



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

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June 8, 1967

Honorable J. W. Edgar
Commissioner of Education
Texas Education Agency
Austin, Texas

Opinion No. M-86

Re: Whether Sections 3 and 4 of Article 2688i-1 supersede and have application, in lieu of Section 1(c) of Article 2688e, to counties (other than Goliad) which have abolished the elective county superintendent, and thereafter abolished the office of ex officio county superintendent and county school board under Article 2688e, and related questions.

Dear Dr. Edgar:

In connection with your first question, you have advised us that Stephens County, on June 26, 1965, by an election held in that county, abolished the office of county school superintendent. On April 1, 1967, by an election held in Stephens County, the office of ex officio county school superintendent and the county school board were abolished. Your essential question is which of two possible statutes apply to the actions taken by Stephens County: Article 2688e, Vernon's Civil Statutes, or Article 2688i-1, Vernon's Civil Statutes. In this connection we quote a portion of Article 2688i-1:

"Section 1. This Act applies to a county

"(1) if the office of county superintendent and the county school board has been abolished in the county; and

"(2) if the county has one county-wide independent school district and no common school district.

"Sec. 2. The office of ex officio county superintendent is abolished upon the effective date of this Act."

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It is apparent from Section 2, supra, that the primary purpose of Article 26881-1 was to effect the abolishment of the office of ex officio county superintendent in certain counties. Inasmuch as the county here involved abolished the county school board and the ex officio county superintendent at the same time, it is the view of this office that the requirements of Article 26881-1 were never met, and that Stephens County remained within the scope of Article 2688e. This would also be true of all other counties involved in abolishment situations which do not come within the precise terms of Section 1, Article 26881-1, quoted, in part, supra. It therefore follows that those counties which do not fall within the terms of Article 26881-1 must continue to follow the procedures established in Article 2688e. In answer to your specific question, you are advised that Sections 3 and 4 of Article 26881-1 do not supersede and have application, in lieu of Section 1(c) of Article 2688e, to counties (other than Goliad) which have abolished the elective county superintendent, and there- after abolished the office of ex officio county superintendent and county school board under Article 2688e.

Dependent upon the answer to your first question, you have asked the following:

When should the county judge's services and additional compensation as ex officio county superintendent in Stephens County cease.

In connection with this question, we quote Article 2688e, Section 1(c), Vernon's Civil Statutes:

"(c) Where the majority of the qualified electors approve the abolition of the office of the ex officio county superintendent and county school board, the duties of such abolished offices as may still be required by law shall be and become the duties of the office of county judge of said county upon the expiration of the current term of office of the ex officio county superintendent, and said county judge shall not be entitled to nor receive any additional compensation as a result of these additional duties."

It is our view that the plain terms of the statute operate to transfer the duties of ex officio county superintendent to the county judge only upon the expiration of the current term of office of the ex officio county superintendent. The net effect is that the county judge (who acts as the ex officio county superintendent) receives remuneration for acting as ex officio county

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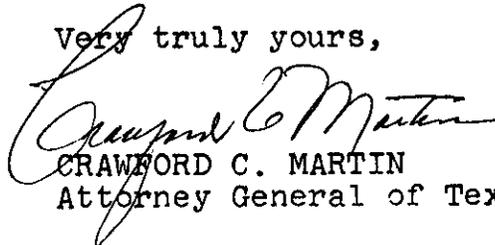
superintendent up until the time of the expiration of his current term of office, at which time he is required to perform the same duties without remuneration.

S U M M A R Y

Sections 3 and 4 of Article 2688i-1, V.C.S. do not supersede and have application, in lieu of Section 1(c) of Article 2688e, V.C.S., to counties (other than Goliad) which have abolished the elective county superintendent, and thereafter abolished the office of ex officio county superintendent and county school board under Article 2688e.

Where the office of ex officio county superintendent has been abolished under Article 2688e, V.C.S., the abolishment takes effect upon the expiration of the current term of the ex officio county superintendent, at which time the duties devolve upon the county judge, who shall perform these duties without additional compensation.

Very truly yours,



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