



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable T. M. Trimble  
First Assistant  
State Superintendent of Public Instruction  
Austin, Texas

Dear Sir:

Opinion No. 9-2821  
Re: Status of Midland Independent  
School District under proposed  
city charter.

We are in receipt of your letter of October 11, 1940, enclosing a copy of the proposed Charter of the City of Midland, and requesting our opinion as to whether the last sentence of Section 1(a), Article III of said charter will affect the present status of the Midland Independent School District, without any further action, if said charter is adopted.

Article III, Section 1(a) of the proposed Charter of the City of Midland reads as follows:

"(a) The City of Midland, made a body politic and corporate by the legal adoption of this Charter, shall have perpetual succession; may use a common seal; may sue and be sued; may contract and be contracted with; implead and be impleaded in all courts and places and in all matters whatever; may take, hold and purchase such lands, within or without the city limits, as may be needed for corporate purposes of said city, and may sell any real estate or personal property owned by it; perform and render all public service, and when deemed expedient may condemn property for corporate use, and may hold, manage and control the same; and shall be subject to all the duties and obligations now pertaining to or incumbent upon said city as a corporation, not in conflict with the provisions of this charter; and shall enjoy all rights, immunities, powers, privileges and franchises now possessed by said city and herein

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conferred and granted; and, except as prohibited by the constitution of the State of Texas or restricted by this charter, the City of Midland shall have and may exercise all municipal powers, functions, rights, privileges and immunities of every name and nature whatsoever. In addition to the powers herein otherwise granted, the City shall have all powers enumerated in Article 1175, Revised Statutes of Texas 1925, as heretofore amended, as though such statute were set forth herein."

Article 1175, Subdivision 32, Revised Civil Statutes, 1925, provides:

"Cities adopting the charter or amendment hereunder shall have full power of local self-government, and among the other powers that may be exercised by any such city the following are hereby enumerated for greater certainty:

". . .

"32. To provide for the establishment of public schools and public school system in any such city, and to have exclusive control over same and to provide such regulations and rules governing the management of same as may be deemed advisable; to levy and collect the necessary taxes, general or special, for the support of such public schools and public school system."

For more than thirty years our statutes have recognized the distinction between independent school districts incorporated for free school purposes only and city controlled districts or municipal corporations which have assumed control of the schools within their limits, thereby acquiring a dual character and exercising dual functions. It is also well settled in this jurisdiction that the municipal corporation as commonly known, and the other corporation, an independent school district incorporated for school purposes only may exist each separate and apart from the other exercising their respective functions although their boundaries may be coextensive.

Statutory provision has been made whereby a city may assume exclusive control of the public free schools within its limits. See Articles 2759, 2760, 2671, 2762, 2768, 2769, 2771, et seq., Revised Civil Statutes, 1925.

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The letter of request does not disclose the present status or relationship of the City of Midland and the Midland Independent School District. We therefore presume for purposes of this opinion that each corporation exists and functions as an entity entirely separate and independent of the other; that the City of Midland has never assumed control of the schools within its limits as prescribed by law; and that it has never attempted to assume or exercise such control, but that the separate corporation for school purposes only, i. e., Midland Independent School District, has exercised and continues to exercise control over the public schools within its limits to the exclusion of the City of Midland.

By virtue of the above mentioned statutes, incorporated cities or towns have for many years had the power to assume control of the public schools within their limits but the mere existence of such power, unexercised, did not destroy or affect the separate corporation for school purposes only, functioning within the limits of such city or town.

It is our opinion that the mere enumeration of the power provided in Article 1175 (32), Revised Civil Statutes, 1925, in the Charter of the City of Midland, would not of itself, standing alone, without any further provision or action, destroy the Midland Independent School District as a separate entity or divest it of control and supervision of the public free schools within such of its territorial limits as might be included within the corporate limits of the City of Midland.

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY

*Cecil C. Casnaack*  
Cecil C. Casnaack  
Assistant

COO:db

APPROVED OCT 25, 1940

*Gerald B. Triable*  
ATTORNEY GENERAL OF TEXAS

