



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS

Modified V-650

ICE DANIEL
RNEY GENERAL

August 5, 1949

Hon. L. A. Woods
State Superintendent
Department of Education
Austin, Texas

Opinion No. V-872

Re: Procedure to annex por-
tion of Spring Lake
Park District to Texar-
kana I.S.D., reconsid-
ering Attorney General
Opinion No. 0-3823,
dated August 7, 1941.

Dear Sir:

You have referred this office to Attorney General Opinion No. 0-3823 rendered by a prior administration and holding that Texarkana Independent School District may annex any part or the whole of a contiguous common district (Spring Lake Park Common District) by complying with the procedure set out in its special law, designated as Section 1-a in Chapter 49, Senate Bill No. 297, Special Laws of the 39th Legislature, 1st C.S., 1926.

Section 1-a provides as follows:

"Whenever a majority of the inhabitants, qualified to vote for members of the Legislature of any territory adjoining the limits of the Texarkana Independent School District, shall desire such territory to be added to and become a part of said independent school district, and a majority of such qualified voters sign a petition to that effect, any three of such qualified voters may file with the board of trustees of said independent school district the said petition, making affidavit of the facts set forth in said petition, fully describing by metes and bounds the territory proposed to be annexed, and showing its location with reference to the existing territory of the Texarkana Independent School District; provided, that said territory proposed to be added must be contiguous to one line of said independent school district. And upon filing of said petition, affidavits and descriptions, with

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the president of the board of trustees, it shall be his duty to submit the same to the board, and, if upon investigation by the board it is found that the proposed addition is necessary and practicable, the said board of trustees, by resolution duly entered upon its minutes, may receive such proposed territory as an addition to, and as becoming a part of the corporate limits of the said Texarkana Independent School District. After the passage and adoption of such resolution, the territory so received shall be a part of the Texarkana Independent School District, and the inhabitants thereof shall thenceforth be entitled to all the rights and privileges as other citizens and inhabitants of the said independent school district. The whole, or any portion of, any contiguous common school district, whether bonded or not, may be annexed to the Texarkana Independent School District in the manner herein prescribed. . . ." (under-scoring ours.)

In Opinion No. 0-3823, evidently no consideration was given to Section 2 of Article 2742e and Section 1 of Article 2742f, V.C.S., enacted by the 41st Legislature, 1st C.S., Acts 1929. You request that we review that opinion in the light of such statutes and advise whether its holding is correct.

The two 1929 Acts, above referred to, are now in effect and must be construed together. County School Trustees of Orange County v. Dist. Trustees of Prairie View C.S.D., 137 Tex. 125, 153 S.W.2d 434 (1941); Board of School Trustees of Young County v. Bullock C.S.D., 55 S.W.2d 538 (Tex. Com. App. 1932).

Without repeating all of the terms of the above designated sections of the 1929 Acts, provision is made therein that in each county of this State the county board of trustees shall have the authority, when duly petitioned as provided in said Acts, to detach from, and annex to, any school district territory contiguous to the common boundary line of the two districts, provided the board of trustees of the district to which the annexation is to be made approves by majority vote the proposed transfer of territory. The Acts prescribe further proce-

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ture if more than ten per cent of the district is involved, and specifically provide that "no school district shall be reduced to an area of less than nine square miles."

The repealing clause of the 1929 Acts, Chapter 47, Section 3, reads in part as follows:

"All laws and parts of laws, General and Special, in conflict herewith are hereby repealed. . ."

This is a general repeal that accomplishes a repeal of prior laws that are repugnant to, or inconsistent with, the provisions of this later law.

Opinion No. 0-3823 does not discuss whether Article 2804 quoted therein (providing for automatic extension of boundaries of city controlled school districts in certain instances) was repealed by the 1929 Acts above referred to. However, it has been held in City of Beaumont Ind. School Dist. v. Broadus, 182 S.W. 2d 406 (Tex. Civ. App. 1944, error ref.) that Article 2804 has not been repealed, expressly nor by implication, by these 1929 Acts, for the reason that the legislative history of the laws relating to municipally controlled school districts and other school districts in the county shows a manifest intention on the part of the law-making body to provide for two separate classifications of districts, namely, a district located within a municipality, over which the city has assumed control, and a district over which a city has no control. Opinion 0-3823 properly holds that Article 2804 is not applicable to Texarkana Independent School District.

