



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable T. W. Trimble, First Assistant
State Superintendent of Public Instruction
Austin, T e x a s

Dear Sir:

Opinion Number O-4953

Re: (1) Length of contract between
common school district and bus
driver.

(2) Whether sale of school bus
by common school district must
be approved by county board.

(3) Whether payments for pur-
chase of bus may extend past
present school year.

We have received your letter of October 30, 1942, in
which you enclose a letter from Mr. H. C. Hinton, County Su-
perintendent of El Paso County. We quote the following from
Mr. Hinton's letter:

"The Board of Trustees in the Smelter Common
School District desires to make a contract for
transportation of school pupils for a period of
longer than the remainder of this year. Please
give us or secure from the Attorney General, the
following information:

"1. For how long may we make a contract for
transportation of pupils? That is, may we make
it for the rest of this school year and for next
year?

"2. The School Board owns the present school
bus and desires to sell it to the contractor.

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Is it necessary to secure the approval of the County Board in accordance with Article 2753?

"3. Can we sell the bus to him on credit even though the final payments will not be made during the present school year?"

The only statutes, which we have been able to find, authorizing the board of trustees of a school district to employ or contract with a person or firm for the transportation of its pupils, are Articles 2687a and 2813, Vernon's Annotated Civil Statutes. Article 2687a provides as follows:

"Transportation of pupils. -- The trustees of any school district, common or independent, making provision for the transportation of pupils to and from school, shall for such purpose employ or contract with a responsible person or firm. No person shall be employed to transport pupils, who is not at least twenty-one years of age and a competent driver of motor vehicles and sound in body and mind. All motor vehicles operated by school districts, directly or by contract, in the transportation of pupils shall be covered and so glassed or curtained at the sides and rear as to protect the pupils from the inclemencies of the weather, and shall at all times be equipped with efficient lights and brakes. The drivers of all school transportation vehicles shall be required to give bond for such amount as the Board of Trustees of the district may prescribe, not less than \$2,000.00, payable to the district, and conditioned upon the faithful and careful discharge of their duties for the protection of the pupils under their charge and faithful performance of the contract with School Board; and they shall, before crossing any railroad or interurban railway tracks, bring their vehicles to a dead stop. Failure to stop before crossing such railway as provided herein shall forfeit the drivers contract and, in case

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of accident to pupils or vehicles the bond shall be forfeited and the amount and all right thereunder shall be determined by a court of competent jurisdiction. Acts 1929, 41st Leg., 1st C.S., p. 96, ch. 42, sec. 1."

Article 2813, relating to consolidated school districts, reads as follows:

"Consolidation: free transportation. - When in their judgment it is deemed necessary or expedient, said trustees may provide for the transportation of pupils to and from any elementary school or high school of the district whereupon such pupils may be in attendance, and trustees are hereby empowered to employ transportation vehicles and drivers for such service, paying the cost thereof out of the local maintenance fund of the district or out of such other funds as may be appropriated for this purpose. Id."

You will notice that both of these statutes are silent as to the term of the employment or contract. For that reason it is our opinion that the contract may not cover a longer period of time than a year.

A clear analogy may be drawn between the question under consideration and the employment of teachers. Article 2750a authorizes the trustees of a common school district to employ teachers for a period of time not in excess of two years. Article 2781 authorizes the employment of teachers by the board of trustees of an independent school district for a term not to exceed three years, and by some districts, for a term not to exceed five years. If the school districts already had such authority, then there would be no point in passing such statutes. It has been held that these statutes are a grant of power, not a limitation. *Fikes v. Sharp* (W.E. Ref.), 112 S. W. (2d) 774.

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We quote the following from the opinion of the court in *Fikes v. Sharp*, supra:

"The facts that these common school districts are supported largely by annual apportionments from the public free school funds; that they also derive their revenue from local taxation, the rate of which may be charged from year to year by the electorate; that they are subject to reclassification from year to year by the county authorities; and that their scholastic population may vary from year to year in a manner seriously to affect their revenues; are considerations which we believe strongly point to a legislative intent that contracts binding upon their future revenues should be limited to a one-year period."

If without these provisions the board of trustees of a school district could employ teachers for a term no longer than a year, then it is our opinion that as there is no provision granting the school trustees authority to employ or contract with a bus driver for a period longer than a year, the same may not be done.

Our conclusion is consistent with the well-established principle that school trustees cannot create a deficiency debt against the district. Article 2749; *Collier v. Peacock*, 93 Tex. 255; *Templeman Common School District No. 1 of Brazos County v. Boyd B. Head Co.*, 101 S. W. (2d) 352.

