transfer.

"I would appreciate your advising me fully concerning this matter."

Articles 2696 and 2697, Revised Civil Statutes of Texas, read as follows:

"Art. 2696 - Application to transfer

Any child lawfully enrolled in any district or independent dis- trict, may by order of the county superintendent, be transferred to the

enrollment of any other district or independent district in the same county upon a written application of the parent or guardian or person having lawful control of such child, filed with the county superintendent; provided that any district or independent district being dissatisfied with any transfer made by the county superintendent may appeal from such action to the county board of trustees of said county who shall have the right to annul and cancel the transfer allowed by the county superintendent.

The applicant shall state in said application that it is his bona fide intention to send said child to the school to which the transfer is asked.

Upon the certification of the transfer of any child from one district to another district by the county superintendent of the county in which the child resides at the time of the transfer, the State Department of Education shall authorize the State Treasurer to pay over directly the per capita apportionment, in independent school districts of five hundred (500) or more scholastic population, to the district to which such child is transferred; and in all other districts, to county superintendents, to be paid by him to the respective districts to which such children are transferred; provided, no transfer shall be made after August 1st. Acts 1905, p. 263; Acts 1935, 44th Leg., p. 488, ch. 201, sec. 1."

"Art. 2697 - Transfer to adjoining county

Any child specified in the preceding article, and its portion of the school fund, may be transferred to an adjoining district in another county, in the manner provided in said article. It must be shown to the county superintendent that the school in the district in which such child resides, on account of distance or some uncontrollable and dangerous obstacle, is inaccessible to such child. Acts 1907, p. 242."

We agree with your conclusion and it is our opinion that any district or independent district of the county, being dissatisfied with any transfer of a child and its portion of the school fund from its district to an adjoining district in another county, may lawfully appeal from such action to the county board of trustees of the transferring county and that such county board of trustees on appeal of such matter has the power and authority, if it sees fit to do so, to annul and cancel the transfer allowed by the county superintendent.

WJF:btsegw

APPROVED MAY 12, 1945
/s/ Carlos Ashley
FIRST ASSISTANT
ATTORNEY GENERAL

APPROVED: Opinion Committee
By G.W.B. - Chairman

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Wm. J. Fanning

Wm. J. Fanning
Assistant