



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GERALD B. SPENCER
ATTORNEY GENERAL
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Hon. Melvin Combs
County Attorney
Beaumont, Texas

Dear Sir:

Opinion No. 0-3344

Re: Whether County School Board of Commissioners' Court may grant County School Superintendent year's leave of absence without pay to serve in Army; and, whether such Superintendent's brother may be appointed by County School Board or Commissioners' Court to serve during such absence.

In your letter of March 27, 1941, you advise that the County School Superintendent of Jefferson County is to be inducted into the United States Army on April 4, 1941, and you request our opinion in response to the following questions:

"Can the County School Board and/or Commissioners' Court grant Mr. C. E. Doyle, the elected School Superintendent, a year's leave of absence without pay?

"Can the County School Board and/or Commissioners' Court appoint Mr. William H. Doyle, brother of C. E. Doyle, Acting School Superintendent during this leave of absence granted Mr. C. E. Doyle."

The elective county superintendent must take the official oath and give bond as other officers. Article 2689, Revised Civil Statutes. His general duties are prescribed in Article 2693, Revised Civil Statutes, and other specific duties are cast upon him by various other statutes. There is no statutory or other authority for either the County Board or the Commissioners' Court to relieve a school superintendent of his statutory duties, either in the form of a leave of absence or otherwise. You do not ask us and we do not here attempt to say what the situation will be after the superintendent enters the Army. Whatever the situation may be, it would not be altered by an order entered by either the County Board or the Commissioners' Court, or both, attempting to give him leave of absence. If he is legally entitled to retain his office after entering

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the Army he can do so without such an order. If he does not already have the right to so absent himself and retain the office, neither the County Board nor the Commissioners' Court can confer such right. We believe the above constitutes a sufficient answer to your first question.

In Article 2700, Revised Civil Statutes, it is provided that "the county board of trustees may make provision for the employment of a competent assistant for the county superintendent. . ." But, the County Superintendent is the one who makes the appointment of assistants. *Keeper vs. Stewart*, 66 S. W. (2d) 812, error refused.

No statute authorizes the appointment of a substitute County Superintendent by the County Board of Trustees or the Commissioners' Court. The statutes having expressly made it the obligation of the County Superintendent to perform the duties of that office, no authority can be implied for the County Board or the Commissioners' Court to arrange with someone else to perform such duties. See *Marquart vs. Harris County*, 117 S. W. (2d) 484.

Hence, as the statutes now stand, we answer your second question in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED MAR 29, 1941

By /s/ Glenn R. Lewis
Glenn R. Lewis
Assistant

/s/ Grover Sellers

FIRST ASSISTANT
ATTORNEY GENERAL

GRL:lh:lm