



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

April 15, 1947

Hon. T. M. Trimble, First Assistant
State Superintendent of Public Instruction
Department of Education
Austin, Texas

Opinion No. V-141

Re: Status of Tyler Independent School District where the city extends the city limits, and related questions.

Dear Sir:

We refer to your letter of recent date enclosing a letter written by Mr. R. S. Boulter, County Superintendent of Smith County, acknowledged by this office on February 24, 1947, wherein was requested an opinion of this Department concerning the status of the Tyler Independent School District and several related questions propounded in Mr. Boulter's letter, which we quote, in part, as follows:

"The Tyler independent district, by provision of the city charter, is under control of the City of Tyler, and the Tyler independent district is so constituted. By reason of the city charter, the Tyler independent school district limits are coterminous with the city limits of the City of Tyler. The City Commission appoints the Board of Trustees of the Tyler independent district, and the City Assessor-Collector of taxes also assesses and collects the taxes for the schools. There is no differentiation between property valuation for the city and the school district.

"The City of Tyler, prior to January 1, 1947, by ordinance, extended the city limits to include territory situated in several common school districts adjacent to the Tyler city limits. This was

done some several months prior to January 1, 1947. This territory was included by ordinance of the City Commission without a vote of the people residing in the territory.

"Please advise us concerning the following questions:

"1. Does the territory annexed to the City of Tyler automatically become a part of the City of Tyler and as such constituted a part of the Tyler independent district?

"2. Does the City Commission of the City of Tyler have authority, by law, to extend the city limits of the city of Tyler for city purposes only?

"3. Does the City Commission of the City of Tyler have authority, by law, to extend the city limits of the City of Tyler for school purposes only?

"4. When the city limits of the City of Tyler are extended so as to attach to the City of Tyler territory lying in one or more common school districts, what responsibility is placed upon the City of Tyler in reference to the indebtedness, including bonds and other existing obligations of the affected common school districts prior to the inclusion of the territory situated in such outlying districts?

"5. In determining the amount of the outstanding obligations that is to be assumed by the City of Tyler or the Tyler independent school district, is it correct to assume that present valuation of property will be considered; or should the amount of the indebtedness be determined from year to year according to the valuation of property in the area detached from the outlying districts, and in proportion to the valuation of taxable property remaining in the affected

districts? Does Article 2805 (Acts 1919, 36th Leg.) apply as to the assumption of indebtedness mentioned in question No. 5?

"6. Is it a responsibility of the City Commission of the City of Tyler to determine the amount of the obligation to be assumed by the city in payment of a part of the outstanding obligation of the affected districts, or is this a responsibility of the Tyler independent school trustees; or do the county trustees and the common school district trustees have jurisdiction; or is it a joint responsibility of the several authorities mentioned to adjust the indebtedness as between the affected districts?

"7. Is it a responsibility of the County School Board to re-establish and redefine the common school districts losing territory by virtue of the extension or extensions of the city limits?

"8. Is there any responsibility resting on the City of Tyler to bring to the attention of the school authorities of districts affected by the extension of the city limits to the effect that territory has been included in the city limits and that such districts, by virtue of the change of their territory, should be re-established and re-defined, such notice or notices containing maps and field notes of territory involved and such other information needed to assist the school authorities in adjusting their business and budgets in conformity with the changes brought about by the city authorities.

"9. In view of the fact that the districts in question have not been as yet re-established and re-defined by the

County Board, is this construed to mean that these districts may be recognized for taxing purposes and for school census purposes the same as though no change had been made in their boundary lines? Does the action of the City Commission taken prior to January 1, 1947, mean that the districts in effect were at that time re-established and re-defined and that as a matter of course would so be recognized by all parties concerned?"

Sections 64, 65, 66, 67 and 68 of the city charter of Tyler, Texas, a home rule city, which charter was approved on December 1, 1936, provide that the City of Tyler shall continue to be an independent school district having sole and exclusive control of its public free schools subject to the laws of Texas, and that said schools shall be governed and controlled by a board of seven (7) trustees to be appointed by the city commission until their successors are elected and qualified. Sections 69 and 70 provide that the public free schools of the city shall be under the exclusive control and supervision of such board of trustees which shall have full power to manage, control and govern said schools granted under the charter as well as all powers granted or that may be granted by the laws of the State of Texas to independent school districts.

It is our understanding that there is no question concerning the validity of the annexation of adjacent territory in question to the City of Tyler and that the same was legally consummated by the proper city authorities acting in full conformance with Sections 61 and 62 of the city charter and enumerated powers granted to the city by virtue of the provisions of Article 1175, Section 2, V.C.S., and further, that the independent school district system in the city has not been separated from municipal control.

