



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

PRICE DANIEL  
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August 5, 1949

Hon. Jas. M. Simpson, Sr.  
County Attorney  
Concho County  
Eden, Texas

Opinion No. V-874  
Re: The validity of an  
order by the County  
Board of School Trus-  
tees to consolidate  
the Concho County  
portion of a dormant  
county-line common  
school district with  
a rural high school  
district.

Dear Sir:

We refer to your request for our opinion as to the validity of an order of the County Board of School Trustees, Concho County, acting under Article VIII, S.B. 116, 51st Legislature, consolidating that part of Salt Gap County-Line Common School District (determined to be "dormant" under S.B. 116) lying in Concho County, with the adjoining Millersview Rural High School District, lying in Concho County.

The following facts are reflected in your submitted copy of the Concho County School Board order passed on July 6, 1949. It shows that an election was held on June 11, 1949, in Salt Gap County-Line School District (of Concho and McCulloch Counties), Melvin County Line Consolidated Independent School District (of Concho and McCulloch Counties), and Whiteland Common School District (of McCulloch County) for the consolidation of the three districts named; and the Commissioners' Court of McCulloch County on June 14, 1949, canvassed the returns thereof and declared the election carried in each of said districts, and issued an order consolidating the three districts named.

In Attorney General Opinion No. V-866 construing Article VIII, S.B. 116, 51st Legislature, this office held that a "dormant district" as defined in S.B. 116, may be consolidated with an adjoining district or districts under the provisions of Article 2806, V.C.S., provided a county board has not previously consolidated such dormant district with an adjoining district under

the authority granted it in Article VIII. For the reasons therein set out, that holding would apply also to consolidation proceedings consummated under Sections 5a and 5b of Article 2742b, and Article 2743, V.C.S.

Article 2806, as amended by H.B. 828, 49th Legislature, provides in part:

" . . . when it is proposed to consolidate contiguous county-line districts, the petitions and election orders prescribed in this Act shall be addressed to and issued by the County Judge of the county having jurisdiction over the principal school of each district and the results of the election shall be canvassed and declared by the Commissioners' Court of said County."

See also like provisions in Article 2742b, Section 5b, V.C.S.

When the orders were passed creating the Salt Gap County-Line District and the Melvin County-Line District, it was then determined which one county should manage and control, that is, have jurisdiction over, the public schools therein. Article 2742b, Section 5a, and Article 2743, V.C.S.

If, therefore, in view of the noted provisions of Article 2806 and Section 5b of Article 2742b, McCulloch County had jurisdiction of the schools in the Salt Gap County Line and the Melvin County Line Districts, its County Judge was authorized on proper petition to call the election and its Commissioners' Court was authorized to canvass the results of the election to consolidate those two county line districts with the White-land District located entirely in McCulloch County. Hunt v. Trimble, 145 S.W.2d 659, (Tex. Civ. App. 1940, error ref.); Stephens v. Coffee, 133 S.W.2d 184 (Tex. Civ. App. 1939); Woodson I.S.D. v. State, 130 S.W.2d 1038 (Tex. Civ. App. 1939, error dismiss., cor. judg.); Donaldson v. State, 161 S.W.2d 324 (Tex. Civ. App. 1942, error ref. w.o.m.). Presuming this to be the situation, coupled with the fact that the consolidation election was called prior to the action of the Concho County School Board and carried as prescribed by law, then the election consolidation (June 14) prevails over the subsequent order (July 6) of the Concho County Board purporting to act under Article VIII, S.B. 116. The Salt Gap district hav-

ing been consolidated by an election with an active adjoining district, the purpose of Article VIII has been fulfilled. That part of the Salt Gap County Line District lying in Concho County was thereafter no longer in existence or "dormant" and would not now be subject to an Article VIII consolidation order of the Concho County Board.

For the reason stated in the above paragraph, and because this consolidation is not made under S.B. 116, the provisions of S.B. 116 restricting consolidation of dormant county line school districts to territory lying within the county are not applicable. Article VIII of S.B. 116 provides:

"If a county line district is or becomes dormant . . ., the provisions of this Act shall apply and be followed . . . to the extent of the territory in each respective county."

That same Section further provides, however, that:

"The provisions herein for the consolidation of school districts by order of the County Board of Trustees . . . shall not be construed to repeal, supersede or limit any existing statute providing other methods for school district consolidation and annexation."

Therefore, it is our opinion that the order of the Concho County school board, considered herein and dated July 6, 1949, is invalid and of no effect. This opinion construes only the validity of the order submitted for consideration and the question presented, in the light of the facts submitted and those herein presumed.

#### SUMMARY

The Salt Gap County Line School District, the Melvin County Line Consolidated Independent School District (under the jurisdiction of McCulloch County) and the Whiteland Common School District located in McCulloch County, having been consolidated on June 14, 1949, by an election held in conformance with Article 2806, V.C.S.,

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the subsequent order of the County School Board of Concho County under Article VIII, S.E. 116, 51st Legislature, purporting to consolidate that part of Salt Gap County Line District lying in Concho County with Millersview Rural High School District in the same county is invalid. A.G. Opinion No. V-866.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

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APPROVED

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