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Honorable Carl Gilliland
County Attorney
Deaf Smith County
Hereford, Texas

Opinion No. 0-7249

Re: (a) Annexation by County School Trustees of one or more common school districts to Hereford ISD under Art. 2922a. (b) Necessity for election under Art 2922c to annex above school districts. (c) Authority of Hereford ISD to exclude transfers from common school districts.

We are in receipt of your letter of May 20, 1946, in which you submit the following questions to this department for our opinion:

"1. Can the County School Trustees annex one or more Common School Districts to the Hereford Independent School District under Article 2922a so long as the Common School Districts are within Deaf Smith County, Texas, and contiguous to the Hereford Independent School District?

"2. If the combined area of the Hereford Independent School District and the contiguous Common School Districts to be annexed comprise more than one hundred square miles, would it be necessary to hold an election as provided in Article 2922c, and if so, would the combined votes of the present independent school district with the votes of the common school district determine such question of annexation?

"3. In the event the procedure provided in Article 2922a, is not carried through, and the procedure as provided in Article 2806 is followed, and the Common School Districts contiguous to the Hereford Independent School District did not vote to consolidate with the Hereford Independent School District, then, in view of the fact that the schools in the Hereford Independent School District are over-crowded, can the Hereford Independent School District refuse to accept students (a) high

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school, (b) grade school, from such Common School Districts, although they otherwise comply with the law with reference to such transfers?"

In regard to your first question, it would appear from the information supplied in the question itself and from your brief that the County Board of Trustees are seeking to form a Rural High School District in the manner provided for in article 2922a; in your second question you mention facts which would also bring such proceedings under the terms of article 2922c.

Article 2922a (RCS 1925) reads as follows:

"In each organized county in this State and in any county which shall hereafter be organized, the county school trustees shall have the authority to form one or more rural high school districts, by grouping contiguous common school districts having less than four hundred scholastic population and independent school districts having less than two hundred and fifty scholastic population for the purpose of establishing and operating rural high schools, provided also that the county school trustees may annex one or more common school districts or one or more independent school districts having less than two hundred and fifty scholastic population to a common school district having four hundred or more scholastic population or to an independent district having two hundred and fifty or more scholastic population upon the approval of the board of trustees of each school district affected; . . ." (Emphasis ours)

As stated in our opinion No. 0-8001, under the above-quoted statutory provisions, there are two methods by which rural high school districts may be formed:

"1. By grouping contiguous common school districts (having less than four hundred scholastic population) and independent districts having a scholastic population each of less than two hundred fifty scholastics;

"2. Subject to approval of the Board of Trustees of each district affected, by annexation of one or more common school districts or one or more Independent School Districts having less than two hundred fifty scholastics to a common school district having more than four hundred scholastics or by annexation of such districts to an independent school district having a scholastic population

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in excess of two hundred fifty; Bell vs. Kirkland
41 S. W. (2d) 443 (Tex. Civ. App. error refused)."

From the statements contained in your brief it would appear that the County Board of School Trustees of Deaf Smith County in the establishment of a rural high school district are planning to exercise the second of the above described powers; viz., that of annexing several contiguous common school districts to an independent school district in the same county to form a rural high school district. However, it appears that the proposed district will, if created, contain a greater area than one hundred square miles; in such case, the controlling statute is Article 2922c, which reads as follows:

"No rural high school district, as provided for herein, shall contain a greater area than one hundred square miles, or more than seven elementary school districts, except that the county board of school trustees may form rural high school districts, as provided in Article 2922a, containing more than one hundred square miles upon a vote of a majority of the qualified electors in the said proposed rural high school district voting at an election called for such purpose; and provided further, that the said board of county school trustees may form a rural high school district containing more than seven elementary districts upon a vote of a majority of the qualified voters in each of the elementary districts within such proposed rural high school district."

In our opinion no. 0-268, it is stated:

"The approval of trustees of districts affected in annexing districts to form a rural high school district is not necessary where an election is required and held under provision of article 2922c (Cox v. Beard 87 S. W. (2) 383.)

"Therefore, we hold that where the district is located wholly within one county and the area of the proposed district is more than one hundred square miles, and not more than seven school districts are involved, that the county school trustees of the particular county may call an election for the purpose of forming a rural high school district of more than one hundred square miles, and not to exceed seven elementary districts without the consent of the trustees of the nuclear districts involved; and if a majority of all of the electors voting at the election held for that purpose, and the whole of the territory involved, vote in favor of such formation of a rural high school district, it is the duty of the county school trustees to so organize the same."

We believe the above quoted statutes and opinion fully answer your first two questions. The cases cited by you in your

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brief sustain this answer.

Our opinion No. 0-4238, to which you refer, dealt with a transfer of territory from one rural high school district to another ISD and not with the forming of a rural high school district in the first instance, as anticipated by your question; therefore opinion 0-4238 is in no way applicable to your question.

In regard to your third question there appears to be a misunderstanding in regard to the application of article 2806 (RCS 1925 amended 49th Legislature 1945). As stated in the case of Doherty v King (Civ. App.) 183 S. W. (2) 1004, error dismissed, "Article 2922aa, authorizing consolidation of rural high school districts and common school districts, and this article (2806) governing elections to consolidate, must be construed together." Article 2922 aa and article 2806 are concerned with the consolidation of school districts, including rural high school districts already formed under the provisions of article 2922 a, and would therefore not be applicable to the situation as presented in your questions and the brief submitted in connection therewith. See our opinion No. 0-2994, a copy of which is attached.

The second part of your 3rd question; viz., as to whether, in event the annexation of the contiguous common school districts to the Hereford ISD does not take place, whether the Hereford ISD can refuse to accept students from such common school districts, although they otherwise comply with the law with reference to such transfers, we refer you to articles 2678a, 2922L(1), 2695, and 2695, (RCS 1925.) In the case of Love v City of Dallas, (Sup Ct) 40 S. W. (2) 20, in an exhaustive treatment of the transfer statutes of this state, the court held:

"Since the constitution does not permit the taxation of the people of a school district for the support of that district, except upon a vote of the peoples of the district, it is not debatable that the Legislature cannot compel one district to use the funds and properties for the education of scholastics from another district, without just compensation. However, in view of the long operation of the transfer statutes, we believe that where a school district has facilities and teachers in excess of those necessary for its own scholastics, the state has the right to require it to accept transfers from another district, but only upon the payment of reasonable compensation therefor. The Legislature, however, is without powers to compel any district to provide additional facilities, teachers, etc., for the education of scholastics from another district." . . . Under our interpretation of the act (article 2678a) in connection with the transfer statutes a sound discretion is left to the local school

boards to determine whether or not, in view of all the circumstances surrounding their districts, the admission of non-resident scholastics will be pre-judicial to the scholastics of their districts and whether or not the statutory fee would be compensatory This discretion to be exercised by the local boards will not be disturbed by the courts except in cases of manifest abuse."

Under authority of the above cited case, it is our opinion that the Board of Trustees of the Hereford Independent School District has the power to refuse transfer of scholastics from other districts if such transfers are prejudicial to the scholastics of Hereford ISD due to the lack of facilities in such district.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

(Signed)
Wm. Blanton, Jr.
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WB:JM

ENCLOSURE

APPROVED JUL 10 1946

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