



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CABER
ATTORNEY GENERAL**

June 13, 1966

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

Opinion No. C- 708

Re: When, under Section 2(b) of Article 2688L, Vernon's Civil Statutes, the abolishment of the office of County Superintendent becomes effective, do Articles 2701 and 3888, Vernon's Civil Statutes, apply: 1. To constitute the County Judge as ex-officio County Superintendent and related questions.

Dear Dr. Edgar:

By recent letter you have requested an opinion in regard to the above stated matter. We quote from your letter as follows:

" . . .

"Presently, we are concerned with Section 2(b), Article 2688L, (H.B. 412, 59th Legislature, R.S., 1965) which by bracketing applies to Childress County. The Office of County Superintendent is abolished by that section, effective upon the expiration of the present county superintendent's term of office--which is December 31, 1966, no vacancy occurring.

" . . .

"In the county preparation and necessary approval by this Agency of the 1966-67 County Administration budget for Childress County (financed by State Available School Funds), we need to know and would appreciate receiving an opinion from your Office on the following:

"When, under Section 2(b) of Article 2688L the abolishment of the office of county superintendent becomes effective, do Articles 2701 and 3888 apply:

- "1. To constitute the county judge as ex-officio county superintendent.
- "2. To determine salary of the ex-officio county, and an assistant ex-officio superintendent, if any.
- "3. To determine an office and travel expense allowance for ex-officio county superintendent.
- "4. Or: Shall the county judge alone serve as ex-officio county superintendent without salary and without office and travel expense allowance, as such."

Section 2(b) of Article 2688L, Vernon's Civil Statutes, is quoted as follows:

"(b) The office of county superintendent in all counties having a population of not less than 8,399 nor more than 8,422 according to the last Federal Census is abolished. The office shall be abolished upon the expiration of the present county superintendent's term of office."

Standing alone, all this Section does is abolish the office of County Superintendent in Childress County, at the expiration of the present incumbent's term. However, Section 3 of Article 2688L, Vernon's Civil Statutes, should be taken into consideration, and is quoted as follows:

"The county superintendents holding office in the counties included in this Act on the effective date of this Act shall serve until the expiration of the term for which they were elected. However, if a vacancy occurs before the expiration of the term, the office of county superintendent shall cease to exist and the duties of the office shall be performed by the county judge as ex-officio county superintendent after that time." (Emphasis added)

Clearly, this Section provides for the duties of the county superintendent to be placed upon the county judge in the counties covered by the act, including Childress County, if a vacancy occurs before the expiration of the present term. Under the prior law if a vacancy occurred another individual was elected by the voters to fill out the unexpired term. Attorney General's

Opinion No. C-321 (1964) discusses this problem.

Additional facts submitted by your office, and from the County Attorney of Childress County, Hon. Clarence L. Darter, show that Childress County has no common school districts and has one county-wide independent school district. Article 2688L, the article in question, abolished the office of County School Superintendent, but nothing is said concerning the County School Board in Childress County.

In the same session of the Legislature (1965), Article 2688i-1, Vernon's Civil Statutes, was enacted and is quoted, in part, as follows:

"Section 1. This Act applies to a county

"(1) if the office of county superintendent and the county school board has been abolished in the county, and

"(2) if the county has one county-wide independent school district and no common school district.

"Sec. 2. The office of ex-officio county superintendent is abolished upon the effective date of this Act."

In order for the above statute to apply to any county, four conditions must be met. (1) The office of county superintendent must be abolished by the Legislature, or the voters. (2) The County School Board must be abolished by the Legislature, or the voters. (3) The county must have no common school districts. (4) The county must have one county-wide independent school district.

Childress County has met conditions (1), (3) and (4), but the County School Board is still legally in existence, therefore, it is our opinion that Article 2688i-1 does not apply to Childress County.

Article 2701, Vernon's Civil Statutes, provides for an ex-officio superintendent in counties which do not have a county superintendent. Article 2701, Vernon's Civil Statutes, is quoted, in part, as follows:

"In each county having no school superintendent, the county judge shall be ex-officio county superintendent and shall perform all the

duties required of the county superintendent in this chapter. . . .The county board shall name or appoint an assistant to the ex-officio county superintendent. . . .The salary of the ex-officio superintendent . . .the salary of the assistant . . .and the office and traveling expenses . . . in all counties in Texas shall be from and after September 1, 1947, paid from the State and County Available School Fund. . . ." (Emphasis added)

It is our opinion, based upon the language of Article 2701 and the relevant sections of Article 2688L (quoted above), that it was the intent of the Legislature to constitute the County Judge of Childress County as ex-officio county superintendent when the present county superintendent's term expires, or sooner, if a vacancy occurs. Obviously the Legislature was aware of Article 2701 when it enacted Article 2688L. The Legislature in enacting, amending, or repealing a statute, may be presumed to have known or was familiar with existing statutes. Cain v. State, 20 Tex. 355 (1857); Cole v. State, 106 Tex. 472, 170 S.W. 1036 (1914).

Question number 1 (above) must therefore be answered in the affirmative. An analysis of Article 3888, Vernon's Civil Statutes, must be made in order to answer the second and third questions.

Article 3888, Vernon's Civil Statutes, is quoted, in part, as follows:

"In a county where the county judge acts as ex-officio county superintendent . . .he shall receive . . .in addition to all other compensation . . .not more than two thousand six hundred (\$2,600.00) dollars a year . . . In such a county an ex-officio assistant superintendent . . .shall receive ~~not~~ more than two thousand, six hundred (\$2,600.00) dollars a year as the county board of school trustees . . .may provide.

"The county judge while acting as ex-officio county superintendent . . .for office and traveling expenses may receive an amount not to exceed one thousand, fifty (\$1,050.00) dollars a year, as the county board of trustees . . .may provide."

Article 3888 has been held by this office to apply to Section 1(b) of Article 2688e, Vernon's Civil Statutes, where

the Legislature did not specifically set out the salary, etc., for an ex-officio county superintendent, once the office of county superintendent had been abolished by the voters of a county. Attorney General's Opinion No. C-41 (1963).

This office has also held that it is permissive rather than mandatory for a county school board to name or appoint an assistant ex-officio superintendent, under the terms of Article 2701 or Article 3888, Vernon's Civil Statutes. Attorney General's Opinion No. V-382 (1947).

Based upon an analysis of Article 3888 and the above prior opinions, it is our opinion that the salary of the ex-officio superintendent and his assistant, if one is appointed by the county board of school trustees, is controlled by Article 3888. It is our further opinion that Article 3888 controls the amount of office and travel expense of the ex-officio superintendent.

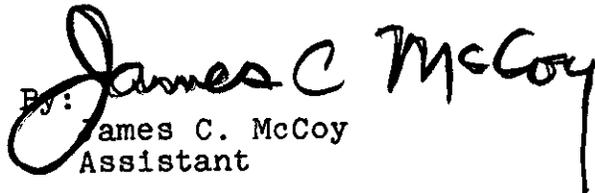
The final question listed above (4) need not be answered in light of the above stated opinions.

S U M M A R Y

Articles 2701 and 3888, Vernon's Civil Statutes, apply to Section 2(b) of Article 2688L, when the abolishment of the office of county superintendent becomes effective.

Very truly yours,

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