



**OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

May 20, 1947

Hon. Claud Gilmer, Chairman
Committee on Appropriations
House of Representatives
Austin, Texas

Opinion No. V-210

Re: The constitutionality
of H.B. 199, by Wise-
man, relative to an
appropriation to pay
taxes to the Maydelle
Independent School
District.

Dear Mr. Gilmer:

You have requested the opinion of this Department as to the constitutionality of House Bill No. 199, which is as follows:

"An Act making an appropriation of One Thousand Fifty-Three and 16/100 Dollars (\$1,053.16); or so much thereof as may be necessary, out of the General Revenue Fund to pay taxes due by the State to a certain independent school district; and declaring an emergency.

"Be it enacted by the Legislature of the State of Texas:

"Section 1. The sum of One Thousand Fifty-Three and 16/100 Dollars (\$1,053.16), or as much thereof as may be necessary, is hereby appropriated out of the General Revenue Fund to pay taxes due by the State of Texas to the Maydelle Independent School District for the years 1943, 1944 and 1945 and 1946.

"Section 2. The fact that Article 2784b of the Revised Civil Statutes of Texas, 1925, and Article 7150, Section 2-A and Section 3-A, Acts of the Forty-first Legislature, Fifth Called Session, Chapter 47 and Chapter 49, pages 190 and 191, Section 1 of each chapter, provides that the State shall pay taxes creates an

emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted."

Chapter 39, Acts of the 41st Legislature, 5th Called Session, 1930, page 179, (Article 2784b, V.C.S.) is in part as follows:

"Section 1. That from and after the passage of this Act, all land in Cherokee County, Texas, owned by the State of Texas and Prison Commission of Texas, except the land heretofore set aside for the Rusk State Hospital, but including the land heretofore set aside to the Agricultural & Mechanical College for re-forestration purposes, shall be subject to taxation for school purposes where any such land is embraced within the metes and bounds of any independent or common school district.

"Section 2. Where any such land is embraced within the metes and bounds of any independent or common school district, the Trustees of the Independent School District, of the Commissioners' Court for a Common School District, are hereby authorized to levy and cause to be assessed and collected taxes for school purposes for the amount and in the manner prescribed by the General Laws for the levy of school taxes.

"Section 3. The taxes herein provided for shall be assessed and collected in the manner now prescribed by General Laws for the assessment and collection of school taxes. . ."

Chapter 47, Acts of the 41st Legislature, 5th Called Session, 1940, page 190 (Article 7150, Sub. 18, V.C.S.) is in part as follows:

"Section 1. That Article 7150, Revised Civil Statutes of Texas, 1925, provide for the exemption of such property from taxation be amended by adding thereto another Section, No. 3a, as follows:

"Section 3-a. Provided that any territory that has been acquired or may hereafter be acquired, by the State of Texas, as a part of any State Prison Farm or property, shall not hereafter be exempt from the payment of its pro rata part of any maintenance tax of a public school district of which the said territory was a part at the time said maintenance tax of the said district which are now outstanding was voted, or which is a part of said district at the time any maintenance tax may hereafter be voted by said district; and the pro rata part of said tax that shall be paid by said territory shall be the proportionate part that the assessed valuation of such territory for county purposes is of the total assessed valuation of the school district for the year in which such taxes are assessed. Provided, also, that the said maintenance tax shall be paid by the governing Board or Management of the State Prison System out of any funds appropriated thereby by the Legislature. It is hereby specifically provided that the said maintenance tax shall be paid for each year that has elapsed since any such territory of a school district was acquired by the State for and as a part of said prison system.

..."

Chapter 49, Acts of the 41st Legislature, 5th Called Session, 1940, page 191, (Art. 7150, Sub. 17, V.C.S.) is in part as follows:

"Section 1. That Chapter 81, page 224, of the General and Special Laws of the First Called Session of the 40th Legislature, 1927, be and the same is hereby amended so as to hereafter read as follows:

"That Article 7150 of the Revised Civil Statutes of Texas, 1925, providing for the exemption of certain property from taxation, be amended by adding thereto another Section No. 2-A, as follows:

"Section 2-A. Provided that any territory that has been acquired or may hereafter be acquired, by the State of Texas, as a part of any State Prison Farm or property, shall not hereafter be exempt from the payment of its pro rata part of any bond tax of a public school district of which the said territory was a part at the time bonds of the said district which are now outstanding were issued, or which is a part of said district at the time of the issuance of bonds which may hereafter be voted; and the pro rata part of said tax that shall be paid by said territory shall be the proportionate part that the assessed valuation of such territory for county purposes is of the total assessed valuation of the school district for the year in which such taxes are assessed. Provided, also, that the said bond tax shall be paid by the governing board of management of the State Prison System out of any funds appropriated therefor by the Legislature. It is hereby specifically provided that the said bond tax shall be paid for each year that has elapsed since any such territory of a school district was acquired by the State for and as a part of said prison system, if any bonds were then outstanding." (Emphasis added)

Under the ruling of this Department in Opinion No. V-161, approved April 23, 1947, and for the identical reasons stated therein, Chapter 39 and Chapter 47, Acts of the 41st Legislature, Fifth Called Session, Supra, are each unconstitutional and void and, therefore insofar as House Bill No. 199, is predicated upon the constitutionality of either or both of said laws, it is also unconstitutional and void for the same reasons stated in Opinion No. V-161.

The language of House Bill No. 199 does not indicate whether or not the taxes "due by the State of Texas to the Maydelle Independent School District for

the years 1943, 1944 and 1945 and 1946" are "maintenance" taxes under the provisions of Chapter 47, supra, or "bond" taxes under the provisions of Chapter 49, supra.

Chapter 49, supra, is a valid law, save and except the following clause, "or which is a part of said district at the time of the issuance of bonds which may hereafter be voted". The emphasized clause is unconstitutional and void for the same reasons stated in Opinion No. V-161. However, since such unconstitutional clause can be severed from the remainder of the Act without destroying its purpose, the balance thereof is constitutional, even though there is no severability clause. See *Charber vs. Florence*, 131 Texas 341, 115 S. W. (2d) 604, 606. The State may not impair the obligation of a valid existing contract between the bondholders and the school district and when it acquired the land in question, the State impliedly assumed the payment of its pro rata share of the then existing bonded indebtedness. Hence the Legislature may legally appropriate funds for the payment of the obligation so assumed.

It is the opinion of this Department that, absent any language therein to the effect that the sum sought to be appropriated is for the payment of bond taxes for the payment of bonds legally issued and outstanding upon the land in question at the time of its acquisition by the State of Texas, House Bill No. 199 is unconstitutional.

SUMMARY

House Bill No. 199, Fiftieth Legislature, providing for the payment of certain taxes on State owned lands, to a certain independent school district, out of the General Fund of the State, is unconstitutional and void as violative of the provisions of Article III, Section 51 and Article XI, Section 9, Constitution of Texas. See Attorney General's Opinion No. V-161.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED MAY 20, 1947

Price Daniel

ATTORNEY GENERAL OF TEXAS
:13/Th/wb

C. K. Richards

By

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Assistant