



**OFFICE OF  
THE ATTORNEY GENERAL**

**AUSTIN, TEXAS**

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ATTORNEY GENERAL

August 16, 1947

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FIRST ASSISTANT

Hon. W. K. Baldrige  
County and District  
Attorney  
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Denton, Texas

Opinion No. V-348

Re: Persons qualified  
to vote in an elec-  
tion held under Ar-  
ticle 2742j, Sec.  
1, V.C.S., as amend-  
ed by Acts 1947,  
50th Leg., R. S.,  
S. B. 182.

Dear Sir:

We refer to your letter of recent date, acknowledged by the Attorney General on July 25, 1947, requesting an opinion of this office concerning persons who may vote in an election called to change or incorporate a common school district into an independent school district under the provisions of Article 2742j, Section 1, V.C.S., as amended by Acts 1947, 50th Legislature, R. S., S. B. 182, Ch. 311.

Prior to the recent amendment of Article 2742j, there existed two methods by which certain common school districts could be incorporated or changed into an independent school district. Any common school district not municipally controlled and containing seven hundred or more inhabitants could, and still may, be changed or incorporated into an independent school district by conformance with the provisions of Article 2757, V.C.S. Article 2757 requires that a petition for that purpose be presented to the county judge signed by twenty or a majority of the resident qualified voters of such a district praying for an election on the matter. This statute further provides that only qualified voters who are residents of the common school district shall be entitled to vote at said election, and if a majority of the votes cast favor the proposed incorporation, the county judge shall so find and enter his order to that effect.

A second method by which such a change might have been effected prior to the 1947 amendment was

provided by Article 2742j, Section 1, V.C.S., enacted in Acts 1930, 41st Legislature, 5th called session, S. B. 19, ch. 5. Under this 1930 Act, any common school district, irrespective of the number of its inhabitants, could be changed or incorporated into an independent school district. A. G. Opinions Nos. 0-6190 and 0-3424. Under S. B. 19, whenever a majority of the legally qualified property taxpaying voters, together with a majority of the trustees of the district, petitioned the county board of trustees to change or incorporate the common school district into an independent school district and furnished sufficient evidence to said county board that the district when incorporated would be financially able to carry out high school work at a reasonable cost per capita, the county board of trustees had authority to pass an order incorporating the said district; and the same would become an independent school district without the necessity of an election.

This second method of incorporation has been amended by the 50th Legislature in S. B. 182. Article 2742j, Section 1, as amended, now applies only to "any common school district in which there is maintained a first class high school of twelve (12) grades, offering sixteen (16) or more credits." In a common school district coming within the specific provisions of Article 2742j, Section 1, as amended, the county judge, upon presentation of a petition properly signed by twenty or a majority of the legally qualified property taxpaying voters residing in the district, shall call an election for the purpose of converting the common school district into an independent school district. Said amended Act further provides that if the majority of the votes cast favor the change, the county board of trustees shall pass an order creating said independent school district and appoint a board of seven trustees who shall serve until the next regular trustee election under the laws of this State, at which time seven members shall be elected as provided by law.

Thus, under the present laws governing the change or incorporation of school districts, a common school district as described or designated in Article 2742j, Section 1, as amended, may incorporate in accordance with the provisions of said amended statute by an election, or, if it has seven hundred or more inhabitants, it may elect to incorporate in accordance with the provisions of Article 2757, by an election.

Since a school district having seven hundred or more inhabitants may incorporate under Article 2742j, Section 1, as amended, or under Article 2757, and Article 2757 provides that in such an election "qualified voters who are residents of the common school district proposed to be incorporated shall be entitled to vote," we can conceive of no logical legal basis or reason for construing Article 2742j, Section 1, as amended, as requiring that only legally qualified property taxpaying voters residing in the district of that particular character are entitled to vote in an election held thereunder. Certainly, the Legislature in amending Article 2742j, Section 1, made no such qualification, nor, do we believe, should any such limitation be implied.

It is our opinion, therefore, that all persons who are qualified voters and who are residents of a common school district falling within the designation of Article 2742j, Section 1, as amended, are entitled to vote in an election held under and for the purpose set out in said amended statute. See Article 2955, V.C.S.

It may not be amiss to direct the attention of those common school districts which contemplate converting or incorporating into independent school districts to the case styled, Bigfoot Independent School District v. Gernard, 116 S. W. (2d) 804, affirmed by the Supreme Court of Texas in 129 S. W. (2d) 1213, holding that where, after a common school district has voted a maintenance tax, the district was regularly converted into an independent school district, the independent school district could not impose the maintenance tax without having first obtained the approval of the voters of the new district, notwithstanding the independent district embraced the identical territory which formed the common school district.

#### SUMMARY

All persons who are qualified voters and who are residents of a common school district of the designation and description set out in Article 2742j, Sec. 1, V.C.S., as amended by Acts 1947, 50th Leg., R. S., S. B. 182, are entitled to vote in an election required thereunder for the conversion of such a common school

district into an independent school district. Arts. 2757, 2955, V.C.S.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Chester E. Ollison*  
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APPROVED:

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