



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable R. C. Slagle, Jr.,
Criminal District Attorney
Grayson County
Sherman, Texas

Dear Sir:

Opinion No. O-2397
Re: Employment of Attorney
by Common School District

This is in reply to your letter of May 20, 1940, requesting the opinion of this department as to the authority of the trustees of a common school district to employ counsel to represent the district in a controversy arising out of action taken by a municipality constituting an independent school district to embrace such common school district within its limits pursuant to Article 2804, Revised Civil Statutes, 1925, which reads as follows:

"Whenever the limits of any incorporated city or town constituting an independent school district are so extended or enlarged as to embrace the whole or any part of any independent or common school district adjacent to such incorporated city or town, that portion of such adjacent district so embraced within the corporate limits of such incorporated city or town shall thereafter become a part of the independent school district constituted by such incorporated city or town.

"If within the portion of such district so embraced there should be situated any real property belonging to such district, such city or town may acquire the same upon such terms as may be mutually agreed upon between the governing body of such city or town and the authorities of such district.

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"This article shall not apply where it shall be determined at an election held within such city or town by majority vote of those voting thereon that the territory or any portion thereof to be so embraced shall not thereby become a part of the independent school district constituted by such city or town, but shall be taken into the city limits for municipal purposes only, and shall remain for school purposes a portion of the adjacent independent or common school district as though said city limits had not been extended."

As this department held in opinion No. O-2103, the trustees of a common school district have legal authority under certain circumstances to employ an attorney to represent the district. The determinant as to the existence of authority in any particular case is whether or not the matter is one relating to school affairs where-in the interests of the school are involved, as distinguished from the personal interests of the trustees. Arrington v. Jones, (C.C.A. 1917), 191 S. W. 361; Harding et al v. Raymonáville Independent School District (C.C.A. 1932), 51 S. W. (2d) 826; Graves and Houtchens v. Diamond Hill Independent School District (C.C.A. 1922), 243 S. W. 638; Stewart v. Newton Independent School District (C.C.A. 1939), 134 S. W. (2d) 429; 24 R.C.L. 597; 37 Tex. Jur. 945. As stated in the Arrington case:

"...It is provided that the trustees of the school district, as a body corporate, may contract and be contracted with, sue or be sued, plead or be impleaded in any court of this state of competent jurisdiction. Article 2822, Vernon's Sayles' Statutes. And the trustees of the school district shall have the management and control of the public school of the district. Articles 2825 and 2892, Vernon's Sayles' Statutes. There is no authority expressly given to trustees to employ an attorney to bring a suit in behalf of trustees against a teacher to cancel a teaching contract. But having the power, as trustees have by the terms of the statute, to contract and to sue and be sued in the courts, the authority on the

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part of trustees to employ an attorney to institute and prosecute an action in their behalf would exist as a necessary incident of the powers to contract and to sue and to manage and control the affairs and interest of the public school. *State v. Aven et al.*, 70 Ark. 291, 67 S.W. 752; 6 Thompson on Corp. (Ed. 1894) § 7361. For the statute does not make it the duty of the county or district attorney to represent the trustees in legal proceedings in which they are interested. Since the trustees have, as we think, the power to employ an attorney to represent them in legal proceedings respecting school affairs, the authority would exist to pay such attorney reasonable compensation out of the special maintenance school fund in the management and control of the trustees. Article 2772, Vernon's Sayles' Statutes...."

We believe it is clear that the affairs of a school district are intimately involved in a controversy arising out of steps taken under Article 2804, supra., by a municipality constituting an independent school district. Moreover, the Legislature contemplated that justiciable issues would arise. As stated by the Court in *Washington Heights Independent School District et al v. City of Fort Worth* (C.C.A. 1923), 251 S.W. 341, writ dismissed, in interpreting Article 2815c, Complete Texas Statutes 1920 (which Article is now the second paragraph of Article 2804, Revised Civil Statutes, 1925):

"This provision evidently means to authorize the adjustment of equities between the two authorities voluntarily as they may agree, or by a judicial proceeding if necessary. The fact that the Legislature has authorized the authorities concerned to make an agreed settlement of equities or amount of compensation would not deprive the parties, in the absence of an agreement, from a judicial proceeding to enforce adjustment of equities and amount of compensation. Legislation therefore covers the point relative to the situation existing, and the annexation in no manner results in taking of property without compensation." (Underscoring ours)

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Consequently, it is the opinion of this department and you are respectfully advised that the trustees of a common school district may employ an attorney to represent the district in a controversy arising out of action taken by a municipality constituting an independent school district pursuant to Article 2804, Revised Civil Statutes, 1925. Such attorney may be paid out of the special maintenance fund in the management and control of the trustees.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

[Handwritten signature]

APPROVED MAY 31, 1940 By

Walter R. Koch
Walter R. Koch
Assistant

FIRST ASSISTANT
ATTORNEY GENERAL

JIS:KD

James D. Smullen
By James D. Smullen

