



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

August 24, 1953

Hon. Charles B. Cox, Director
State Approval Agency
Capitol Station
Austin, Texas

Letter Opinion No. MS-89

Re: Legality of employees of the
State Approval Agency contin-
uing as members of Employees
Retirement System rather than
becoming members of Teacher
Retirement System when the
Agency becomes a part of the
Texas Education Agency.

Dear Mr. Cox:

You have requested our opinion on the following:

"May personnel of this Agency, who are presently members of the Employees Retirement System, and who are to be absorbed by the Texas Education Agency on September 1, 1953, as the result of carrying out the intent of House Bill 116 (sic), Acts of the 53rd Legislature, continue as members of the Employees Retirement System rather than lose their retirement credits by being required to become members of the Teachers Retirement System?"

Evidently you intended to refer to House Bill 111 which is Chapter 81, Acts of the 53rd Legislature, 1953, and is the Biennial Appropriations Bill. The particular portions of the Biennial Appropriations Bill involved are at pages 194 and 195 of the 53rd Session Laws and follow:

"The proper officer or officers of the Texas Central Education Agency are hereby authorized to make application for and accept any other gifts, grants or allotments from the United States Government or other sources to be used on cooperative and other projects and programs in Texas, . . . Any of such Federal funds as may be deposited in the State Treasury are hereby appropriated to the specific purposes authorized by the Federal Government.

" . . .

" . . .

Hon. Charles B. Cox, page 2 (MS-89)

"There is hereby reappropriated for the use and benefit of the Central Education Agency under Public Law 346 and subsequent federal legislation relating to veterans education the unexpended balance of that certain appropriation made by provisions of House Bill 329, Acts of the Fiftieth Legislature, Chapter 207, Page 365, and reappropriated by provisions of Senate Bill 503, Acts of the Fifty-first Legislature, Chapter 562, Page 1100, which said appropriation included an initial Fifty-five Thousand Dollars (\$55,000) to initiate the program of the State Approval Agency for Veterans Education under Public Law 346, and which said sum is and has been since the original appropriation constantly reimbursed from funds from the Veterans Administration under the federal statute authorizing the Veterans Administration to reimburse certain expenditures made by the State Approval Agency. There is also reappropriated all funds or moneys as may be received and deposited in the State Treasury from the Veterans Administration for use and benefit of the Central Education Agency."

On June 26, 1953, Governor Allan Shivers, in a letter to the Veterans Administration, said:

"Pursuant to the legislative intent expressed in House Bill 111 of the 53rd Legislature, I hereby designate the Texas Education Agency as the State Approval Agency for the approval of proprietary schools, non-profit institutions, establishments for on-the-job training programs, and the institutional on-farm training programs in connection with providing education for veterans under Public Laws 16, 550, and 346, as amended.

"This designation includes transfer of the functions of the present State Approval Agency to the Texas Education Agency effective September 1, 1953."

Section 1, Article 2654-1, Vernon's Civil Statutes, provides, in part:

"There is hereby established a Central Education Agency composed of the State Board of Education, the State Board for Vocational Education, the State Commissioner of Education, and the State Department of Education . . ."

The Central Education Agency is commonly referred to as the Texas Education Agency.

Section 48a, Article III, of the Constitution of Texas, provides that the legislature "shall have the right to levy taxes to provide for a Retirement Fund for persons employed in public schools, colleges and universities, supported wholly or partly by the State; . . . and provided that the recipients of such retirement fund shall not be eligible for any other pension retirement funds or direct aid from the State of Texas, unless such retirement fund, contributed by the State, is released to the State of Texas as a condition to receiving such other pension aid."

Article 2922-1, V.C.S., contains the legislation enacted pursuant to the amendment quoted in the preceding paragraph. Subsection (3a) of Section 1 provides:

"'Auxiliary employee' shall mean a person, other than a 'teacher' as hereinabove defined, employed on a full time regular salary basis by . . . the . . . State Board of Education, State Department of Education . . . and any other legally constituted board or agency of an educational institution or organization supported wholly or partly by the State . . ."

Sub-section (6) of Section 1 provides that "member" of the Teacher Retirement System "shall mean any teacher or auxiliary employee included in the membership of the System as provided in Section 3 of this Act."

From the foregoing it is apparent that employees of the Central Education Agency come within the term "auxiliary employee" and are included in the membership of the Teacher Retirement System.

Section 62a, Article XVI, of the Constitution of Texas, authorizes the legislature "to levy taxes to provide a Retirement, Disability and Death Compensation Fund for the appointive officers and employees of the State; . . . and provided that the recipients of benefits from said Fund shall not be eligible for any other pension retirement funds or direct aid from the State of Texas, unless the Fund, . . . contributed by the State, is released to the State of Texas as a condition to receiving such other pension aid."

The enabling legislation giving effect to Section 62a of Article III, of the Constitution of Texas, is contained in Article 6228a, V.C.S. Section 1C provides:

"'Employee' shall mean any regularly appointed officer or employee in a department of the State who is employed on a basis or in a position normally requiring not less than nine hundred (900) hours per year, but shall not include . . . any persons who is covered by the Teacher Retirement System of the State of Texas . . ." (Emphasis supplied.)

Hon. Charles B. Cox, page 4 (MS-89)

In the light of the two constitutional amendments and the existing law affecting teacher retirement and state employee retirement, it is our opinion that on August 31, 1953, the personnel of the State Approval Agency will cease to be members of the Employees Retirement System.

Yours very truly,

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Attorney General

By

J. A. Amis, Jr.
Assistant

JAA:mg/cm