



**THE ATTORNEY GENERAL  
OF TEXAS**

Grover Sellers

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ATTORNEY GENERAL

**AUSTIN 11, TEXAS**

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

Opinion No. 0-6797

Re: Requirements under the provisions  
of Section 1 of Article I of Senate  
Bill 167, Acts 49th Legislature,  
with reference to school districts'  
eligibility for Equalization Aid.

Dear Sir:

We are in receipt of your letter of recent date requesting the opinion of this department on the above stated matter. Your department has also furnished us a letter addressed to Dr. L. A. Woods from Mr. R. S. Bolter, County Superintendent of Smith County, Texas, wherein many questions are raised with reference to the subject of your inquiry. We quote from your letter as follows:

"The teacher in a one-teacher school has never been considered as an administrator. The Rural Aid Bill, under which we are now operating, allows such a teacher \$5 per month in addition to her schedule salary for performing such minor administrative duties necessary to the conduct of the school in which she is teaching. The legal administrator of such a school is the county superintendent. It is necessary for many of the teachers in one and two-teacher schools to drive the school bus as there is no one else available.

"Is it possible, under the present Equalization Law, for the board of trustees and the county superintendent to pay the

head teacher of a common school district for service which she is rendering as a bus driver?

As a general provision with reference to the county transportation system, we call your attention to the following provisions contained in Article V of Senate Bill 167, Acts 49th Legislature:

"The County Superintendent and County School Boards of the several counties of this state subject to the approval of the State Superintendent of Public Instruction, are hereby authorized to annually set up the most economical system of transportation possible for the purpose of transporting both grade and high school pupils from their districts, and within their districts. The county shall be regarded as the unit and the warrant made payable to the County Board Transportation Fund, on the total transportation earned within the county not to exceed the total approved cost thereof; . . .

"County Boards of Trustees are hereby authorized to employ bus drivers for one year, and the salary of no bus driver may be paid out of the County Board Transportation Fund created herein unless such bus driver is so employed. Provided, further, that only pupils or persons directly connected with the school system shall be transported on school buses while in the process of transporting pupils to and from the school, and any bus driver violating the foregoing provisions shall forfeit his contract and shall be immediately discharged by the County Board of Trustees. . . ."

Article I of Senate Bill 167, sets forth certain specific requirements with which a school district must comply in order for such district to be eligible for Equalization Aid. We call your attention particularly to the following provisions contained in Section 1 of Article I of said Act:

"No school district will be eligible for any type of aid, except tuition aid, under the provisions of this Act, which pays any

salary above those specified in this Act from any State, local or Federal funds, used to supplement salaries of Vocational Agricultural, Home Economics and Trade & Industries teachers, and funds from the Federal Lanham Act.

"Provided that the salaries of atheletic directors, band directors or lunch room supervisors may be supplemented, from funds derived from sources other than taxes, without making the school ineligible under this section; and provided further that teachers who also serve as bus drivers, but who perform no administrative duties, may be paid an additional salary as bus drivers out of any funds of the district derived from a local maintenance tax in excess of the local maintenance tax of Fifty Cents (50¢) on the One Hundred Dollars (\$100.00) valuation required to be levied by Sec. 2 of Article 1 hereof; provided further, that the additional salary paid for serving as bus driver shall conform to the salary scale paid other bus drivers of the district, and an itemized list of all such supplements shall be furnished the State Department of Education and the Legislative Accountant with the general budget of the district."

Under the foregoing provisions, when a district pays any salary above those specified in the Act from any state, local or Federal funds whatsoever, such district will not be eligible for any kind of aid (except high school tuition aid) except:

(1) Where salaries of Vocational, Agriculture, Home Economics, and Trade Industries teachers are supplemented from Federal funds, and

(2) Where salaries are supplemented from funds derived from the Federal Lanham Act;

(3) Where salaries of athletic directors,

band directors, or lunch room supervisors are supplemented from funds derived from sources other than taxes;

(4) Where teachers who perform no administrative duties are paid an additional salary as bus drivers out of the funds of the district derived from a local maintenance tax in excess of the local maintenance tax of the required Fifty Cents (50¢) on the One Hundred Dollars (\$100.00) valuation.

