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Opinion Committee

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Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Attn: Opinion Committee

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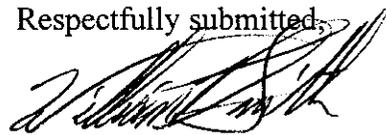
RE: OPINION REQUEST

Dear Attorney General Morales:

This office has received a request from the Briscoe County Commissioners Court to obtain an opinion from your office concerning the distribution of county permanent school funds. Please find enclosed brief on same.

Your written opinion assisting us in resolving this matter will be greatly appreciated.

Respectfully submitted,



William P. Smith
Briscoe County Attorney

WPS/sy

enclosure(s) as stated

To the Honorable Attorney General Dan Morales:

Now Comes William P. Smith, County Attorney of Briscoe County, Texas and on behalf of his Commissioners Court, requests a formal opinion from the Attorney General concerning the following questions affecting distribution of county permanent school funds pursuant to Article VII, Section 6(b) of the Texas Constitution:

- (1) What constitutes independent and common school districts of a county as related to Article VII, Section 6(b) of the Texas Constitution, more specifically addressing the following facts?
- (2) Are there any exceptions to Article VII, Section 6(b) of the Texas Constitution as it relates to distribution of school funds, specifically to the following facts?

FACTS:

Briscoe County, Texas contains two small communities, Silverton and Quitaque. In 1971 Quitaque ISD consolidated with Turkey ISD, a Hall County community, to form the Turkey-Quitaque Independent School District. Children in the Quitaque area attend schools in the Turkey-Quitaque Independent School District (Valley, while located in Briscoe County, is considered a Hall County school for TEA purposes), children in the Silverton area attend schools in the Silverton Independent School District (Silverton, a Briscoe County School), and children in the north-eastern part of Briscoe County attend school in the Clarendon Independent School District (Clarendon, a Donley County school which incorporated a portion of Briscoe County into its school district).

Interest on the Briscoe County permanent school fund has been disbursed yearly. Quitaque was given its share of the interest money for the last time in 1972. Since that year,

each interest payment from the Briscoe County permanent school fund has gone wholly to Silverton ISD.

In addition, Hall County has completely disbursed its county permanent school fund, interest and principle, to several school districts including a distribution to Turkey-Quitaque Independent School District (Valley) based on Valleys' total student population, (including children residing in Briscoe County), not just Hall County children attending the school.

Distributions made to the other school districts, Memphis ISD and Lakeview ISD, were also made on total student population, not just Hall County children attending the schools.

LEGAL ANALYSIS:

Both questions require interpretation of Article VII, Section 6(b) of the Texas Constitution. That constitutional provision provides:

Sec. 6(b). Notwithstanding the provisions of Section 6, Article VII, Constitution of the State of Texas, any county, acting through the commissioners court, may reduce the county permanent school fund of that county and may distribute the amount of the reduction to the independent and common school districts of the county on a per scholastic basis to be used solely for the purposes of reducing bonded indebtedness of those districts or for making permanent improvements. The commissioners court shall, however, retain a sufficient amount of the corpus of the county permanent school fund to pay ad valorem taxes on school lands or royalty interests owned at the time of distribution. Nothing in this Section affects financial aid to any school district by the state.

Adopted Nov. 7, 1972.

Attorney General Opinion H-47 (1973), relying on Love v. City of Dallas, 40 S.W.2d 20 (Tex. 1931) in which the court stated,

“In view of the history of the subject and the statutory and constitutional provisions referred to above, it is plain, we think, that the property and funds of the public schools are held in trust by the city, district, county, or other statutory agency, to be used for the benefit of the school children of

the community or district in which the properties exist, or to which the school funds have been allocated. We think these properties and funds are so plainly and clearly impressed with a trust in favor of the local public schools of the city or district that they are within the [120 Tex. 366] protective claims of both the state and federal Constitutions, and that the Legislature is without power to devote them to any other purpose or to the use of any other beneficiary or beneficiaries....”,

concluded that each school district lying wholly or in part within the county, (making a permanent school fund distribution), should receive its pro rata share of any distribution based upon its resident scholastics.

Also in Attorney General Opinion H-47 (1973), your office defined the phrase “on a per scholastic basis” as “on the basis of the number of persons residing in the school district eligible by age for free education.” But that the computation of students on a per scholastic basis has no relation to the average daily attendance. Your office also concluded in Attorney General Opinion JM-355 (1985), that it was “...incumbent upon the county commissioners as trustees of the fund to formulate a method to determine the scholastic population within a school district.”

While Article VII, Section 6(b) of the Texas Constitution allows the commissioners court discretion of how and when to distribute the permanent county school fund, the purposes for which the fund may be distributed are clearly expressed, “...solely for the purposes of reducing bonded indebtedness of those districts or for making permanent improvements.” The commissioners court, being held to a trustee standard, must act within the bounds of a reasonable judgment and is required to manifest the care, skill, prudence, and diligence of an ordinary prudent man engaged in similar business affairs and must investigate and ascertain facts to make an informed judgment as to whether permanent improvements will be made and how much of the school district’s portion of the permanent school fund will be used in the construction of permanent improvements before funds are distributed to school districts. See

Attorney General Opinion JM-355 (1985). However, the commissioners court may, after using the above described judgment, distribute funds to a school district for temporary investment after that district has shown the court it has plans for the distributed funds to be used for either of the allowed constitutional purposes within a reasonable time. Id.

CONCLUSION:

Under the present facts, Attorney General Opinions and case law it appears that all three school districts, (Silverton, Turkey-Quitaque, and Clarendon) are independent school districts of Briscoe County and each would be entitled to their respective shares of the county permanent school fund based on a per scholastic basis as determined by the commissioners court, using the standard and duty of a trustee to formulate the number of persons residing in the school districts eligible by age for free education. Of course, each district must satisfy the commissioners court, once again being held to the standards and duties of a trustee, that it will immediately use, or within a reasonable time, use the distributed funds for either of the constitutional purposes of reducing bonded indebtedness of those districts or for making permanent improvements.

An exception to the rule for disbursement is a school may invest its share of the distributed fund for a temporary period, only after showing the commissioners court it has definite plans to use the money for permanent improvements or reduction of bonded indebtedness within a reasonable time.

No other exceptions to distribution have been noted, therefor, no consideration should be given to the Hall County permanent school fund distributions or the Briscoe County permanent school fund interest distributions.

WHEREFORE PREMISES CONSIDERED, I respectfully request a formal opinion either approving, modifying or disapproving my legal analysis and conclusions to the issues and questions discussed herein.