In Attorney General Opinion No. 0-3541 this Department properly held that Article 2804, V.C.S., provides that whenever the limits of a city which constitutes an independent school district are extended and enlarged so as to include adjacent independent or common school districts, the territory so included "shall hereafter become a part and portion of the independent school district

constituted by such incorporated city"; and in Opinion No. 0-2554, it was held that if the city is such an incorporated city constituting an independent school district, then the extension of its boundaries would automatically operate to extend the boundaries of the municipally controlled independent school district. City of Houston vs. Tod, 276 S.W. 419; Washington Heights I.S.D. vs. City of Ft. Worth, 251 S.W. 341. See also recent case holding to the same effect, City of Beaumont I.S.D. vs. Breadus, 182 S.W. 2d 406, writ of error refused.

Accordingly, our answer to your first question is in the affirmative. This answer, of course, is predicated on the assumption that the Tyler Independent School District has not been separated or divorced from municipal control under the authority of Article 2783b, V.C.S.

Article 2803, V.C.S., provides a method for the "extension of city limits for school purposes only" upon a petition of a majority of the resident qualified voters of the territory to be taken into the city only for such purposes. Poteet vs. Bridges, 248 S.W. 415. The third paragraph of Article 2804, provides further that the automatic enlargement of school boundaries co-extensive with the enlargement of municipal boundaries should not result if it were determined by the voters of the incorporated city that the added territory taken into the municipal limits should not be taken in for school purposes.

Accordingly, our answer to your second question is in the affirmative provided the city commission acts under the provisions of Article 2804, third paragraph, and an election held thereunder has determined that the territory to be annexed to the city shall not become a part of the independent school district constituted by the said city.

Our answer to your third question is in the affirmative provided the city commission follows the procedure or methods set out in Article 2803, V.C.S.

Article 2805, V.C.S., provides as follows:

"In all cases where a district is embraced within an incorporated city or town, as provided in the preceding Arti-

cle (Art. 2804); and in all cases where any town or village has been or may be incorporated for free school purposes only (Art. 2803) and which shall include within the limits thereof any portion of any common school district which has an outstanding bonded indebtedness, then such city, town or village shall become liable and bound for the payment of such portion of the bonded indebtedness of such district as the assessed value of the portion thereof so included bears to the entire assessment value of the district from which the same was taken. The assessed values of the district so included shall be those shown upon the last preceding county tax assessment roll after such districts are so included; such incorporated city, town or village shall pay either directly or through the officers of such district the proportion of the interest and principal of such bonded indebtedness for which it is liable." (Emphasis ours)

The proper answers to your fourth and fifth questions are found in the provisions of Article 2805 above quoted, wherein we have indicated by underlining. In *City of Houston vs. Tod*, 258 S. W. 839, it was held, among other things, that a failure of a city, which constitutes an independent school district, upon extending its limits so as to include part of an adjacent district which thereupon became a part of the district constituted by the city, to provide for the assumption of its proportionate part of the indebtedness of a school district diminished by extension, does not render such extension void, since Article 2805 definitely fixes liability of the city for such indebtedness.

We quote from the case of *Washington Heights I.S.D., vs. City of Ft. Worth*, supra, at page 345, as follows:

"In making the change and in allowing the annexation, the Legislature intended that the liabilities as well as the rights of property of the orig-

inal independent school districts, as to the parts of the territory detached, should be taken over by the city. The schoolhouses and school sites passed as a right appurtenant to the territory or parcels so allotted or annexed to the city. The board of trustees of the original independent school district would, by operation of law, lose all control and right of management over the transferred portion and the property thereon from and after the time the annexation or transfer becomes legally effective. But the vesting of the right in the city to take over the portion of territory of the original independent school districts also requires allowance by the city to the said original districts of its proper proportion of the value of the improvements made upon the premises. The city can make this payment after the accession, as the statute does not require it to be done before."

Furthermore, it has been held that a city extending its territory to include an independent school district has the right to tax the annexed territory for school purposes. *Tod vs. City of Houston*, Com. App., 276 S. W. 419, affirming judgment in *City of Houston vs. Tod*, 258 S. W. 839. ✓

Paragraph 2 of Article 2804 provides:

"If within the portion of such district so embraced there should be situated any real property belonging to such district, such city or town may acquire the same upon such terms as may be mutually agreed upon between the governing body of such city or town and the authorities of such district."

