



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

July 31, 1951

Hon. William L. Taylor
Prosecuting Attorney
Harrison County
Marshall, Texas

Opinion No. V-1225

Re: Validity of a school
superintendent's con-
tract with a rural
high school district
under the circumstances
related.

Dear Sir:

We refer to your request for an opinion of this office concerning the validity or existence of a school superintendent's contract with a rural high school district. You state the circumstances in connection therewith, in substance, as follows:

On March 9, 1951, the trustees of the Hallsville Rural High School District met as a group and voted at that board meeting to re-elect its superintendent for a two-year period. The board minutes for that date reflect such action.

According to the school superintendent, he, at that board meeting, accepted by expressing his appreciation for their consideration and thanked them for renewing his contract. On March 12, the superintendent addressed a letter to the president of the board in which he accepted the job of superintendency tendered to him by the action of the board on March 9.

On March 19, the board again held a called meeting and voted not to elect teachers, including the superintendent, until after the approaching trustee election and the newly elected trustees took office, and voted to cancel the agreement for a two-year contract for the superintendent. Trustee elections were held on April 7, 1951. Art. 2774a, Sec. 4, V.C.S.

The precise question involved herein is:

Can and does there exist a valid oral contract for the school years 1951-1952 and 1952-1953 between the Superintendent and the Board of Trustees of the Hallsville Rural High School District under the submitted facts and laws applicable thereto?

Article 2922k, V.C.S., provides in part:

"All rural high schools within a rural high school district herein provided for shall be under the immediate control of the board of school trustees for such rural high schools, and such board of school trustees shall be under the control and supervision of the county superintendent and county board of school trustees, and shall be subject to the same provisions of law and restrictions that common schools are now subject to, . . ."
(Emphasis added.)

According to Bulletin 512 of the Texas Education Agency for 1950-1951, the Hallsville Rural High School District is classified as a common school district. Art. 2922b, V.C.S. By virtue of Article 2922k, it is subject to the same provisions of law and restrictions that common schools are now subject to.

Articles 2749, 2750, 2750a-1, and 2693, V.C.S., insofar as pertinent to teacher contract matters of common school districts, apply also to rural high school districts classified as common school districts. Att'y Gen. Op. 0-7009 (1946).

Article 2749 provides in part:

"Said trustees [of a common school district] shall have the management and control of the public schools . . . They shall have the power to employ . . . teachers; . . . They shall contract with teachers and manage and supervise the schools, subject to the rules and regulations of the county and State Superintendents; they shall approve all claims against school funds of their district; provided, that the trustees, in making contracts with teachers, shall not create a deficiency debt against the district."

Article 2750 provides in part:

"Trustees of a district shall make contracts with teachers to teach the public schools of their district, but the compensation to a teacher, under a written contract so made, shall be approved by the county superintendent before the school is taught, stating that the teacher will teach such schools for the time and money specified in the contract. . . ."

Article 2750a-1 provides in part:

"Trustees of any Common School District . . . shall have authority to make contracts for a period of time not in excess of two (2) years with principals, superintendents, and teachers of said Common School Districts . . . provided that such contracts shall be approved by the County Superintendent. No contract may be signed by the Trustees of Common School Districts . . . until the newly elected trustee or trustees have qualified and taken oath of office."

Article 2693 provides in part:

"The county superintendent shall approve all vouchers legally drawn against the school fund of his county. He shall examine all the contracts between the trustees and teachers of his county, and if, in his judgment, such contracts are proper, he shall approve the same; provided, that in considering any contract between a teacher and trustees he shall be authorized to consider the amount of salary promised to the teacher. . . ."

Under these statutes, written contracts of employment between a common school district and its teachers must be approved by the county superintendent. Numerous cases have held that a contract not approved by the county superintendent cannot furnish the basis for an action on the contract itself, although the parties might have recourse to an action to compel approval of the written contract in a proper case. Thomas v. Taylor, 163 S.W. 129 (Tex.Civ.App. 1914, error ref.); Boyles v. Potter County, 177 S.W. 210 (Tex.Civ.App. 1915); Ratcliff v. Buna Independent School Dist., 46 S.W.2d 459 (Tex.Civ.

