



PRICE DANIEL  
ATTORNEY GENERAL

# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

September 18, 1947

Hon. C. D. Wright  
County Attorney  
Briscoe County  
Silverton, Texas

Opinion No. V-382

Re: Appointment of an as-  
sistant to an Ex-of-  
ficio County Superin-  
tendent under Articles  
2701 and 3888, V.C.S.  
as amended by S. B.  
252, 50th Legislature.

Dear Sir:

We refer to your letter of recent date where-  
in you request an opinion from this office on whether  
under S. B. 252, Acts 1947, 50th Legislature, Regular  
Session, amending Articles 2701 and 3888, it is manda-  
tory or permissive for a County School Board to name or  
appoint an assistant to the County Judge - Ex-officio  
County Superintendent.

Article 2701, as amended by S. B. 252, pro-  
vides in part as follows:

"In each county having no School Super-  
intendent, the County Judge shall be Ex-  
officio County Superintendent and shall  
perform all the duties required of the  
County Superintendent . . . The County  
Board shall name or appoint an assistant  
to the Ex-officio County Superintendent  
. . . the salary of the assistant Ex-of-  
ficio Superintendent of Public Instruc-  
tion . . . shall be from and after Sep-  
tember 1, 1947, paid from the State and  
County Available School Fund."

Article 3888, as amended by S. B. 252, pro-  
vides in part as follows:

". . . The Ex-officio Assistant Super-  
intendent of Public Instruction shall re-  
ceive for his services such salary not to  
exceed Fifteen Hundred (\$1500) Dollars a

year as the County Board of School Trustees of the respective county may provide."

Section 5, the emergency clause in S. B. 252 provides in part:

"The fact that there is no definite provision at present for the appointment and remuneration of an assistant to the Ex-officio County Superintendent . . . creates an emergency . . ."

In the construction of statutes, the word "may" may be used to mean "shall" or the word "shall" may be construed to mean "may" according to the intention expressed in the statute; they must be given the meaning which will best express legislative intent. National Surety Corporation vs. Ladd, 115 S. W. (2d) 600, 602; Schlemmer vs. Board of Trustees of Limestone County, 59 S. W. (2d) 264; Hess & Skinner Engineering Co. vs. Turney, 203 S. W. 593, 595.

Article 2701, as amended, provides that a County Judge - Ex-officio County Superintendent shall perform all the duties required of a County School Superintendent.

There is no legislative intent evidenced in the statute amended to create the office of an Assistant Ex-officio County Superintendent of Public Instruction, nor to vest such an assistant with any prescribed powers or duties. Indeed, under Article 3888, as amended, the salary of such a named or appointed assistant may vary anywhere from one dollar or less up to fifteen hundred dollars a year, whatever the county school board may provide.

Said statutes as amended clearly authorize the County School Board to name or appoint an assistant designated therein as "Ex-officio Assistant Superintendent of Public Instruction" and to provide for his services a salary not to exceed Fifteen Hundred Dollars a year. Certainly, the County School Board in the exercise of its discretionary authority in providing a salary for such an assistant could effectively thwart an attempt to force it to appoint such an assistant. In short, we do not find an intendment within said statutes to impose upon the counties thereby affected an assistant Ex-officio County Superintendent, if the County School Board acting in cooperation with the County

Judge shall determine that such an assistant is not needed.

Furthermore, this construction of the said amended statutes is consonant with the authority of the County School Board to name or appoint an assistant or assistants to all other elective or appointive county superintendents in this State. Article 2700 as amended by Acts 1947, 50th Legislature, R. S., H. B. 375, and Article 2688, V.C.S. It would seem unreasonable to give a mandatory interpretation to the statute authorizing the naming of an assistant to an ex-officio county superintendent, absent of a clear intentment in the statute to that effect, when the authority to name or appoint an assistant to all other elective or appointive county superintendents in this State is permissive.

It is our opinion, therefore, that under Articles 2702 and 3888, V.C.S. as amended by S. B. 252, Acts 1947, 50th Legislature, Regular Session, Chapter 305, it is permissive rather than mandatory for a County School Board to name or appoint an Assistant to the County Judge - Ex-officio County Superintendent.

SUMMARY

Under Articles 2702 and 3888, V.C.S., as amended by S. B. 252, Acts 1947, 50th Legislature, Regular Session, it is permissive rather than mandatory for a County School Board to name or appoint an Assistant to the County Judge - Ex-officio County Superintendent.

Very truly yours

APPROVED:

*Pric Daniel*

ATTORNEY GENERAL

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*Chester E. Ollison*

By

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Assistant

CEO :mmc :wb :jt