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OPINION COMMITTEE

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August 22, 2005

Office of the Attorney General
Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2110

RQ-0386-GA

Re: Opinion on Dawson County Permanent School Fund

Dear Sirs:

Enclosed you will please find a question and brief which the Dawson County Commissioners Court has requested that I ask you. Please respond as soon as possible since the distribution of interest on the fund is on hold until an opinion is rendered. Thank you.

Respectfully yours,


Steven B. Payson

Dawson County Attorney

QUESTION ONE: Whether Dawson County may distribute its permanent school funds to school districts within its boundaries based children residing in Dawson County attending school in their district rather than based solely upon the school district in which they reside.

FACTS

Dawson County has oil royalties and real estate which result in money in a permanent school fund. Lamesa Independent School District is the only School District which is wholly contained in Dawson County. Klondike and Sands Independent School Districts have land in Dawson County and Martin County, but the school campuses are in Dawson County. Dawson Independent School District has land in Dawson, Terry and Gaines Counties but the school campus is in Dawson County. O'Donnell Independent School District has land in Dawson County and Lynn County with the school campuses in Lynn County. In the past, O'Donnell received no money from the Dawson County Permanent School Fund. The other four school districts received money based on their average daily attendance. September 2004 a new county auditor was appointed for Dawson County. Based on previous Attorney General's Opinions it is now presumed that the previous system of distribution cannot be followed but each district has made plans based upon the expected distribution.

There are students who reside in Lamesa Independent School District who attend school in the other 4 school districts. There are also students who are being home schooled. There are also students who are over the age of 18 who are still in school in each district who would be counted in the Average Daily Attendance under the state education code. There are also illegal aliens attending our schools. The Superintendent of the Lamesa Independent School District is of the opinion that the Dawson Commissioner's Court must count and distribute the permanent school fund on the basis of the School District of the child's residence rather than the school of his attendance. The superintendents of the other school districts are of the opinion that if they are educating the child, they should get to count the child as one of their scholastics in determining the proration. The fund currently has in excess of \$13 million.

BRIEF ON QUESTION

The County Permanent School fund is created in Texas Constitution Article 7, Section 6b which states:

Notwithstanding the provisions of Section 6, Article 7, 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 purpose 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 the distribution. Nothing in this Section affects financial aid to any school district by the state.

Chapter 43, Section 43.001 of the Texas Education Code states:

b. The available school fund, which shall be apportioned annually to each county according to its scholastic population,

c. The term "scholastic population" in subsection (b) or any other law governing the apportionment, distribution, and transfer of the available school fund means all students of school age enrolled in average daily attendance the preceding year in the public elementary and high school grades of school districts within or under the jurisdiction of a county of this state.

According to Attorney General Opinion H-47, the following conclusions are made:

1. Per scholastic means on the basis of the number of residents of free school age in each district. Each district lying wholly or in part within the county should receive its pro rata share of any distribution based upon its resident scholastics.
2. Where a school district lies in counties A and B with the schools physically located in county B, County A, in distributing its permanent school fund, should allocate to the school district a pro rata part for each scholastic residing in the part of the district within county A.

According to Attorney General Opinion JM-355, the following conclusions are made:

"Prior to 1975, the legislature had provided for the taking of a scholastic census whereby the number of students of scholastic age residing in a particular school district could be determined, but in 1975 the provision was repealed. We have not found nor have you informed us of any official method by which a tabulation may be made whereby the county funds may be distributed in compliance with the constitutional requirement. Since sections 6 and 6b of the constitution are directed to the county commissioners court, we believe that it is incumbent upon the county commissioners as trustees of the fund to formulate a method to determine the scholastic population within a school district. Again, we advise that these commissioners are required to manifest the care, skill, prudence and diligence of ordinary prudent persons engaged in similar business affairs.

The former rule of the Texas Education Agency addressed the apportionment of the county available school fund, provided as follows:

"The county judge of each county having school lands or county available school fund shall certify before October 1 of each year the amount of the county available school fund available for distribution to the districts of the county during the year. The county available school fund shall be apportioned among the districts of the county on the basis of the number of students in average daily attendance in each district in the county during the previous year.

According to LO-98-006, the following conclusions are made:

A school district with at least some territory in a county is entitled to a portion of the corpus of the county permanent school fund based on the number of scholastics residing in the part of the district within the county....each county's permanent school fund is legally distinct...given the fiduciary nature of their duties as trustees of the fund, the Briscoe County Commissioners Court members would be well advised to adhere to the exact letter of article 7, 6b in distributing the corpus of the Briscoe County permanent school fund.

We agree with your conclusion that it is within the discretion of the Briscoe County Commissioners Court to determine the scholastic population of the county within the three school districts and to prorate the distribution of the corpus of the county permanent fund.

Based on these 3 opinions I conclude the following:

1. Sands ISD, Lamesa Independent School District, Dawson ISD, Klondike ISD and O'Donnell ISD are entitled to distributions under the permanent school fund for Dawson County.

2. The money can be used for permanent improvements only.

3. Distribution is not to be made on the basis of Average Daily attendance.

4. Whether the school buildings are in Dawson County is not relevant.

5. It is up to the commissioners court to set the criteria for deciding who to count based upon the premise of "those residing in each district entitled to free school education."

a. This would include kindergarten and those past 18 who have not attained High School diploma but under the age of 21.

b. This would not include illegal aliens.

c. This would not require that the children be enrolled in that school district or in public school. They could be home schooled.

d. This would not allow us to distribute money to any school district outside the county.

e. While H-47 addresses the issue of not distributing Dawson County money to a School District with no Dawson County land, it does not cover the issue of transfer students between School districts within the County, wholly or

partially. Thus there is no clear answer as to whether a child living in one school district but attending one of the other 4 school districts in the county should be counted only in the district of his residence.

Based on the Texas Education Code method of counting scholastics, it would be the average daily attendance of students residing in Dawson County attending that school. Thus, transfers from Lamesa ISD attending O'Donnell ISD would not be counted for Lamesa ISD but O'Donnell. At present 41 students in Dawson County attend school as residents and 40 as transfers at O'Donnell schools, thus 81 residents of Dawson County attend O'Donnell schools.

It is the opinion of the Dawson County Attorney that the Commissioners Court of Dawson County can distribute the County Permanent School fund on the basis of the average daily attendance of resident Dawson County Scholastics in each school district containing property within Dawson County and is not limited to distributing the fund based on the district of residence. As long as the child is a resident of Dawson County and is eligible to a free education, the Commissioners Court has the latitude to count him in either the district of his residence or his attendance as long as that district has land and resident students in Dawson County. The provision in the Constitution is designed to supply money for the benefit of the children of the county and not the benefit of one school district or another.