



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable L. A. Woods  
State Superintendent of Public Instructions  
Austin, Texas

Dear Sir:

Opinion No. 0-1676

Re: May independent school districts spend local tax moneys for the purpose of conducting classes for adults over twenty-one years of age?

We are in receipt of your letter of November 13, 1939, in which you request an opinion of this Department on the question stated in your letter as follows:

"Under existing State statutes, may local independent school districts, conducting school for a minimum of nine months per school year, spend local tax monies for the purpose of conducting classes for adults over twenty-one years of age? Such funds in many cases are used to match State and Federal monies, appropriated for Vocational Education."

Article 7, Section 1 of the Constitution of Texas reads as follows:

"A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."

In accordance with the constitutional mandate that a system of public free schools be established, the Legislature has authorized the creation of independent school districts. The local taxes, or maintenance taxes, voted by said districts

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are authorized by Article 2790 of the Revised Civil Statutes of 1925, which reads, in part, as follows:

"If an independent school district votes a maintenance tax, the board of trustees shall thereafter annually levy and cause to be assessed and collected upon the taxable property in the limits of the district for the maintenance of the public free schools of the said district such ad valorem tax as the qualified voters of such district authorized at the election held for that purpose; \* \* \*

In the case of Adams v. Miles, et al, 35 S. W. (2d) 123 (Com. App. Tex.) stated:

"A school district is a quasi corporation of a public nature, and the trustees of said district cannot lawfully expend money belonging thereto except for the purposes authorized by statute."

The authorized expenditure of public school funds is provided for in Article 2327 of the Revised Civil Statutes of Texas, which reads as follows:

"The public free school funds shall not be expended except for the following purposes:

"1. The State and county available funds shall be used exclusively for the payment of teachers' and superintendents' salaries, fees for taking the scholastic census, and interest on money borrowed on short time to pay salaries of teachers and superintendents, when these salaries become due before the school funds for the current year become available; provided that no loans for the purpose of payment of teachers shall be paid out of funds other than those for the then current year.

"2. Local school funds from district taxes, tuition fees of pupils not entitled to free tuition and other local

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sources may be used for the purposes enumerated for State and county funds and for purchasing appliances and supplies, for the payment of insurance premiums, janitors and other employes, for buying school sites, buying, building and repairing and renting school houses, and for other purposes necessary in the conduct of the public schools to be determined by the Board of Trustees, the accounts and vouchers for county districts to be approved by the county superintendent; provided, that when the State available school fund in any city or district is sufficient to maintain the schools thereof in any year for at least eight months, and leave a surplus, such surplus may be expended for the purposes mentioned herein."

The question in this case resolves itself to the proposition of whether or not the conducting of classes for adults is a part of a public free school system. The scholastic age of students who are to receive the benefits of our public free school system is set out by Article 2902 of the Revised Civil Statutes of 1925, which reads as follows:

"All children, without regard to color, over six years of age and under eighteen years of age at the beginning of any scholastic year, shall be included in the scholastic census and shall be entitled to the benefit of the public school fund for the year. The board of trustees of any city or town or independent or common school district shall admit to the benefits of the public schools any person over six and not over twenty-one years old at the beginning of the scholastic year, if such person or his parents or legal guardian reside within said city, town or district."

It is the opinion of this Department that the holding of classes for adults is not such a function of the public free school system of this State as to authorize expenditure of local maintenance public school funds for said purpose. As stated by

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the Supreme Court of Alabama in the case of State Tax Commission v. County Board of Education of Jefferson County, 179 Southern 197,

"Operation of adult schools is wholly statutory and not within the system of public schools defined in Section 260 of the Constitution."

By way of analogy, our Constitution and Statutes, in setting up the public free school system and allowing the collection of a local maintenance tax for said public free schools, contemplate that the benefits of said public free school system should inure to students of public school age as defined by the Legislature in Article 2902, supra.

In this connection your attention is called to Article 2904 of the Revised Civil Statutes, which reads as follows:

"The trustees of schools shall have the power to admit pupils over and under scholastic age, either in or out of the district, on such terms as they may deem proper and just; provided, that in admitting pupils over and under the scholastic age, the school shall not be overcrowded to the neglect and injury of pupils within the scholastic age. They may suspend from the privileges of schools any pupil found guilty of incorrigible conduct, but such suspension shall not extend beyond the current term of the school."

It is the opinion of this Department that the above quoted Article looks to the allowing of pupils over and under scholastic age on such terms as the trustees of the school may deem proper to classes regularly conducted for pupils of scholastic age as a part of the public free school system. Nowhere does this Article authorize the trustees to establish and maintain classes for persons over twenty-one years of age. Certainly it does not give the trustees authority to spend money from the local maintenance fund for the establishment of such adult classes.

While it cannot be denied that the establishment of adult classes is a worthwhile project, this Department fails to

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find any authority for the expenditure thereon of local maintenance funds.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Billy Goldberg*  
Billy Goldberg  
Assistant

BG:RS

APPROVED DEC 9, 1939

*Gerard B. Mann*  
ATTORNEY GENERAL OF TEXAS

APPROVED  
OPINION  
COMMITTEE  
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