



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

*Travis Co,  
Referred by  
WU-1442*

Honorable T. W. Trimble  
First Assistant State Superintendent  
Austin, Texas

Dear Sir:

Opinion No. 0-2687  
Re: Whether Amarillo Independent  
School District may have the  
Tax Assessor and Collector  
of the City of Amarillo as  
its Tax Assessor and collec-  
tor.

In your letter of September 7, 1940, you re-  
quest our opinion in substance as to whether the Amarillo  
Independent School District may have as its assessor and  
collector of taxes the Tax Assessor and Collector of the  
City of Amarillo.

Amarillo Independent School District was orig-  
inally incorporated by special act of the Legislature in  
1905. Chapter 136, page 330, General and Special Laws,  
1905. That act was repealed by S. B. 10, chapter 8, page  
777, Local and Special Laws of Texas, Second Called Ses-  
sion, 31st Legislature, which was amended by S. B. No. 109,  
chapter 31, 35th Legislature, Fourth Called Session, add-  
ing to the District certain territory located in Randall  
County. Neither of the last mentioned acts makes a spe-  
cific provision for the election or appointment of a tax  
assessor and collector. However, Sections 8, 9 and 11,  
of said S. B. No. 10, 31st Legislature, read as follows:

"Sec. 8. If the majority of the votes cast  
at such election shall be in favor of such in-  
corporation, and shall be so returned to the  
county judge, said school district shall hereby  
be and become an incorporated independent school  
district under the name of the Amarillo Independ-  
ent School District, and shall have, possess,

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and exercise all the powers, rights and duties of independent school districts formed by towns and villages incorporating for school purposes only; and the said county judge shall cause an entry thereof in the records of the county commissioners court."

"Sec. 8. The said board of trustees shall be vested with the full management and control of the free schools in said district, and shall be vested with all the powers, rights and duties that are provided by general law for boards of trustees of towns and villages incorporated for free school purposes only, including the powers and manner of taxation, issuing bonds, buying grounds, and buying and erecting buildings and improvements and all materials and supplies for school purposes. They shall also have the right at any time in their discretion to sell and convey any real estate or other property belonging to said independent school district, not needed for school purposes."

"Sec. 11. The said Amarillo Independent School District and the trustees and officers thereof shall be governed in all things by the general laws of Texas for towns and villages incorporated for school purposes only, except as otherwise provided in this act."

Articles 2791, 2792 and 2802, Revised Civil Statutes, originated in S. F. No. 218, chapter 124, page 263, General and Special Laws of Texas, 1905, by the 29th Legislature. From a reading thereof (particularly Sections 133, 149 and 165), it seems evident that Articles 2791 and 2792 apply in the cases of "towns and villages incorporated for free school purposes only" such as were referred to in S. F. No. 218, 29th Legislature, while Article 2802 has application to a city or town constituting an independent school district such as is provided for in Article 2768, Revised Civil Statutes. Hence, under the provisions of Sections 5, 8 and 11, of said S. F. No. 10, 31st Legislature, Articles 2791 and 2792 govern the Amarillo Independent School District in respect to its assessor and collector of taxes, rather than Article 2802.

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Under Articles 2791 and 2792, the District may have its taxes assessed and collected by the county assessor and collector, or it may have its own assessor and collector, duly bonded. In the light of these statutes, to have the Tax Collector and Assessor of the City of Amarillo assess and collect the taxes for the District would not merely be adding to the duties of that office. For, unless the board of trustees chooses to have the taxes assessed and collected by the county tax assessor and collector, there exists a separate and distinct office, that of Tax Assessor and Collector of the Amarillo Independent School District.

Section 40, Article 15, of the State Constitution, clearly prohibits the same man from holding both the offices in question. With reference to the attempt of G. L. Cellum to occupy the places of tax assessor and collector of the City of Sinton and of the Sinton Independent School District, which also had been created by special act of the Legislature, the Commission of Appeals, in *Odem vs. Sinton Independent School District*, 234 S.W. 1090, held that such could not be done, saying:

"It is clear that Cellum could not hold his office as city assessor and collector, and at the same time act as de facto assessor and collector of the school district. The Constitution prohibits the holding and exercise of two such offices. Section 40, art. 15, Constitution of Texas. He could not hold or exercise both offices in either a de jure or de facto capacity."

Still more closely in point -- by reason of the similarity of the Act creating the Dalhart District and the Act creating the Amarillo District -- is the case of *Jenkins vs. Autry*, 256 S. W. 672, error refused, holding that the two offices could not be occupied at the same time by one person. The difference between the instant case and *First Baptist Church vs. City of Fort Worth*, 26 S. W. (2d) 196, appears from the distinction drawn by Judge Leddy in his opinion in that case between it and the *Odem-Sinton* and *Jenkins-Autry* cases.

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We are thus required to answer your question in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*  
Glenn R. Lewis  
Assistant

GRL:LM

APPROVED SEP 16, 1940

*Gerard B. Mann*

ATTORNEY GENERAL OF TEXAS

