



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS.

GERALD C. MANN
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ATTORNEY GENERAL

Honorable Joe C. Gladney
Criminal District Attorney
Rusk County
Henderson, Texas

Dear Sir:

Opinion No. 0-4565

Re: Authority of Board of Trustees of the Overton Independent School District to lease to the City of Overton, school buses for use by said city on runs so scheduled as not to interfere with the transportation of pupils to and from school, and upon the assumption by the City of Overton of all liability and operating costs.

Your letter of April 25, 1942, submits for our opinion the following inquiry, which we quote therefrom:

"Mr. Sam Warren, President of the Board of Trustees of the Overton Independent School District, has made request of me by letter that I submit the following question to your office for an opinion:

"The City Commission of the City of Overton, Texas desires to lease either one or two buses owned (and operated) by the Overton Independent School District for use on a route to run near the city of Overton. The schedule of runs will be so arranged as not to interfere with the transportation of pupils to and from school. The city of Overton promises to assume all liability and pay the operating cost. Does the Board of Trustees of the Overton Independent School District have the authority to lease these busses for such purposes under such conditions?"

It seems that the idea of using the school busses for the purposes indicated by the question origi-

nated with a group of Overton citizens who thought the plan would be worth while from the standpoint of conservation of private motor vehicles and would serve present public necessity.

"The Overton Independent School District has more than five hundred scholastics and it is my understanding that the City of Overton has not undertaken the control and management of the school system."

Public school property is held in trust to be used for the benefit of the children of the community or district in which the property exists. 37 Tex. Jur. 958. But the trustees of a school district, including an independent district, may authorize the use of school property for private purposes which do not conflict with use as a school. Thus, it has been held, there is no abuse of discretion by the trustees of an independent school district in leasing, during vacation, a portion of an unused school campus for a baseball park, such use being so restricted as to constitute no interference with or injury to the school property, and the lease-contract being for the benefit of the district. Royce Independent School District, et al. vs. Reinhardt, 159 S.W. 1010.

Moreover, the trustees of an independent school district have been upheld by the Supreme Court of Texas in the exercise of their discretion in permitting the use of school buildings by clubs and fraternal societies, musical organizations, Sunday-schools, etc. where such uses do not interfere with their use for school purposes. Martine vs. San Antonio Independent School District, 115 Tex. 145, 277 S.W. 78, refusing writ of error, 275 S.W. 265.

The cited cases discuss and uphold the authority of school trustees to lease or otherwise deal with the real estate of a school district----land, buildings, and other fixtures thereon----rather than personal property such as is involved in the instant case. However, it is our opinion that this difference in the type of property involved does not remove the instant situation from the reasoning and principles upon which these authorities are grounded. We find no statutory prohibition of the contemplated leasing of or other dealing with school buses; in Articles 2813 and 2687a, Vernon's Texas Civil Statutes, the articles pertinent to this particular species of school property. The accelerated rate of deterioration or depreciation of school buses over school buildings is but another element entering into the discretion of the school trustees in leasing or dealing with such property, but should in no wise defeat or deny the discretion vested in such trustees over all school property, under the authorities.

Moreover, in connection with our holding that the school trustees in question may lawfully, if their discretion so dictates, enter into the described lease arrangement with the governing body of the city of Overton, we think it not amiss to point out that the purposes to be subserved by this transaction are public rather than private and such transaction is in harmony with the policy of our government in the present emergency to conserve motor vehicles and tires. The courts have found no abuse of discretion to exist, under the facts, in the leasing by school trustees of school buildings for private purposes, and we submit that with stronger reasoning the courts should uphold the discretion of the school trustees of the Overton Independent School District in leasing school property, personal though it be in nature, for public purposes, under circumstances and conditions growing out of the present emergency.

Thanking you for the helpful brief submitted in connection with your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Pat M. Neff, Jr.
Pat M. Neff, Jr.
Assistant

PMN:ff:wc

APPROVED MAY 19, 1942
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee by GWP Chairman