



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

April 7, 1948

Hon. L. A. Woods
State Superintendent
Department of Education
Austin, Texas

Attention: Hon. T. M. Trimble
First Assistant

Opinion No. V-535

Re: Authority of Rural
High School Dis-
tricts to employ a
delinquent tax col-
lection attorney.

Dear Sir:

We refer to your letter of recent date re-
questing an opinion from this office on the following
question:

"May a Rural High School District,
created by grouping (Article 2922a), and
which has the status of a Common School
District (Article 2922b), employ an at-
torney with or without the approval of
the Commissioners' Court to collect de-
linquent taxes and pay the fee allowed
under the statutes for such service."

In Attorney General's Opinion No. 0-6408, this
department advised that since no power or authority
rests in the board of trustees of common school districts
to levy, assess, or collect taxes owed the districts,
such power being placed in the Commissioners' Court of
the county wherein the common districts lie under Arti-
cles 2784e and 2795, V. C. S., common school districts
are without authority to institute suit for the collec-
tion of delinquent taxes owed to the districts. Further,
that suits for the collection of common school districts'
taxes should be instituted by the County Attorney or by
the attorney employed by the Commissioners' Court under
the authority of Articles 7335 and 7335a, V. C. S. Opin-
ions Nos. 0-3134, 0-6650, and 0-980.

In Attorney General's Opinion No. 0-2959, this
department advised that Articles 7343, 7335 and 7335a,
V. C. S., authorizing the employment of an attorney to
enforce or assist in the enforcement of delinquent tax-

es for a percentage of the collection not exceeding 15% are available to independent school districts. Bell v. Mansfield Independent School District, 129 S.W.(2d) 629; Attorney General's Supplemental Opinion No. 0-452 and Opinions Nos. 0-2624 and 0-3679. Furthermore, by virtue of the provisions of Articles 2790, 2784e, as amended, 2791, 2792, and 7337, V. C. S., authority is granted the Board of Trustees of independent school districts to levy and cause to be assessed and collected taxes voted by the districts. Republic Insurance Company v. Highland Park Independent School District, 141 Tex. 224, 171 S.W.(2d) 342 at page 347. (Com. App.)

A rural high school district, however, although it is classified as a common school district under Article 2922b, is created and governed under the provisions of the rural high school laws, Articles 2922a to 2922L, inclusive, V. C. S. Thus, the statutes applicable to common school districts, (as distinguished from rural high school districts) will apply to rural high school districts classified as common in those matters which are not covered by the rural high school laws themselves.

Article 2922L of the rural high school laws provides, in part:

"The board of trustees of a rural high school district provided for in this Act shall have the power to levy and collect an annual ad valorem tax . . . for the maintenance of schools therein, and a tax . . . for the purpose of the payment of accounts legally contracted in purchasing, constructing, repairing or equipping public free school buildings within the limits of each district . . . ; and provided further, that no tax shall be levied and no bonds shall be issued until after an election shall have been held wherein a majority of the qualified taxpaying voters, voting at said election, shall have voted in favor of the levying of said tax, or the issuance of said bonds, or both, as the case may be, and which election shall be held in accordance with the law now governing such elections in independent school districts; . . . The board of trustees of any rural high school district may appoint an assessor of taxes, who shall assess the

taxable property within the limits of said district within the time provided by existing laws, and said assessment shall be equalized by the board of equalization composed of three members appointed by the board of trustees of said district. The said board of equalization . . . shall have the same powers and authority and be subject to the same restrictions that now govern said boards in independent school districts. . . . The county tax collector shall collect such tax . . . The tax assessor herein provided for shall make a complete list of all assessments made by him and, when approved by the board of trustees, shall be submitted to the county tax collector not later than September first of each year. (Emphasis ours).

Article 2784, V. C. S., as amended by S. B. 373 of Acts 1947, 50th Legislature, insofar as pertinent to this opinion provides in Section 1:

"The Commissioners' Court for the common school district in its county, and the district school trustees for the independent school districts incorporated for school purposes only, and trustees of rural high school districts, and the trustees of all other school districts shall have the power to levy and cause to be collected the annual taxes and to issue the bonds herein authorized, subject to the following provisions: . . ."
(Emphasis ours).

Under the cited statutes it becomes apparent that a rural high school district classified as common is neither a common nor an independent district in the full sense; it is a hybrid form of school district. Unlike a common school district, but like an independent school district, the board of trustees of a rural high school district has been authorized to levy and cause to be collected the taxes of the district, and may have its own assessor. But unlike an independent school district, which may elect who shall collect its taxes, a rural high school district classified as common must have its taxes collected by the county tax collector. Attorney General's Opinion No. O-2299. Further, unlike statutes pertaining to common school districts, it is provided in Article 2922L that tax elections in rural

high school districts must be held in accordance with the laws now governing such elections in independent school districts.

Articles 2922L and 2784e, as amended, place express power or authority in the boards of trustees of rural high school districts to levy and cause to be collected the taxes voted by the district. Accordingly, no such authority rests in the Commissioners' Court with respect to rural high school districts classified as common, and such Court is absent authority to employ an attorney in the collection of delinquent taxes for such districts.

Since express authority is given to the board of trustees to levy and cause to be collected the taxes of the rural high school districts, we are of the opinion that incidental or implied authority and duty rests in said board to effectuate the collection of taxes of the district and to employ every legally available means to do so. The taxing authority and conditions under which it has been made permissible by statute to employ an attorney in the collection of delinquent taxes for an independent school district are identical with the conditions that exist in rural high school districts classified as common, hence we see no reason why the same rule by analogy should not apply. *McPhail v. Tax Collector*, 280 S.W. 260, at page 264. Accordingly, we advise that a rural high school district having the status of a common school district may employ an attorney to enforce or assist in the enforcement of delinquent taxes for a percentage of the collections not exceeding 15% in the same manner as may an independent school district, subject to the provisions of Article 7343, V. C. S.

SUMMARY

A rural high school district which has the status of a common school district under Article 2922b, V. C. S., may employ an attorney to enforce or to assist in the collection of delinquent taxes in the district for a percentage of collections not exceeding 15%, subject to the provisions of Articles 7343 and 7335a, V. C. S., appertaining

Hon. L. A. Woods, page 5 (V-535)

to independent school districts as constructed in Bell v. Mansfield Independent School District, 133 Tex. 403, 129 S.W.(2d) 629.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By *Chester E. Ollison*
Chester E. Ollison
Assistant

CEO:mw

APPROVED:

Price Daniel
ATTORNEY GENERAL