



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

OSWALD C. MANN
ATTORNEY GENERAL

Hon. B. F. Walters
County Auditor, Smith County
Tyler, Texas

Dear Sir:

Opinion No. 9-5718
Re: Employment of common school
trustee as school bus driver
for County Transportation
System.

We are in receipt of your request for an opinion
by this Department in which you submit the following questions:

"Please advise if the Board of County Trustees may
lawfully employ a trustee of a common school district
of the county to drive a county bus where all funds to
operate the bus come from the County Transportation Fund.
If such contract may be made, then would it be legal
where the trustee owns the bus and receives all the bus
earnings under the Transportation Fund, and any deficit in
State payment is made up from the local funds of the
district?"

"Please advise if a board of trustees of a common
school district may purchase supplies for the school
from one of the members of such board."

You also state that the districts in question are
rural aid schools.

H. B. No. 284, Acts 47th Legislature, Regular
Session, the Rural Aid Appropriation Bill for the ensuing
two years beginning September 1, 1941, provides the following
with reference to transportation aid:

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"Sec. 1. The County Superintendent and County School Boards of the several counties of this State, subject to the approval of the State Superintendent of Public Instruction, are hereby authorized to annually set up the most economical system of transportation possible for the purpose of transporting both grade and high school pupils from their districts and within their districts. The county shall be regarded as a unit and the warrant made payable to the County Board of Transportation Fund, on the total transportation earned within the County not to exceed the total approved cost thereof, and the County Board of Education shall distribute the funds equitably to the Districts operating such transportation system not to exceed the actual approved cost of any one bus so operated. . . ."

"Sec. 4. County Boards of Trustees are hereby authorized to employ bus drivers for one year and the salary of no bus driver may be paid out of the County Board Transportation Fund created herein unless such bus driver is so employed. Provided further, that only pupils or persons directly connected with the school system shall be transported on school buses while in the process of transporting pupils to and from the school and any bus driver violating the foregoing provisions shall forfeit his contract and shall be immediately discharged by the County Board of Trustees. However, subject to the provisions herein, bus drivers who own their own buses and are so employed may be given a contract for not to exceed two (2) years conditioned that said bus drivers agree to make improvements on their buses, so as to more adequately insure safer transportation for the scholastics, and the route of such bus is not changed for the second year of the contract."

In opinion No. 0-1031 we ruled that under the county unit system of transportation, the County Board of School Trustees might employ a bus driver who was related within the prohibited degree to a member of the local board, although the salary of such driver was paid from local funds and such contract would not be in violation of Articles 432, 433 and 435 of the Penal Code. Under these statutes however the local Board of Trustees could not legally employ a bus driver related within the prohibited degree to one of its members.

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The first question presented by you differs from the situation considered in the foregoing opinion in that here the County Board proposes to employ one of the members of the local board and not merely a person related to him; however, upon a careful reading of Articles 432, 433 and 435 we think that such employment by the County Board would no more violate the nepotism statutes than the employment of a person related within the prohibited degree to a local board member. Where a bus driver is to be paid entirely out of the County Transportation Fund and is employed by the County Board of Trustees, it is our opinion that the local board of school trustees and the local school district are not parties to the contract, and the County Board of School Trustees may therefore lawfully employ a local school trustee to drive a county school bus.

In the second portion of your first question a much different problem is presented. There, any difference between the compensation agreed upon by the driver and the County Board, and the amount available for payment out of the County Transportation Fund, is to be paid to the driver out of the local maintenance funds of the district. The common school trustees are responsible for the proper expenditure of the local funds of their district and "they shall approve all claims against school funds of their district." Article 2749, R.C.S., 1925. Not only would a common school trustee in the performance of his official duties be called upon to pass upon a claim against his own district in which he is interested, and thus place himself in incompatible positions, but in order to obligate the local funds of the district to pay a deficit or any portion of the compensation of a bus driver therefrom, the local board would in effect become a party to the contract with such driver. It is our opinion that a common school trustee may not be employed as a school bus driver where the local funds of his district are to be used to pay all or a part of his compensation as such driver. See authorities cited in opinions Numbers 0-1014, 0-863 and 0-878, copies of which are enclosed herewith.

The first sentence of your first question is therefore answered in the affirmative and the second sentence of said question is answered in the negative.