



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

July 22, 1968

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

Opinion No. M- 262

Re: Whether the State Board of Education has the authority to make an adjustment in the economic index and/or local fund assignment of Hill County, and related question.

Dear Dr. Edgar:

You have requested the opinion of this office regarding the above matter and in this connection have provided us with the following:

"The 1968-69 Economic index determined for Hill County (.169) reflects a 13.4 percentage increase over its index for 1967-68. This results in an approximate \$39,000 increase in the local fund assignment to Hill County for 1968-69, which comprises twelve school districts. An estimated \$6,000 of this increase in local fund assignment is attributable to the increase in the cost of the Foundation School Program from \$154.8 million in 1967-68 to \$159.6 million for 1968-69. The remaining increase is quite probably attributable in large part to the location and operation of the Neuhoff Brothers Feed Lot in Hill County beginning 1962, and the inclusion of the sales of its products, (as an agricultural-farm operation) in the U.S.D.A.'s 1964 Census of Agriculture and its Statistical Reporting Service, Texas Crop and Livestock Reporting Service, for the years 1964, 1965, 1966--the most current federal and/or state statistics available.

"Because of the unusual increase in its economic index for 1968-69 and further increases anticipated in 1969-70 occasioned in large part by such Neuhoff feeder operations, a brief (dated May 21, 1968) in

the nature of a report and application was filed on behalf of the twelve school districts in Hill County asking me and the State Board of Education for relief; viz., an adjustment in their economic index. It sets out the reasons, grounds and reviews the laws and authorities submitted in support of the request. Transmitted herewith is a copy of that brief which is self-explanatory.

" . . .

"On motions duly made and voted, the State Board of Education has directed me, in connection therewith to submit and request an opinion from your office on the following questions:

"1. Does the State Board of Education (Texas Education Agency) have the authority to make an adjustment in the economic index and/or local fund assignment of Hill County?

"2. In making an economic index adjustment or in computing an original index does the State Board of Education have the right to determine that a cattle feed lot is an industrial operation rather than agriculture, and accordingly direct an adjustment by deletion of the income figured on the feed lot (as best it can be determined) from Agriculture income totals used in computing the index?"

Section 3, Article 2922-16, Vernon's Civil Statutes, requires the State Commissioner of Education to calculate an economic index for all the counties in this State subject to the approval of the State Board of Education.

As we understand the facts, the Commissioner of Education compiled the economic index, which was approved by the State Board of Education in March of this year; and the School Districts of Hill County have made an application to the Commissioner and the Board for an adjustment of the index, alleging that such index as to Hill County is inequitable and does not accomplish the plan and purposes contemplated by Article 2922-16. Your first question inquires as to the authority of the State Board of Education to make an adjustment in the economic index and/or local fund assignment of Hill County.

Under the facts, it is the opinion of this office that until such time as State funds are distributed to the respective school districts in the State for the current year, the Board has the authority to make such an adjustment. The action heretofore taken with regard to the index is not final in the sense that it cannot be modified or adjusted by the Board if the Board deems such modification or adjustment proper in order to accomplish equity and to carry out the true legislative intent. 2 Am.Jur.2d 290, Secs. 483-484, Administrative Law; 2 Am.Jur.2d 330, Secs. 522-523, Administrative Law; Superior Oil Co. v. Board of Trustees of Magnolia Independent School District, 410 S.W.2d 504 (Tex.Civ.App. 1966, writ ref. n.r.e.)

In computing the economic index under Article 2922-16, Section 3, the Board is confined to data taken from the most recently available official publications and reports of Federal and State agencies. Although being thusly confined, it is the opinion of this office that the Board may consider any official State or Federal publications or reports; and if the Board deems it proper or necessary in considering the question of an adjustment, it has the authority to arrange for and make available to itself other and further such official reports and publications as it may deem necessary in order to properly and wisely make its decisions. This same principle is true with regard to the compilation of economic indices in the future.

In regard to your second question concerning whether you might classify some of the business activities in a different category, it is our opinion that a cattle feed lot business may not be legally classified industrial rather than agricultural. Webster's Third New International Dictionary defines agriculture as follows:

"Agriculture:

"1(a): The science or art of cultivating the soil, harvesting crops, and raising livestock, tillage, husbandry, farming.

"(b): The science or art of the production of plants and animals useful to man and in varying degrees the preparation of these products for man's use and their disposal (as by marketing)."

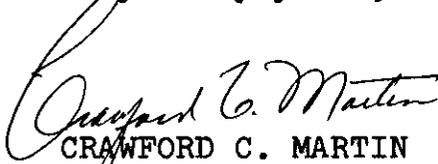
The Supreme Court of Kansas held in the case of Fields v. Anderson Cattle Company, 396 P.2d 276 (1964), that a cattle feed lot was agricultural in nature rather than industrial. We have been unable to find any authority to the contrary.

SUMMARY

Under the circumstances, the State Board of Education has the authority to make an adjustment in the economic index and/or local fund assignment of Hill County before a disbursement of State Funds has been made. In compiling the economic index and in considering future economic indices, the Board is confined to data from the most recently available official reports and publications of State and Federal agencies, but the Board may arrange for such other and further reports and publications as it may deem necessary.

The Board does not have the authority to classify a cattle feed lot as an industrial operation rather than agricultural.

Very truly yours,



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