Under the above quoted provisions, we note that a district is not rendered ineligible for Equalization Aid by reason of paying salaries above those specified in the Act when a teacher who performs no administrative duties is paid an additional salary for services as a bus driver out of the designated local funds. It is further provided that the additional salary which is authorized to be paid to a teacher out of the specified local funds of the district, must conform to the salary similarly paid other bus drivers of the district. In this connection, we note that Article V of Senate Bill 167, supra, makes general provisions for setting up a County Transportation System and for the payment of the bus drivers out of the County Board Transportation Fund. We note, however, that where a school teacher who performs no administrative duties is a bus driver, Article I of the Act authorizes the payment of the additional salary of said teacher for services as a bus driver out of "funds of the District derived from local maintenance taxes in excess of the Fifty Cents (50¢) on the One Hundred Dollars (\$100.00) valuation."

We call your attention to the following language contained in 39 Tex.Jur. "Statutes", Sec. 101, p. 191:

"Where one section of an act prescribes a general rule which, without qualification, would embrace an entire class of subjects, and another section prescribes a different rule for individual subjects of the same class, the latter will be construed as an exception to the general rule."

It is stated in 39 Tex.Jur. "Statutes" Section 114, p. 213:

"When a statute makes a general provision apparently to all cases and a special provision for a particular case or class, the former yields and the latter prevails insofar as the particular case or class is concerned."

Moreover, it is stated in 39 Tex.Jur. "Statutes" Section 100, pp.189-190:

"A provision limiting a thing to be done in a particular form or manner implies that it shall not be done otherwise . . . when a right or power is granted and the method of its exercise is prescribed, the prescribed method excludes all others."

In view of the foregoing, it is apparent that the provisions of Article I, with reference to the method of payment of the additional salary of a teacher who performs no administrative duties and serves as a bus driver, constitutes an exception to the general provisions of Article V, with reference to the general method of payment of bus drivers, and therefore prevails as the authorized method of payment of a teacher for services as a bus driver. In view of the foregoing, you are advised that a teacher in a district otherwise eligible for Equalization Aid, who serves as a bus driver, cannot be paid an additional salary for such services from the County Board Transportation Fund, for the payment of such teacher for such services is governed by that portion of Article I which provides for such payment "out of any funds of the District derived from a local maintenance tax in excess of the local maintenance tax of Fifty Cents (50¢) on the One Hundred Dollars (\$100.00) valuation."

In order to answer your question as to whether a common school district's eligibility for rural aid is affected by paying the head teacher thereof an additional salary for driving a school bus, it is necessary to determine what is meant by the performance of "administrative duties" within the contemplation of this Act. In construing a statutory word or phrase, it is proper to take into consideration the meaning of the same or similar language used elsewhere in the Act (39 Tex. Jur. "Statutes", Sec. 108, p. 201). With further reference to this matter, it is stated in 39 Tex. Jur. "Statutes" Sec. 104, p. 196-197:

"In every case the particular meaning depends upon, and must be determined by, the context and subject matter and the evident intention of the Legislature."

We call your attention to the following provisions contained in Section 1 of Article I of the Act:

"No school district will be eligible for any type of aid, except tuition aid, under the provisions of this Act, which pays any salary above those specified in this Act from any state, local or Federal funds whatsoever . . . provided . . . that teachers who also serve as bus drivers, but who perform no administrative duties, may be paid an additional salary as bus drivers out of any funds of the district derived from a local maintenance tax in excess of the local maintenance tax of Fifty Cents (50¢) on the One Hundred Dollars (\$100.00) valuation required to be levied by Section 2 of Article I hereof; provided further, that the additional salary paid for serving as bus driver shall conform to the salary scale paid other bus drivers of the district, and an itemized list of all such supplements shall be furnished the State Department of Education and the Legislative Accountant with the general budget of the district." (Underscoring ours.)

Also, we call your attention to the following language contained in Section 2 of Article III of the above mentioned act:

"Salary Schedule and Length of Term. The base pay for class room teachers in unaccredited schools shall be One Hundred and Thirty-five Dollars (135.00) per month for eight (8) months. The base pay for class room teachers in accredited schools shall be One Hundred and Thirty-five Dollars (\$135.00) per month for nine (9) months. The base pay for Home Economics teachers shall be One Hundred and Thirty-five Dollars (\$135.00) per month for ten (10) months. The base pay for Vocational Agriculture teachers, and Trades and Industries teachers shall be One Hundred Seventeen Dollars and Fifty Cents (\$117.50) per month for twelve months (12). Three Dollars (\$3.00) per month shall be added for each year of college credit over one year not to exceed Fifty Dollars (\$15.00). One Dollar and Fifty Cents (\$1.50) per month shall be added for each year of teaching experience; provided such amount added for experience shall not exceed Fifteen Dollars (\$15.00) per month.

"Administrative Salaries. Additional allowances for teachers serving as principals in unaccredited schools shall be Five Dollars (\$5.00) per month per teacher but in no instance to exceed Forty Dollars (\$40.00) per month.