Your first question is specifically answered as follows: The board of trustees of a common school district may not make a contract for the transportation of its pupils for a longer term than a year. A contract may be made for the remainder of the current school year, but it cannot cover both the remainder of this school year and the following school year. Our conclusion is strengthened by the fact that the

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State Department of Education has long construed the statutes as authorizing a board of trustees to make a transportation contract for no longer period of time than one year.

We wish to direct your attention to the current rural aid bill (Acts 1941, 47th Leg., R.S., H. B. 284, ch. 549, p. 880) wherein it is provided that the county boards of trustees may employ bus drivers. Section 4 of Article V (Transportation Aid) reads as follows:

"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."

You will notice that the county board may employ bus drivers for one year, or if the bus drivers own their own buses, for two years if said 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." However,

the point about which you inquire is the authority of the board of trustees of the school district to make such a contract, not the county board. We wish to point out, however, that under Section 4 above quoted the salary of a bus driver may not be paid with rural aid funds unless the driver is employed by the county board, assuming, of course, the school district is eligible and entitled to participate in the rural aid benefits.

We now will consider the second question. It is stated that the school district owns the present school bus and desires to sell the same. You wish to know whether the approval of the county board must be secured under the provisions of Article 2753, which reads as follows:

"Sale of school property.— The trustees of any school district, upon the order of the county trustees prescribing the terms thereof, when deemed advisable, may make sale of any property belonging to said school district, and apply the proceeds to the purchase of necessary grounds, or to the building or repairing of schoolhouses, or place the proceeds to the credit of the available school fund of the district."

Although this article does not apply to independent school districts, it does apply to common school districts. *R. B. Spencer & Co., v. Brown*, 198 S. W. 1129. Though the word "property" in its broad sense would include both real and personal property, it is our opinion that "property" as used in Article 2753 is limited in its application to real property. This conclusion is reached because of several reasons. First, this article is placed among those statutes dealing with the land and schoolhouses of districts. (See Article 2752, relating to the construction of buildings; Article 2754, declaring that the schoolhouses and grounds shall be under the control of the district trustees; Article 2756, relating to the use of

schoolhouses by white and colored students). Second, none of the cases in which this article has been construed involved the sale of personal property, but on the contrary, dealt only with conveyances of real estate. Third, the uses for which the money derived from a sale under Article 2753 may be applied are clearly indicative that a sale of realty was contemplated. Fourth, there is much more reason to require the approval of the county board on a sale of realty than there is in the case of personal property, for the value of the personal property of a district is usually negligible as compared to its real property value. Until the Legislature authorized the purchase of buses, the only personal property that a district could acquire consisted only of supplies and equipment, and we think that at the time Article 2753 was originally enacted (1905), the Legislature had in mind only real property.

The question now arises as to the authority under which the board of trustees may sell the personal property of the district. The trustees of a common school district are a body corporate and are given the right to manage and control the school district and its property. See Articles 2743 and 2749, Revised Civil Statutes. They are authorized to purchase supplies and equipment. See Article 2827, Revised Civil Statutes. It is true that a board of trustees possesses only the powers expressly conferred upon it by law or necessarily implied from such powers. *Harlingen Independent School District v. Page Bros.*, 48 S. W. (2d) 983; 24 R.C.L., 564. However, we believe that as the board of trustees of a common school district is a body corporate authorized to acquire equipment and supplies, it has the authority to dispose of such property by sale when the board in its discretion determines that the interest of the school district would be best served by the same, and if this power is not an expressed power, it is certainly an implied one. Compare *Vestal et al., v. Fickering et al.*, (Sup. Ct. Oregon), 26 Pac. 821. In the instance of the sale of realty, an additional requirement is added; namely, the act of the county board in joining with the local board. But this requirement is not present in the sale of personalty. Your second question is, therefore, answered in the negative.

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If the board of trustees has authority to sell the personal property of the district, then as the terms of such sale are not set out by statute, it is our opinion that the board may determine such terms, provided, of course, that they are reasonable.

Your third question is, therefore, answered as follows: If the board of trustees in its discretion determines to sell the bus on credit and such action is reasonable in view of all the facts surrounding the transaction, then it may do so even though the final payments are not to be made during the present school year. It is our further opinion that the money received from the sale of the bus would be local funds under Section 2 of Article 2827 and could be used only for those purposes which are set out in such provision.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *George W. Sparks*
George W. Sparks
Assistant

GWS/s

*O.K.
E.P.P.*

Received
APPROVED NOV 20 1942
W. M. ...

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