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OFFICE OF THE ATTORNEY GENERAL OF TEXAS

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GERALD C. MANN
ATTORNEY GENERAL

April 3, 1939

Honorable Joe J. Fisher
District Attorney
San Augustine, Texas

Dear Sir:

San Augustine

Opinion No. 0-506

Re: Whether Board of Trustees of Consolidated Common School Districts have authority to contract with a superintendent on a twelve months basis.

We are in receipt of your letter of March 6, 1939, wherein you request our opinion in response to the following three questions:

1. Does the board of trustees have the authority to contract with a superintendent of a consolidated common school district on a twelve months basis?
2. If so, should the contract begin as specified in Article 2781, or should it begin at some other date?
3. If the Board of Trustees for a consolidated common school district does not have the authority to make a twelve months contract, would the school district be liable for the extra three months, where a twelve months contract has been made?

Article 2781, Revised Civil Statutes, to which you refer relates to teachers' contracts made by boards of trustees of cities, towns and independent school districts and provides that "all twelve months contracts made by trustees of independent school districts with employees herein mentioned shall begin on July 1st and end on June 30th of the year terminating the contract." From your letter we gather that the district to which you refer is governed not by Article 2781, but by Article 2809, Revised Civil Statutes, the applicable parts of which read as follows:

"The board of trustees so elected shall employ a superintendent for the district, who shall be elected for one year or for two years as the trustees may determine,

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and who, in addition to his duties as superintendent, shall be a teacher in one of the elementary schools or the high school of the district. . . . Contracts between the trustees and the district superintendent and teachers shall be in writing and subject to the approval of the county superintendent of the county wherein such district is situated."

Referring briefly to Article 2781, you will notice that same does not in its terms authorize the making of twelve months contracts by trustees of independent school districts, but rather proceeds upon the assumption that such contracts could be made, and rightly so we think. Article 2809 provides for the employment of a superintendent for a term of one year or for two years as the trustees may determine. The statute does not undertake to set out in detail just what the contract shall contain. It does not require that the teacher or superintendent shall be paid monthly for twelve months or monthly for nine months only. If the parties should agree to it, there is nothing to prevent their contract being for the superintendent to receive his year's salary in twelve monthly installments. It is immaterial that he may be in active service only nine months during the year. Even though he were otherwise entitled to receive the whole year's pay during the nine months of active service, nevertheless, it would be within his power to postpone the accrual of a part of that salary so that same shall fall due during the three summer months that he is not in active service. The superintendent having agreed to that, it would be a matter of which the school district having so contracted could not complain. Our answer to your first question, therefore, is in the affirmative.

It has already been noted that Article 2781 does not apply to the district under consideration. Even if it did, it has been held in the case of *Smith v. Martin Independent School District*, 85 S. W. (2) 853, that a superintendent would not be precluded from recovering on a twelve months contract, notwithstanding the beginning date is fixed at a date other than July 1st. Our answer to your second question, therefore, is that it is not necessary to the validity of the contract that the beginning date of the same shall be July 1st. In view of the above answer to your first two questions, there is no need to answer the third.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*

Glenn R. Lewis
Assistant

GRL:N

APPROVED

Frederic M. Mann
ATTORNEY GENERAL OF TEXAS