



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

December 10, 1962

Honorable O. P. Carillo
County Attorney
Duval County
San Diego, Texas

Opinion No. WW-1490

Re: Whether Article 2900a,
Vernon's Civil Statutes,
violates the provisions
of the Texas or United
States Constitutions.

Dear Mr. Carillo:

You have requested an opinion from this office upon
the question of:

"Does Article 2900a of the Revised
Civil Statutes of Texas violate the pro-
visions of the Constitution of the State
of Texas, or the Constitution of the United
States of America?"

Article 2900a, Vernon's Civil Statutes, provides
as follows:

"Section 1. That no board of trustees
nor any other school authority shall have
the right to abolish the dual public school
system nor to abolish arrangements for trans-
fer out of the district for students of any
minority race, unless by a prior vote of the
qualified electors residing in such district
the dual school system therein is abolished.

"Sec. 2. An election for such purpose
shall be called only upon a petition signed
by at least twenty per cent (20%) of the
qualified electors residing in such district.
Such petition shall be presented to such of-
fice or board now authorized to call school
elections. Such an election may be set for
the same date as the school trustee election
in that district, if such petition is filed
within ninety (90) days to such date, other-
wise the official or board shall call such
an election within sixty (60) days after fil-
ing of such petition. The election shall be
conducted in a manner similar to that for the

election of school trustees. No subsequent election on such issues shall be called within two (2) years of a prior election held hereunder.

"Sec. 3. School districts which maintained integrated schools for the 1956-1957 school year shall be permitted to continue doing so hereafter unless such system is abolished in accordance with the provisions of this Act. No student shall be denied transfer from one school to another because of race or color.

"Sec. 4. Any school district wherein the board of trustees shall violate any of the above provisions shall be ineligible for accreditation and ineligible to receive any Foundation Program Funds during the period of time of such violation. Any person who violates any provision hereof shall be guilty of a misdemeanor and shall be fined not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000)."

Since the decision of the United States Supreme Court in Brown v. Board of Education, 347 U.S. 483 (1954), which held that in the field of public education the doctrine of "separate but equal" was no longer applicable, there have been numerous cases before the Federal courts concerning the implementation of the desegregation required of the public schools by the Supreme Court in its decision in Brown v. Board of Education, *supra*. One of such cases is Boson v. Rippy, 285 Fed.2d 43 (1960), in which the United States Court of Appeals for the Fifth Circuit had before it an appeal in an action seeking to end enforced racial segregation in the public schools of the Dallas Independent School District. In conformity with certain orders of the District Court the school authorities had submitted to the Court certain plans for effectuating a transition to a racially non-discriminatory school system. One of these plans, in the words of the Court in Boson v. Rippy, *supra*, provided for:

" . . . the separating and grouping of the schools into white, Negro and mixed schools, and for canvassing parents and pupils in order to learn 'who does and who does not want integration, and thereby give all concerned what they prefer, as far as is

practical and possible.'"

The District Court, in Boson v. Rippy, supra, expressed the opinion that the holding of an election under Article 2900a should not be made a condition of a plan of desegregation, and eliminated from the plans for desegregation submitted by the school authorities those provisions which made an election and a favorable result a part of the plan of desegregation. In its opinion in Boson v. Rippy, supra, the United States Court of Appeals held that:

"We agree with the district court that the holding of an election under Article 2900a of the Revised Civil Statutes of Texas should not be made a condition of a plan of desegregation. It goes without saying that recognition and enforcement of constitutional rights cannot be made contingent upon the result of any election." (Emphasis added).

In view of the above quoted language in the case of Boson v. Rippy, supra, we are of the opinion that Article 2900a is unconstitutional.

SUMMARY

Article 2900a, Vernon's Civil Statutes, requiring an election prior to the abolishment of a dual public school system within a school district, is unconstitutional. Brown v. Board of Education, 347 U.S. 483 (1954); Boson v. Rippy, 285 Fed.2d 43 (1960).

Yours very truly,

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APPROVED:

OPINION COMMITTEE
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REVIEWED FOR THE ATTORNEY GENERAL
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