



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable T. M. Trimble, First Assistant  
State Superintendent of Public Instruction  
Austin, Texas

Dear Sir:

Opinion Number O-4982  
Re: Whether teacher may serve  
as bus driver and receive  
equalization funds there-  
for.

We have received your letter of November 20, 1942,  
which we quote, in part, as follows:

"Article 1, Section 2 of the Equalization Law provides, in part, that 'No local funds may be used to increase teachers' salaries directly or indirectly above the salary schedule provided for in this Act.'

"Section 2 of Article 3 of the same Act, in dealing with salary aid, provides, in part, that 'No aid herein provided shall be used for increasing the monthly salary of any teacher except as herein authorized, and funds provided for in this Act shall be used for the exclusive purpose of extending the length of school term of schools situated in the district receiving such aid on the basis of the schedule of teachers' salaries as determined by the State Board of Education for the year 1938-1939.'

"In view of the fact that a bus driver is employed by the County Board of Trustees and is paid from that portion of the Equalization Fund which is specifically earmarked for transportation, and in view of the further fact that a

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teacher who may be driving a bus is performing a duty that in no way interferes with her regular teaching service, and in view of the further fact that the bus driver is not being paid from local funds or from funds which were appropriated for salaries, would there be any legal objection to a teacher serving as a bus driver and receiving pay for her services as a bus driver from the transportation fund of the county which fund is distributed by the County Board of Trustees?"

Section 4, Article V of the current rural aid bill (Acts 1941, 47th Leg., R. S., Chapter 549, H. B. 234, p. 886) authorizes the employment of bus drivers by the county boards of trustees. Said section 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 have informed us that due to the present emergency it is most difficult, if not impossible, to secure the services of regular bus drivers in some portions of the State, and that

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the only practical solution of this transportation problem is the employment of teachers to drive the school buses. It is our opinion that the provisions of the rural aid bill, quoted in your letter, would not be violated by such employment for the reason that the money received by the individual as bus driver is of an entirely different character than that received by him as teacher. In other words, the two employments are separate and distinct, and compensation received for performing under one employment could not be said to increase the compensation received by such individual for performing under the other employment. It is, therefore, our opinion that the salary received by a teacher under his teacher's contract is not as such supplemented or increased by the compensation received by such person as bus driver.

Let us now examine the general law to see if there is any legal inhibition to a person's serving in both capacities. Section 40 of Article XVI, Constitution of Texas, prohibits the holding of more than one civil office of emolument. However, a school teacher is an employee, not a public officer. *Martin v. Fisher*, 291 Pac. 278; *Moody v. Belyee*, 236 N. W. 358, 75 A.L.R. 1347; *Leymel v. Johnson*, 288 Pac. 859; *Clune v. School District*, 166 N. W. 11, 6 A.L.R. 736; *Heath v. Johnson*, 15 S.E. 980; *State ex rel. Lovellian v. Smith*, 69 N. W. 114; 56 C.J. 382; 57 Tex. Jur. 1035; Opinions No. O-371, No. O-4020, No. O-4669, No. O-4798. Neither is a bus driver a public officer. Opinion No. O-4957. It follows that the constitutional provision prohibiting double office holding is not applicable and in itself would not prevent one person's holding both the positions under consideration.

Section 35 of Article XVI, Constitution of Texas, prohibits the accounting officers of this State from drawing or paying a warrant upon the treasury in favor of any person for salary or compensation as agent, officer, or appointee, who holds at the same time any other office or position of honor, trust or profit under this State or the United States, as therein specified. However, as the State accounting officers neither draw nor pay a warrant upon the treasury in favor of either the school teacher or the bus driver, this section is inapplicable.

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The performance of the duties attached to each of these positions would necessarily take place at different times; that is, the bus driver's duties are performed before the commencement of and after the close of the school day as usual. See Article 3306, Revised Civil Statutes. There is, therefore, no conflict as to the time of performance of the respective duties, and after an examination of the relative statutes we are unable to discern any inconsistency or incompatibility between the duties of one position and those of the other.

You are, therefore, advised that a teacher employed by a school district may under the authority of Section 4, Article V of the current rural aid bill be employed as a bus driver by the county board of school trustees and receive compensation out of the County Board Transportation Fund for the performance of such services, provided, of course, the employment is real, and is in no way a subterfuge or means to supplement the salary received by such person as teacher.

This opinion is limited in its scope to the general duties of a school teacher and a bus driver. We are not passing on any certain contract for none is presented for our consideration. Of course, a contract may contain provisions which would make it improper or impossible for one person to serve in both capacities at the same time and perform the duties attached thereto (for example, where a teacher's contract calls for service after close of school day). No such contract is before us; nor do we express any opinion as to the same.

Very truly yours

ATTORNEY GENERAL OF TEXAS

*George E. Mann*

By *George W. Sparks*

George W. Sparks  
Assistant

GWS/s

*E.T.P.*

