



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

GERALD C. MANN  
~~WILLIAM WILSON~~  
ATTORNEY GENERAL

Honorable B. T. Walters  
County Auditor  
Smith County  
Tyler, Texas

Dear Sir:

Opinion No. O-3660

Re: What authority is vested in the County Auditor of Smith County to install and supervise the books and records of the common schools of the county?

This will acknowledge receipt of your request for our opinion on the hereinabove captioned question. We quote from your letter as follows:

"Please advise what authority is vested in the Auditor of Smith County to install and supervise the books and records of the common schools of the county. Art. 1652-1653, RCS, do not give enough information for me to know the duties and corresponding authorities of this office in the fiscal affairs of the common schools.

"The records of the County Superintendent's office are not sufficient for any auditor to ascertain the correctness of the vouchers given by the trustees of the common school districts, except for payment of teachers salaries. In most case no invoice or other evidence of debt is furnished by the district when requesting the County Superintendent to issue voucher in payment of a local bill. Many of these requisitions are signed by the superintendent of school, or by one trustee for the entire board. A large number of bills are paid that run into hundreds of dollars that simply show on the requisition as "supplies." This prevents a breakdown of expenditures into 'Janitor Supplies,' 'Class Room Supplies' etc.

"Most of the Districts are perfectly willing to comply with any reasonable request. Some do not want to submit any further evidence to the County Superintendent when requesting payment of local bills, or bills from the local funds.

"If it is the duty of the County Auditor to audit the Common School districts, or the records of the County Superintendent, please advise if, in your opinion, the correctness of the vouchers may be determined from the enclosed papers which, as stated above, comprise all the evidence to be found in the Superintendent's office. If not then what steps should be taken to correct the situation?"

Articles 1652 and 1653, Vernon's Annotated Civil Statutes of Texas, read as follows:

Art. 1652. School Ledger -- The auditor shall install in his office a school ledger showing an accurate account of all funds received and disbursed by the common school districts of his county; a bond register showing all the school bonds issued by the common school districts of his county, their rate of interest, date issued and maturity date; and he shall also keep an interest and sinking fund account of such school bonds.

Art. 1653. To examine accounts. -- He shall have continual access to and shall examine all the books, accounts, reports, vouchers and other records of any officer, the orders of the commissioners court, relating to finances of the county, and all vouchers given by the trustees of all common school districts of the county and shall inquire into the correctness of same."

In our Opinion Nos. O-2734 and O-2734-A, heretofore rendered by the present administration of this department, copies of which are enclosed herewith, it was held that it is mandatory that the county auditor keep the school ledger mentioned in Article 1652, supra.

In said Opinion No. O-2734-A, this department held that the county auditor was entitled to examine all books and accounts having to do with receipts and disbursements in common school districts, and to examine all vouchers given by such trustees. It was there further held that the details for such examination should be worked out between the auditor and the respective school boards, since the statute is silent on the subject. If any other construction was given Article 1653 it would be impossible for the auditor to determine the correctness of the vouchers which the statute requires him to examine for that purpose.

From our examination of the papers enclosed in your letter, which appear to be the "vouchers" given by the

trustees of the common school district, into the correctness of which Article 1653 makes it your duty to inquire, we are inclined to agree with your opinion that you cannot determine their correctness from the meager information contained thereon.

As county auditor, you are, of course, not authorized to pass on the legality of the vouchers given by the trustees of the common school district, nor to disapprove them and thereby prevent their payment. Those duties are given to the county superintendent by Article 2693, Vernon's Annotated Civil Statutes which provides, in part, as follows:

"The county superintendent shall approve all vouchers legally drawn against the school fund of his county. \* \* \*"

The quoted portion of said statute was construed by Commission of Appeals of Texas, Section B, in *Palmer Publishing Company vs. Smith*, 109 S.W. (2d) 158. In that case the plaintiff Publishing Company was the holder of numerous school warrants issued by various common school districts of Titus County, and alleged to have been signed by a majority of the trustees of the issuing district. The county superintendent of public schools refused to approve these warrants, whereupon a mandamus suit was filed against him to compel their approval. The court held that mandamus did not lie since the plaintiff failed to show that it had first appealed from the superintendent's decision to the county board of school trustees as provided by Article 2686, Vernon's Annotated Civil Statutes. We quote from the court's opinion as follows:

"The clause 'legally drawn against the school fund of his county,' as used in article 2693, supra, undoubtedly confers upon him authority to decide as to the legality of the form of such vouchers. If we consider this language in connection with the 'educational set-up' of each county, we have no doubt it goes further than this and authorizes an inquiry by him into the legality of the indebtedness represented by such voucher. We need inquiry no further than whether or not he can pass his judgment on any one or more of the elements which go into the making of a 'legally drawn' voucher, and from such 'decide' its legality. We think his relation to the school fund in a limited sense is somewhat analogous to that of a county auditor with respect to county funds.

