



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable John C. Marburger
County Attorney
Fayette County
La Grange, Texas

Dear Sir:

Opinion No. 0-6968

Re: Authority of the La Grange
Journal, which is owned by
the County Superintendent,
to compete with other bidders
for the furnishing of office
supplies to the County.

Your letter of recent date requesting an opinion
from this department on the above subject matter is in part
as follows:

"The present qualified and acting County
Superintendent of Public Schools is the sole
owner of the La Grange Journal, a weekly news-
paper published for over 50 years. The Super-
intendent is not related by blood or affinity
with any members of the Commissioner's Court,
the County Judge, the Auditor, nor any of the
other County Officers.

"Under the above fact situation, could the
said LaGrange Journal or its owner legally file
bids and enter into a contract with the Commis-
sioners' Court and Fayette County for furnish-
ing office supplies to the County of Fayette,
such as stationery, etc. that the county lets
out on bids? In other words, would the fact
that the LaGrange Journal is owned by the County
Superintendent, prevent it from competing with
other bidders for the furnishing of office sup-
plies to the County?"

Article 2688, V. A. C. S., creating the office of
County Superintendent, provides:

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"The Commissioners' Court of every county having three thousand (3,000) scholastic population or more as shown by the preceding scholastic census, shall at a General Election provide for the election of a County Superintendent to serve for a term of four (4) years, who shall be a person of educational attainments, good moral character, and executive ability, and who shall be provided by the Commissioners' Court with an office in the courthouse, and with necessary office furniture and fixtures. He shall be the holder of a teacher's first grade certificate or teacher's permanent certificate. In every county that shall attain three thousand (3,000) scholastic population or more the Commissioners' Court shall appoint such Superintendent who shall perform the duties of such office until the election and qualification of his successor. In counties having less than three thousand (3,000) scholastic population whenever more than twenty-five per cent (25%) of the qualified voters of said county as shown by the vote for Governor at the preceding General Election shall petition the Commissioners' Court therefor, said Court shall order an election for said county to determine whether or not the office of County Superintendent shall be created in said county; and, if a majority of the qualified property taxpaying voters voting at said election shall vote for the creation of the office of County Superintendent in said county, the Commissioners' Court, at its next regular term after the holding of said election, shall create the office of County Superintendent, and name a County Superintendent who shall qualify under this Chapter and hold such office until the next General Election. Provided, that in all counties having a population in excess of three hundred and fifty thousand (350,000) inhabitants according to the last available Federal Census the County Superintendent shall be appointed by the County Board of Education and shall hold office for two (2) years, provided further, that this provision shall not operate so as to deprive any elected Superintendent of his office prior to the expiration of the term for which he has been elected; provided further that

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in counties having a scholastic population of between three thousand (3,000) and five thousand (5,000) scholastics, wherein the office of County Superintendent has not been created and a Superintendent elected, then in such counties the question of whether or not such office is established shall be determined by the qualified voters of said county in a special election called therefor by the Commissioners' Court of said county, upon petition therefor as hereinabove specified."

Article 2689, V. A. C. S., is as follows:

"The county superintendent shall first take the official oath and shall enter into a bond in the sum of one thousand dollars, with good and sufficient sureties, to be payable to and approved by the commissioners court, conditioned under the faithful performance of his duties. Any sum collected on a forfeiture of said bond shall become a part of the available county school fund."

Article 2690, V. A. C. S., provides, in part:

"The county superintendent shall have, under the direction of the State Superintendent, the immediate supervision of all matters pertaining to public education in his county. He shall confer with the teachers and trustees and give them advice when needed, visit and examine schools, and deliver lectures that shall tend to create an interest in public education. He shall spend four days each week visiting the schools while they are in session, when it is possible for him to do so. He shall have authority over all of the public schools within his county, except such of the independent school districts as have a scholastic population of five hundred or more. In such independent school districts as have less than five hundred scholastic population, the reports of the principals and treasurers to the State Department of Education shall be approved by the county superintendent before they are forwarded to the State Superintendent. . . ."

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We quote the following from 34 Texas Jurisprudence,
p. 323:

" . . . 'Office' embraces the ideas of tenure, duration, emolument and duties. Among the criteria for determining whether an employment is a public office are the following: the delegation of a portion of the sovereign functions of the government; the requirement of an official oath; that the powers entrusted are conferred by law and not by contract. . . "

Based upon the foregoing, it is our opinion that a County Superintendent is a County Officer.

We call your attention to Article 373, V. A. P. C., which reads as follows:

"If any officer of any county, or of any city or town shall become in any manner pecuniarily interested in any contracts made by such county, city or town, through its agents, or otherwise, for the construction or repair of any bridge, road, street, alley or house or any other work undertaken by such county, city or town, or shall become interested in any bid or proposal for such work or in the purchase or sale of anything made for or on account of such county, city or town, or who shall contract for or receive any money, or property, or the representative of either, or any emolument or advantage whatsoever in consideration of such bid, proposal, contract, purchase or sale, he shall be fined not less than Fifty (\$50.00) Dollars and not more than Five Hundred (\$500.00) Dollars."

Since the County Superintendent is the owner of the La Grange Journal, it is the opinion of this department that the La Grange Journal or County Superintendent is prohibited from filing bids and entering into a contract with Fayette County by Article 373, V. A. P. C.

APPROVED DEC 12, 1945

[Signature]
ATTORNEY GENERAL OF TEXAS

JR:dat

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

J. C. Davis, Jr.
J. C. Davis, Jr.
Assistant

By

John Reeves
John Reeves

APPROVED
OPINION
COMMITTEE
BY *[Signature]*
CHAIRMAN