The legislative history concerning the Texarkana Independent School District shows that it is not a municipally controlled school district. It is an independent school district created by special law, divorced from city control in 1920. Chap. 31, S.B. 9, Acts 36th Legislature, 3rd C.S., 1920, as amended by Chap. 49, S.B. 297, Spec. Laws of 39th Leg., 1st C.S., 1926; A.G. Opinion No. 0-3823; V-650. We find no like legislative history which would operate to save from the repealing effects of the 1929 Acts, school districts like Texarkana created by special law and which do not fall within the classification of a municipally controlled school district.

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It is our opinion, therefore, that to the extent that the annexation provisions found in Section 1-a of S.B. 297 (the special law applicable to the Texarkana Independent School) are repugnant to, or inconsistent with, the Acts of 1929 (Section 2 of Article 2742e and Section 1 of Article 2742f) they have been repealed by the Section 3 of the 1929 Acts, above quoted.

Section 1-a of S.B. 297 provides that the petition for annexation of contiguous territory to the district shall be filed with the board of trustees of the Texarkana district, and that such board by resolution may receive such territory. The subsequent 1929 Acts provide that such a petition for detachment and annexation of territory to a contiguous district shall be submitted with the county board of trustees, and (the other procedure of the Acts being complied with) the county board may pass an order transferring said territory. Construing the Acts of 1929 together, as they must be when common and independent districts are involved, they contain the express prohibition that "no school district shall be reduced to an area of less than nine square miles." Thus, the county school board has authority under Section 1 of Article 2742f, and Section 2 of Article 2742e to detach and annex portions of school districts in accordance with the procedure thereof, but they would have no authority thereunder to annex or detach an entire active school district. Weinert I.S.D. v. Ellis, 52 S.W.2d 370 (Tex. Civ. App. 1932); Higginbotham v. County School Trustees, 220 S.W.2d 213 (Tex. Civ. App. 1949).

Clearly, therefore, the authority granted County School boards and the procedure prescribed in the 1929 Acts herein considered conflicts with and supersedes the authority granted Texarkana board of trustees and the procedure prescribed in Section 1-a of Senate Bill 297, insofar as the power and procedure for annexation of a part or portion of the contiguous common school district may be involved. To this extent, Section 1-a is repealed by the subsequent 1929 Acts.

These 1929 Acts, however, do not conflict with the authority granted the Texarkana board in such Section 1-a to annex the whole of any contiguous common district under the procedure and in the manner therein prescribed. The Springlake Park district not being dormant so as to be subject to the provisions of Article 2742e-1, V.C.S., or Article VIII of S.B. 116, 51st Legislature, those laws could not be applicable to conflict with the authority granted the Texarkana Board in Section 1-a to annex

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the whole of that contiguous common school district. Article 2806, authorizing consolidation of school districts by an election procedure therein provided, does not contain a repealing clause. Article 2806 not being repugnant to the provisions of Section 1-a, it is merely cumulative.

Accordingly, Opinion No. 0-3823, dated August 7, 1941, is modified by the holding of this opinion. To the extent, also, that A. G. Opinion V-650 follows and relies on the holding in Opinion 0-3823, it is modified by this opinion.

SUMMARY

The authority granted the board of trustees of Texarkana Independent District and the procedure prescribed in Section 1-a of S.B. 297, Special Laws of 39th Legislature, 1st Called Session, 1926, to annex a portion of a contiguous common school district, being in conflict with Section 2 of Article 2742e and Section 1 of Article 2742f (Acts of 1929), have been repealed by Section 3, Chap. 47, Acts 1929. Annexation of a portion of contiguous Springlake Park Common School District to Texarkana District may be accomplished through the county board of trustees in accordance with and subject to the provisions of Section 2 of Article 2742e and Section 1 of Article 2742f, V.C.S. Attorney General Opinions Nos. 0-3823 and V-650 are accordingly modified hereby.

Yours very truly,

APPROVED

Price Daniel
ATTORNEY GENERAL

CEO: bh: gw: mw

ATTORNEY GENERAL OF TEXAS

By

Chester E. Ollison

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