"The conclusion that his said act of disapproval was not a void one follows necessarily from the above."

You state in your letter that "some districts do not want to submit any further evidence to the county superintendent (than the meager statement as shown on the vouchers enclosed by you) when requesting payment of local bills, or bills from the local funds."

Under the authorities hereinbefore mentioned the county superintendent certainly has the authority -- and we think it is his duty under the facts submitted by you -- to refuse to approve such vouchers (as submitted by you in your letter) on the ground that they do not disclose sufficiently detailed information for him to determine their legality.

Any authority given to boards and officers to draw on school funds is governed and limited by the provisions of the general statutes. Vouchers and warrants also should be approved as provided by law. The manner in which those powers shall be exercised, are prescribed by statute, and the course prescribed by law must be followed to the exclusion of all other methods. 37 Tex. Jur. 968, Section 97.

Like other public officers, school officers are responsible for any wrongful or illegal disbursement or misapplication of school funds. A county superintendent and his bondsmen have been held liable where the superintendent knowingly and wrongfully approved vouchers drawn on a fund which could only be appropriated to another purpose. 37 Tex. Jur. 971, Section 99; Powell v. Mathews (Civ. App.) 280 S. W. 903.

If the county superintendent would require the trustees of the common school district to give such detailed information in such vouchers as would appear to be necessary in order for him to properly determine their legality, as he is authorized to do to avoid possible liability on his bond, the county auditor would have no difficulty in determining their correctness as required of him in Article 1653.

We are of the opinion that the Legislature, in charging the county superintendent and county auditor with their respective duties in connection with vouchers given by the trustees of common school districts, intended that the superintendent and auditor cooperate in their respective duties to the end that the school accounts will receive the highest degree of scrutiny possible.

Trustees of a common school district are also "public officers" and must subscribe to the oath prescribed in the

Constitution. 37 Tex. Jur. 935, Section 68. Consequently, it is our opinion that such trustees are duty bound, under oaths of office, to cooperate with the county superintendent and the county auditor, and to give to such officers any information concerning such vouchers that may be reasonably necessary for them to discharge their statutory duties.

The Constitution (Article 5, Section 24) and statutes (Articles 5970-5987, V. A. C. S.) give to a district judge power to remove county officers for certain specific causes. Trustees of independent and common school districts, other than those in cities that have assumed control of their schools, are county officers within the meaning of the statutes providing for the removal of county officers. 37 Tex. Jur. 936, Section 68; *Kimbrough vs. Barnett*, 93 Tex. 301, 55 S.W. 120.

We are of the opinion that a county superintendent, likewise, is a county officer within the meaning of the statutes, supra, providing for the removal of county officers.

In Conference Opinion No. 1824, recorded in Book 50, pages 1-7, rendered by this department on June 27, 1917, to the Honorable H. L. Washburn, County Auditor, Houston, Texas, it was held, at page 6, as follows:

"His (the county auditor's) authority to examine into the correctness of such vouchers to our minds was conferred merely for the purpose of giving him the right to audit such vouchers and if in his judgment the same were unlawfully drawn to report the same to the proper authorities of the county, for such action as might be indicated thereby."

In answer to your question as to what steps should be taken by you to correct the situation as stated in the letter from you, it is the opinion of this department that, under the authorities hereinabove discussed, the following course might aid you in your commendable desire to carry out your official duties.

(1) You should suggest to the county superintendent that you and he, together, work out a form of voucher that will contain all of the information that is needed by each of you for your respective duties.

(2) After a suitable form has been agreed upon the trustees should be advised thereof and their cooperation requested by the county superintendent.

As stated hereinabove, the manner in which such details

are to be worked out is within the discretion of the auditor and cannot be passed upon by this department. We are returning to you herewith the vouchers submitted with your letter.

Trusting that we have fully answered your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/Edgar Pfeil  
Edgar Pfeil  
Assistant

EP:reaw:wc

APPROVED JULY 22, 1941  
s/Grover Sellers  
FIRST ASSISTANT  
ATTORNEY GENERAL

Approved Opinion Committee By BWB Chairman