App. 1932); Miller v. Smiley, 65 S.W.2d 417 (Tex.Civ. App. 1933, error ref.); Moore Common School Dist. No. 2 v. Frio County Board of School Trustees, 90 S.W.2d 289 (Tex.Civ.App. 1936); Feevy v. Carlile, 135 Tex. 132, 139 S.W.2d 779 (1940). However, no rights accrue to either party before a formal written contract is executed.

In White v. Porter, 78 S.W.2d 287, 290, 291 (Tex.Civ.App. 1934), all the trustees of a common school district entered, on April 26, 1933, into an agreement in writing to employ Miss Jones as a teacher. The contract was to be signed on May 1, 1933. No contract was actually signed with Miss Jones by the trustees on that date or any other time. Subsequently, on June 26, 1933, two of the trustees (a majority) signed a written contract with Miss White to teach the school for the 1933-1934 term on the contract form prescribed by the school authorities of Texas, and regular in its terms. It was filed with the county superintendent on August 31, 1933, for his approval. The county superintendent, being of the opinion that the agreement of April 26 was legally sufficient to constitute a contract with Miss Jones to teach school and it being prior in point of time to Miss White's contract, disapproved Miss White's contract. After proper appeal through the school authorities on the matter, Miss White in this action sued to mandamus the county superintendent to approve her contract. Peremptory mandamus was awarded. The court in its opinion stated:

"The agreement in question, however, does not purport to be a completed contract of employment with Miss Jones. . . . It could have no more force than the mere statement of intention on the part of the trustees to do something in the future respecting their official duties. . . . No contract was actually signed with Miss Jones.

". . . The two trustees on June 26, 1933, signed a written contract with Miss White to teach in the school for the 1933-34 term. . . . The mode of employing teachers by trustees of common school districts, as distinguishable from independent districts, is prescribed by article 2750, R.S., which provides: 'Trustees of a district shall make contracts with teachers to teach the public schools of their district, but the compensation to a teacher, under

a written contract so made, shall be approved by the county superintendent before the school is taught, stating that the teacher will teach such school for the time and money specified in the contract.'

"The election or employment of a teacher in board meeting, regular or special, is not prescribed by the statute as an essential prerequisite to the validity of the written contract between the trustees of a common school district and a teacher to teach the school. Its only essential is that it shall be made by the trustees with the teacher in writing, stating that the teacher will teach such school for the time and money specified in the contract."

Under the facts submitted for consideration in the matter herein, not only is there absent approval or disapproval of the county superintendent on the claimed contract, but there is absent also an executed written contract between the district superintendent (for the scholastic years 1951-1952 and 1952-1953) and the trustees of the Hallsville School District. We are of the opinion that there cannot exist an enforceable valid teacher contract binding a common school district unless the same be in writing and properly signed by its board of trustees. A formal contract in writing is required by the above quoted statutes, and is further necessitated by such statutes as require action of the county superintendent in such matters. White v. Porter, supra. In short, an oral teacher contract of a common school district or an alleged teacher contract based alone on agreements or elections of its board of trustees evidenced by its minutes or in letters appertaining thereto is not enforceable in our courts. But see Attorney General's Opinion O-2162 (1940) concerning teacher contracts of independent school districts.

Accordingly, it is our opinion that, under the facts submitted, there exists no valid contract between the trustees of the Hallsville Rural High School District and its present superintendent for the 1951-1952 or 1952-1953 school years, there being no formal contract in writing as required by Articles 2749, 2750, 2750a-1, and 2693, V.C.S., upon which the county superintendent must act.

In view of our conclusion that no valid contract was made, it is unnecessary to consider whether the board

Hon. William L. Taylor, page 6 (V-1225)

of trustees could have entered into a binding contract before the trustees elected on April 7, 1951, had taken office. But, in this connection, see Att'y Gen. Op. V-1051 (1950).

SUMMARY

Articles 2749, 2750, 2750a-1, and 2693, V.C.S., appertaining to employment contracts of teachers and superintendents of common school districts, including rural high school districts classified as common, require the signing of a formal contract in writing, which must be submitted to the county school superintendent for approval. Until the statutory requirement of an executed written agreement is met, there exists no contract.

APPROVED:

J. C. Davis, Jr.
County Affairs Division

Jesse P. Luton, Jr.
Reviewing Assistant

Charles D. Mathews
First Assistant

BWB:CEO:mw

Yours very truly,

PRICE DANIEL
Attorney General

Chester E. Ollison
Chester E. Ollison

Bruce W. Bryant
Bruce W. Bryant
Assistants