



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable F. E. Mitchell
County Attorney
Callahan County
Baird, Texas

Dear Sir:

Opinion No. G-3400

Re: Validity of a school trustee election where the election judges are themselves trustees, one of whom was a candidate for reelection.

Your request dated April 12, 1941, requesting an opinion from this department has been received and considered. We quote from your request:

"The following situation has arisen in a Consolidated Common School District in this (Callahan) County:

"The board of trustees of said district appointed three of their number as election officers to hold the annual trustee election in said district on the First Saturday in April, one of them being Judge of the election and one of the number also being a candidate for reelection, and as a result of said election this said trustee was reelected.

"I find nothing in the law specifically forbidding the appointment of a trustee to hold a trustee election, and have advised the parties interested that it is my opinion that the election was valid. Art. 2808, R. G. S. 1925, provides, 'The board of trustees of the district shall appoint three qualified voters of the district to hold said election and make returns thereof in like manner as provided by law for holding elections in common school districts.' This article refers to election of trustees in consolidated districts. The article relating to holding elections in Common School districts, Art. 2746,

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provides, 'Said trustees shall appoint three persons, qualified voters of the district, who shall hold such election and make returns thereof, etc.'

"Would appreciate an opinion from your department as to whether said election, held as above stated, is a valid election and if not, whether it is absolutely void or merely voidable."

Article 2808 provides for the election of the trustees in a consolidated school district and, in part, provides:

" . . . Each year thereafter alternately three trustees and four trustees shall be elected by the qualified voters of the district on the first Saturday of April and trustees so elected shall enter upon the discharge of their duties on the first day of May next following and serve for a term of two years thereafter. . . . The board of trustees of the district shall appoint three qualified voters of the district to hold said election and make returns thereof in like manner as provided by law for holding elections for trustees in common school districts, except that the persons holding said election shall each receive two dollars a day for such services."

We notice that the facts submitted in your inquiry do not indicate that such election officials attempted to exercise any influence upon the electors or were unfair or that they perpetrated any fraud in holding the election.

There does not appear to be any specific statute declaring that a school trustee election in a consolidated school district shall be null and void if the election officials are themselves trustees of the school and where one of said election officials is a candidate for reelection for trustee.

Article 2940, R.C. S., 1925, provides in part:

"No one who holds an office of profit or trust under the United States or this State, or in any city or town in this State, or within thirty (30) days after resigning or being dismissed from any such office, except notary public, or who is a candidate for office, or who has not paid his poll tax, shall act as judge, clerk or supervisor of any election . . ."

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The courts of Texas have held that school trustees are public officers of this State. See authorities in opinion No. O-2056, which is enclosed.

This department in opinion No. O-2056 has passed upon a very similar matter to the one submitted to you. In that opinion we held that school trustees are disqualified, under Article 2940, from serving as election judges. In the same opinion, we held, principally based upon the holding in the case of Cayle v. Alexander, (Civ. App.) 75 S.W. (2d) 706, that the provisions of Article 2940 were not mandatory insofar as affecting the validity of an election unless the election officials attempted to exercise influence on electors or acted unfairly or perpetrated some fraud where the qualifications of a majority of the election officers were not challenged. We believe the holding in the opinion referred to is applicable to your proposition. A copy of that opinion is being enclosed for your assistance and information, and you are referred to the authorities therein cited.

You are, therefore, advised that it is the opinion of this department, under the facts submitted by you, that the school trustee election in a consolidated school district is not rendered void, as a matter of law, by reason of the election officials likewise being school trustees or because one of the officials was a candidate for reelection for school trustee in the absence of some proof that said election officials attempted to exercise some influence over the electors or acted unfairly or fraudulently in performing the duties imposed upon them as election officials.

We are unable to say, under the facts submitted by you, whether or not the election was valid in all respects or whether the same is voidable and we do not pass upon either of these questions.

We trust that we have fully answered your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Harold M. McCracken*
Harold McCracken
Assistant

APPROVED APR 24 1947
[Signature]
FIRST ASSISTANT
ATTORNEY GENERAL

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