



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

August 14, 1951

Hon. J. W. Edgar
Commissioner of Education
Texas Education Agency
Austin, Texas

Opinion No. V-1236

Re: Authority of the State
Board of Education to
fix the fee to be
charged for special
certificates for per-
sons found qualified
for special positions
in public schools.

Dear Sir:

You request an opinion on the following ques-
tion:

"May the State Board of Education include in its regulations governing the issuance of teaching qualification certificates for special positions a requirement that a fee of one dollar (\$1.00) be charged for each special certificate issued?"

Subdivision (3) of Section 1, Article 2922-13, V.C.S., provides in part:

"d. Provided that school districts may choose from the five types of special service teacher units listed in Section 2 of Article II of this Act, sub-section A-3, the number of each classification that it desires, to the extent of total eligibility for such units and the allocation of special service teacher units shall not preclude the assignment of classroom teachers to special service duties. The State Commissioner of Education shall establish qualifications of special service teachers and subsequent to the 1949-1950 school year such qualifications shall be subject to regulations made by the State Board of Education.

"Provided further, that the special service teacher unit allotments provided for herein shall be made in addition to other professional unit allotments." (Emphasis added throughout.)

Hon. J. W. Edgar, page 2 (V-1236)

Subdivision (4) of Section 1, Article 2922-13, V.C.S., provides in part:

"c. There is hereby created in the State Department of Education a Division of Special Education. There shall be appointed by the State Commissioner of Education a Director for the Division of Special Education. No person shall be employed to teach any class for exceptional children as defined in this Act unless he possesses a valid teachers certificate and, in addition thereto, such training as the State Commissioner of Education may require.

"Provided that allotments for exceptional children teacher units provided for herein shall be made in addition to other professional unit allotments."

Subdivision 5 of Section 1, Article 2922-13, V.C.S., provides in part:

"a. One (1) supervisor or counsellor unit for the first forty (40) classroom teacher units and one (1) supervisor or counsellor unit for each additional fifty (50) classroom teacher units, or major fractional part thereof. If a district is eligible for one such unit, the district may employ for such unit either a supervisor or a counsellor, but not both. If a district is eligible for two or more such units, the district may employ supervisors only, counsellors only, or a combination of the two to the extent of total eligibility. The State Commissioner of Education shall establish qualifications of supervisors and counsellors and subsequent to the 1949-1950 school year such qualifications shall be subject to regulations made by the State Board of Education."

Section 4 of Article 2654-5, V.C.S., provides:

"It shall be the duty of the State Commissioner of Education to issue teaching certificates to public school teachers and administrators and to voucher the expenses of the central educational agencies according to

the rules and regulations prescribed by the State Board of Education. The decisions of the State Commissioner of Education shall be subject to review by the State Board of Education."

You state in your request that, pursuant to the above provisions, "the State Board of Education has established rules and regulations which define the requirements for administrator's certificates, certificates for special service teachers, counselors, supervisors, teachers of exceptional children and vocational teachers in the four vocational service areas."

In McCalla v. City of Rockdale, 112 Tex. 209 246 S.W. 654, 655 (1922), it is stated:

"The courts of this state have adopted the rule construing strictly those statutes prescribing fees for public officers and against permitting such fees by implication. No officer is permitted to collect fees or commissions unless the same are provided for and the amount thereof declared by law. This is true, notwithstanding such officer may be required by law to perform specific services for which no compensation is provided. The obligation to perform such services is imposed as an incident to the office, and the officer is deemed to have engaged to perform them without compensation by his acceptance thereof. McLennan County v. Boggess, 104 Tex. 311, 315, 316, 137 S.W. 346; State v. Moore, 57 Tex. 307, 320, 321; Hallman v. Campbell, 57 Tex. 54."

It is likewise stated in Nueces County v. Cur-
rington, 139 Tex. 297, 162 S.W.2d 687, 688 (1942):

"It may be stated at the outset that the Court of Civil Appeals correctly holds that a fee paid a public officer for the performance of a duty enjoined by statute is a fee collected in an official capacity. It is equally true that unless a fee is provided by law for an official service required to be performed and the amount thereof fixed by law, none can lawfully be charged therefor."

In view of the above well-established principle of law, the State Board of Education cannot charge a fee for the issuance of teaching qualification certificates for special positions unless it has express authority prescribing the fee for the services rendered. Article 2879, V.C.S., authorizes the collection of a fee from an applicant for examination for a teacher's certificate and the collection of a fee for the issuance of such certificate. Article 2888, V.C.S., prescribes a fee for the issuance of "teachers' certificates based on college credentials from junior colleges, teachers' colleges, colleges or universities." Article 2889a, V.C.S., prescribes a fee to be charged for the issuance of "Texas Teacher's Certificate on credentials from another state." We are unable to find any provision prescribing a fee to be charged for the issuance of the teaching certificates mentioned in your request. You are therefore advised that the State Board of Education cannot prescribe a fee of \$1.00 to be charged for the issuance of teaching certificates for special positions.

SUMMARY

The State Board of Education is not authorized to charge a fee for the issuance of teaching certificates for special positions pursuant to the regulatory powers of the State Board of Education. McCalla v. City of Rockdale, 112 Tex. 209, 246 S.W. 654 (1922); Nueces County v. Currington, 139 Tex. 297, 162 S.W.2d 687 (1942).

APPROVED:

Bruce Allen
County Affairs Division

Everett Hutchinson
Executive Assistant

Charles D. Mathews
First Assistant

JR:mw:gs

Yours very truly,

PRICE DANIEL
Attorney General

By *John Reeves*
John Reeves
Assistant