This legislation and Article 2805 covers the matters set out in your sixth question and means to authorize the adjustment of equities between the two authorities (the governing body of such city and the authorities of such school districts whose areas have been diminished) voluntarily as they may agree, or by a judicial proceeding if necessary.

With respect to your eighth question, we have found no statute, nor has any been brought to our attention, which specifically places the responsibility on the city of Tyler to notify the school districts affected by the extension or to provide field notes, plats, etc., denoting the new boundaries of the city. However, necessarily, it would seem to follow that since Article 2805 definitely fixes the liability of the city for its proportionate part of the indebtedness of the district diminished by the extension, and since the city has the right to tax the annexed territory for school purposes, and because Article 2803, paragraph 2, permits and requires the city authorities acting in cooperation with the diminished school district authorities to adjust the equities, that a duty may properly and reasonably be implied that the City of Tyler should notify and assist the diminished school district concerning all matters involved covering boundaries, taxes and assumption of indebtedness.

With respect to your seventh and ninth questions, we have the following to say. It was held in the Broadus case, 182 S.W. 2d 406, that where the City of Beaumont extended its boundaries so as to embrace part of an adjacent independent school district, the portion so embraced became a part of the city independent school district, notwithstanding Articles 2742e, 2742f giving the county board of school trustees authority to change boundaries of school districts generally had not been complied with. The Court said therein also that Article 2804 and Articles 2742e, 2742f subsequently enacted, and relating to county trustees' authority to change boundaries of school districts generally and of common school districts are not so conflicting as to bring the earlier Act (Article 2804) within the general repealing clause of the later Articles.

We have herein in answer to your first question advised that the extension of the City of Tyler boundaries automatically operated to extend the boundaries of its municipally controlled independent school district. To the extent the boundary of the city independent school district was changed to include portions of the areas of the common school districts affected thereby, the boundaries of the diminished common school districts also for all purposes automatically were affected and changed thereby. True, the county school board acting under the provisions of Article 2742e, Section 2; 2742b, Section 9, and/or 2742f, Section 1, has

the authority to change the boundary and effect adjustments of bonded indebtedness of so-called rural common and independent school districts, but it has never been recognized that the county school board had authority over municipally controlled independent school districts. Broadus case, supra. Article 2681, V.C.S., specifically provides that "a record of school districts" should be kept by the county board, showing the field notes of all changes made in school district lines; however, it is apparent that this Article does not refer to schools over which cities and towns have assumed exclusive control.

The change in the school boundaries of all the school districts involved being automatic and effective from and after the time the annexation becomes legally effective, the districts as enlarged or diminished thereby may be recognized for taxing purposes and school census purposes without further action by any board re-defining or reestablishing such districts. Such districts exist as previously created and existing at the time of the ordinance in question subject to the change of the areas and boundaries affected by the enactment of the City of Tyler extending its city limits. We would advise, of course, that the proper authorities as designated herein meet to settle voluntarily the liabilities involved, to ascertain the true and correct boundaries of their school districts as modified by the city ordinance, and to record the matters and field notes with the county school board in order that each district may ascertain its jurisdictional confines for taxing and census purposes.

SUMMARY

When the limits of the City of Tyler constituting an independent school district, were extended to include territory of adjacent common school districts, the extension automatically operated to extend the boundaries of the municipally controlled independent school district and automatically operated to modify the boundaries of the common school districts diminished thereby. Article 2804, V.C.S.; City of Beaumont I.S.D. vs. Broadus, 182 S.W. 2d 406, writ ref., and cases cited therein.

The city must assume its proportionate part of the indebtedness of the school districts

diminished by extension using the assessed values basis provided in Article 2805, V.C.S. The governing body of the city and the boards of trustees of the school districts diminished may adjust the equities voluntarily by agreements or by judicial proceeding if necessary. Art. 2804, V.C.S.; Washington Heights I.S.D. vs. City of Ft. Worth, 281 S.W. 241; Tod vs. City of Houston, 276 S.W. 419, affirmed in 258 S.W. 839.

The existing school districts as increased or diminished by the Tyler city ordinance increasing its city limits may be recognized for taxing and school census purposes.

Article 2681, V.C.S., which requires the county school board to keep "a record of school districts" showing the field notes of all changes made in school district lines does not refer to municipally controlled school districts.

The city commission of the City of Tyler acting in conformity with Articles 2803 or 2804, V.C.S., has authority to extend the city limits for city purposes only or for school purposes only.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Chester E. Ollison*

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APPROVED APRIL 15, 1947

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