



THE ATTORNEY GENERAL OF TEXAS

PRICE DANIEL
ATTORNEY GENERAL

AUSTIN, TEXAS

October 11, 1949

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

Opinion No. V-933.

Re: Enumerating in the
school census those
non-resident scholas-
tics whose transfer
has not been approved
by the State Commis-
sioner of Education.

Dear Sir:

We refer to your opinion request wherein you
state, in substance:

Paragraph 2 of Article III, Senate Bill 116,
51st Legislature, reads:

"Provided that the attendance of non-
resident scholastics whose grades are taught
in their home districts shall not count to-
wards teacher eligibility, unless the trans-
fer of such scholastics has been approved by
the County School Board and the State Commis-
sioner of Education."

Many counties have reported to the School Cen-
sus Director of the State Department of Education trans-
fers of scholastics whose grades are taught in their home
district. Such transfers bear the approval of the County
School Board.

There are many transfers that were approved by
the County Boards but then disapproved by the State Com-
missioner of Education.

Does that disapproval remove the child from the
transfer report and leave the per capita apportionment in
the home (sending) district? If not, will the name re-
main on the transfer report and the per capita be paid to
the receiving district? We do not know whether to leave
the per capita money in the sending district or credit it
to the receiving district.

Articles 2696 and 2697 of Vernon's Civil Statutes

set out in detail the procedure to be followed in effecting the transfer of children from one district to another. These statutes also provide that if any district is dissatisfied with any transfer made by the County Superintendent it may appeal from such action to the County Board of Trustees who shall have the right to cancel the transfer. Article 2696 also provides:

" . . . Upon the certification of the transfer of any child, from one district to another district, by the county superintendent of the county in which the child resides at the time of the transfer, the State Department of Education shall authorize the State Treasurer to pay over directly the per capita apportionment, in independent districts of five hundred (500) or more scholastic population, to the district to which such child is transferred; and in all other districts, to county superintendents, to be paid by him to the respective districts to which such children are transferred; provided, no transfer shall be made after August 1st."

Under the law governing distribution of the available school fund, the per capita apportionment is distributed to the district in which the scholastic is enumerated, usually his home district. Texas Constitution, Art.VII, Secs.5 and 7; Arts.2665, 2692, V.C.S. The statutes provide for the transfer of scholastics in the instances enumerated and in the manner provided. Arts.2696-2699; S.B.116, Art.III, par.3, Acts 51st Leg., 1949. Where a scholastic is transferred in the manner prescribed by law, the per capita apportionment follows him to the district to which he is transferred. Excepting the instances when the scholastic is legally transferred, the per capita apportionment for that scholastic is payable only to the district wherein he is enumerated. Art.2699; Love v. City of Dallas, 120 Tex.351, 40 S.W.2d 20 (1931); McCorkle v. Trustees of Robinson Springs School District No.76, of Comanche County, 121 S.W.2d 1048 (Tex. Civ.App.1938).

Senate Bill 116, however, provides State aid to finance the minimum program established by that Bill, in addition to those State moneys payable to districts out of the State Available Fund. Article III thereof is the law governing the matter of teacher eligibility for

purposes of the minimum foundation program. It sets out the formula by which any school district may determine the amount of minimum foundation funds it may expect to receive.

Paragraph 2 of Article III provides that non-resident scholastics whose grades are taught in their home district shall not count toward teacher eligibility, unless their transfer has been approved by the County School Board and the State Commissioner of Education. Under that paragraph scholastics, school districts, and county boards are clearly apprised of the consequences where transfers approved by the county board do not receive the subsequent approval of the State Commissioner. Under Article 2696 school districts have been afforded the opportunity to voice their dissatisfaction with any transfer made by the County Superintendent and the right to appeal to the County School Board.

The effect of paragraph 2 of Article III (considered with subd.b,Sec.2, and Sec.1 of Art.V of S.B.116) is that no State aid will be granted out of minimum foundation funds for the educational costs of non-resident scholastics, whose grades are taught in their home districts, unless their transfer has been properly approved by the County School Board and the State Commissioner. The purposes of these provisions are to encourage attendance of scholastics in their home districts when their grades are taught therein and to economize on transportation costs authorized in the foundation program.

Thus, Article 2696 and Article III paragraph 2 deal with distinct and separate subjects. Article 2696 concerns legal (parental) transfers and places the jurisdiction over the same in county boards and officers. It governs in the distribution of State Available Funds for children transferred by virtue of the statute. Paragraph 2 of Article III concerns teacher eligibility of school districts under the Gilmer-Aikin laws, and applies to eligibility for the minimum foundation school funds. Senate Bill 116 contains no provision governing the matter of distribution of State Available Funds where legal transfers are consummated under Article 2696. In short, we do not think it the intention of Senate Bill 116 to take control and discretion in matters of scholastic transfers out of the local county school boards and place it in the hands of the State Commissioner of Education in all instances.

Accordingly, it is our opinion, that if the

State Commissioner of Education, acting Under Article III, paragraph 2, refuses to approve (for teacher eligibility purposes) transfer of a scholastic (whose grades are taught in his home district) to another district, such refusal would have no effect on the right of the receiving district to realize the per capita apportionment on that legal transfer, as provided in Article 2696. The name of the legal transfer should remain on the transfer report, and the per capita be paid to the receiving district.

SUMMARY

Per capita apportionment on legal transfers of public school students consummated under Article 2696, V.C.S., is governed by that article, and is not affected by any ruling of the State Commissioner of Education made under Senate Bill 116, Article III, paragraph 2, Acts 51st Legislature 1949, concerning the transfer.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By *Chester E. Ollison*
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APPROVED

J. R. Greenhill

FIRST ASSISTANT
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