"Allowances for high school principals in accredited schools shall be Twelve Dollars (\$12.00) per month in schools with nine (9) to eleven (11) teachers; twelve (12) to twelve to nineteen (19) teachers, Thirty Dollars (\$30.00); twenty (20) to twenty-nine (29) teachers, Thirty-five Dollars (\$35.00) per month; thirty (30) or more teachers, Forty Dollars (\$40.00) per month. Salaries for high school principals in accredited schools shall be paid for ten (10) months. Superintendents in schools having five (5) teachers shall receive an additional allowance of Forty-five Dollars (\$45.00) per month; six (6) to seven (7) teachers, Fifty Dollars (\$50.00) per month; eight (8) to eleven (11) teachers, Fifty-five Dollars (\$55.00) per month; twelve (12) to nineteen teachers, Seventy-five Dollars (\$75.00) per month; twenty (20) to twenty-nine (29) teachers, Ninety-five Dollars (\$95.00) per month; thirty (30) or more teachers, One Hundred-five Dollars (\$105.00) per month. Salaries of superintendents shall be paid for twelve (12) months. No school with less than nine (9) teachers can have both principal and superintendent. Principals of accredited elementary schools in a district which does not include a high school shall receive an additional allowance of Six Dollars (\$6.00) per month per teacher, not to exceed Fifty-four Dollars (\$54.00) per month." (Underscoring ours)

In the above salary schedule we note that the first paragraph sets the base pay for class room teachers, while the second paragraph of said section under the heading of "Administrative Salaries" authorizes additional allowances for teachers serving as principals in unaccredited schools and for principals and superintendents in accredited schools. It is manifest that the law contemplates that any teacher who would be entitled and authorized to receive "additional allowance" authorized under the classification, "Administrative Salaries", should be regarded as a teacher performing administrative duties. When the language contained in Section 1 of Article I with reference to a teacher "who performs no administrative duties" is considered in context with the term "Administrative Salaries" contained in Section 2 of Article III of the Act, authorizing an additional allowance in the compensation of such teachers, it is manifest that within the contemplation of this Act the language relative to teachers

"who perform no administrative duties" referred to teachers other than those who were receiving "Administrative Salaries" under the provisions of Section 2 of Article III.

In view of the foregoing, it is our opinion that when a district pays a teacher, who receives "additional allowance" as an "administrative salary" (and within the contemplation of the Act performs administrative duties), an additional salary for services as a bus driver, the payment of such additional salary would not be in compliance with the terms of the exception that authorizes a district to pay additional salary to a teacher "who performs no administrative duties" without impairing such district's eligibility for Equalization Aid.

In connection with the construction of exceptions or "provisos", we call your attention to the following language contained in 39 Tex. Jur. "Statutes", Sec.101, p. 191:

"The fact that an Act contains one or more exceptions discloses an intention on the part of the Legislature that there should be no other exceptions and that the Act should apply in all cases not excepted. . . In construing a statute it is not ordinarily permissible to imply an exception . . . or to enlarge an exception so as to include cases not within its terms."

In view of the above and foregoing, it is our opinion that under the provisions of Section 1 of Article I of the Equalization Act, a District that pays a teacher, who receives an "additional allowance" as an "Administrative Salary" (within the contemplation of the Act for the performance of administrative duties), an additional salary for driving a school bus would constitute the payment of an additional salary not authorized by the terms of any exception or proviso in the Act and, therefore, such payment would render the district ineligible for any type of Equalization Aid except tuition aid. You are therefore advised that a common school district that pays an additional salary for services as a bus driver to a head teacher or principal who is entitled to or receives any "additional allowance" in any amount, as an administrative salary as provided in Section 2 of Article III, would be ineligible to receive any type of aid, except tuition aid.

As pointed out, however, in a previous portion of this opinion, a school district may pay additional salary to a teacher,

who performs no administrative duties, for services as a bus driver out of funds of the district derived from local maintenance tax in excess of the required Fifty Cents (50¢) on the One Hundred Dollars (\$100.00) valuation without affecting said district's eligibility for Equalization Aid, but in no event may a teacher be paid an additional salary for services as a bus driver from the County Board Transportation Fund.

We have endeavored herein to construe the statutory provisions involved in accordance with the recognized principles of statutory construction. We regret that the provisions so construed will not satisfactorily and adequately cover many contingencies and emergencies that may arise in connection with the administration of the law. Consequently, such conditions constitute problems for legislative consideration.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By J. A. Ellis  
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