



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable W. C. McClain
District Attorney
Conroe, Texas

Dear Sir:

Attention: Mr. Ned G. Wallace

Opinion No. O-3244
Re: Construction of Article 2742b,
Section 5a, Vernon's Texas
Civil Statutes, qualified prop-
erty tax paying voters.

We are in receipt of your recent request for an opinion in which you refer to your letter of December 19, 1940, and submit the following question:

"Would your opinion be any different as to who would be a legally qualified voter to sign a petition for a consolidated election of two contiguous common school districts if said election proceeded under Article 2742b, Section 5a, providing for consolidation by county board of trustees?"

As pointed out in your letter, your original request referred to the meaning of the phrase "legally qualified voters" as used in Article 2806, R. C. S. 1925, with particular reference to whether it is necessary that signers of the petition therein are required to be property tax paying qualified voters. In answer to that request we forwarded a copy of our Opinion No. O-339 holding that the legally qualified voters referred to in Article 2806 are not required to be property tax paying voters.

The portion of Article 2742b, Section 5a, under consideration reads as follows:

"Whenever a majority of the legally qualified property taxpaying voters residing in two or more contiguous Common School Districts lying in two or more Counties desire to consolidate said contiguous Common School Districts for school purposes

Honorable W. C. McClain, Page 2

only, they may do so by a petition signed by twenty or more of the qualified taxpaying voters in each Common School District, presented to the County Board of School Trustees of the County in which the Common School District is situated.

"* * * The returns of said election shall be made to the respective Boards of County School Trustees who shall declare the result and if the consolidation is approved by a majority of the taxpaying voters of each Common School District applying for consolidation, the Board of County School Trustees of each County shall declare the result * * *."

Article 2306, R. C. S. 1925, which was construed by our Opinion No. O-339 reads in part as follows:

"On the petition of twenty (20) or a majority of the legally qualified voters of each of several contiguous common school districts, or contiguous independent school districts, praying for the consolidation of such districts for school purposes, * * *"

The different language employed in these two statutes is readily apparent upon examination; Article 2306 referring to "legally qualified voters" and Article 2742b, Section 5a, using the terms "legally qualified property tax paying voters" and "qualified tax paying voters". By reason of the difference in the wording of these two statutes they prescribe different qualifications for voters and persons signing petitions for consolidation.

It is noted that Article 2742b, Section 5a, first states that "when a majority of the legally qualified property taxpaying voters * * * desire to consolidate"; but when making provision for the petition, it only requires that the signers be "qualified taxpaying voters." In the next paragraph however the statute provides that the election shall result in a consolidation if "approved by a majority of the taxpaying voters." Considering the statute as a whole we are of the opinion that the Legislature did not intend to draw a distinction between "qualified property taxpaying

Honorable W. C. McClain, Page 3

voters" and "qualified taxpaying voters", if such distinction may be drawn, but used them in the same sense and in each instance had reference to "property taxpaying voters."

It is our opinion that our construction of Article 2806, R. C. S. 1925, as made in Opinion No. O-339, is not applicable to Section 5a of Article 2742b, Vernon's Texas Civil Statutes, and that signers of the petition provided in the latter statute must be legally qualified property tax paying voters residing in the common school districts to be consolidated.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Cecil C. Cammack
Cecil C. Cammack
Assistant

CCC:LM

APPROVED MAR 14, 1941

Gerrald M. Mann

ATTORNEY GENERAL OF TEXAS

