



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

CRAWFORD C. MARTIN

ATTORNEY GENERAL

August 16, 1971

Honorable J. W. Edgar
Commissioner of Education
Texas Education Agency
201 East 11th Street
Austin, Texas

Opinion No. M-935

Re: Whether H.B. 625, Acts 62nd
Leg., R.S., Ch. 625, page
1186 (1971), codified as
Article 2688y, V.C.S.,
abolishes the office of
county superintendent in
Matagorda County.

Dear Dr. Edgar:

We quote from your letter requesting an opinion from
this office, in part, as follows:

"House Bill 625 (Acts 62nd Legislature,
R.S., 1971, p. 1186, approved May 19, 1971;
Article 2688y in V.C.S.) reads as follows:

"Section 1. The office of county superin-
tendent is abolished in all counties having a
population of not less than 27,800 nor more than
28,800 according to the last preceding federal
census. In each of those counties, the county
judge shall be the ex officio county superin-
tendent and may receive no additional compensa-
tion for these additional duties.

"Only Matagorda County having a 1970 de-
cennial census population of 27,913 is covered
in the 27,800-28,800 bracket requirement.

"Within the 1960 census period, in 1965 a
similar statute, then applicable only to
Matagorda County, was enacted. Article 2688n,
V.C.S. The validity of that law was challenged.
In Opinion M-745 (December, 1970), it was ruled
that the elective office of county superintendent
in Matagorda County continues to exist."

In addition, you have advised us that the current scholastic
population of Matagorda County is in excess of 3,000.

With regard to the foregoing, you ask whether H.B. 625, Acts 62nd Leg., R.S., Ch. 625, page 1186 (1971) codified as Article 2688y, V.C.S., abolishes the office of county superintendent in Matagorda County.

We quote from Attorney General's Opinion M-745 (1970) referred to in your letter, in part, as follows:

"You have pointed out that Article 2688n, Vernon's Civil Statutes, provides that the office of County School Superintendent is abolished in all counties having a population of not less than 25,750 nor more than 28,000 according to the last preceding Federal census, and further advised us that whereas the 1960 census reported a population of 25,744 for Matagorda County, the figures released to date place the 1970 population at 27,630. You inquire whether, in view of the provisions of Article 2688n and the 1970 population figures for Matagorda County, the office of County School Superintendent for that county is abolished; and if so, the effective date.

"In our opinion the office of County School Superintendent continues to exist in Matagorda County, . . .

"The current scholastic population of Matagorda County being over 3,000 the election of a County Superintendent to serve a four year term is made mandatory by the provisions of Article 17.41(a) of the Texas Education Code.

"In view of the office having been once created in the county and the scholastic population remaining over 3,000, it appears that the only statutory provision for abolishing the office is provided by Article 17.64 of the Texas Education Code. See Attorney General's Opinion No. M-733 (1970). Apparently the procedure provided in Article 17.64 has not been followed in Matagorda County. . . .

"In our opinion, Article 2688n as narrowly restricted in its application to certain counties, is unconstitutional for the reason that it is a

local or special law regulating the management of public schools in contravention of Article III, Section 56, Constitution of Texas. The Supreme Court of Texas, in Miller v. El Paso County, 136 Tex. 370, 150 S.W.2d 1000 (1941), has well stated the prevailing rule with regard to this type of legislation:

"Notwithstanding the above constitutional provision, the courts recognize in the Legislature a rather broad power to make classifications for legislative purposes and to enact laws for the regulation thereof, even though such legislation may be applicable only to a particular class or, in fact, affect only the inhabitants of a particular locality; but such legislation must be intended to apply uniformly to all who may come within the classification designated in the Act, and the classification must be broad enough to include a substantial class and must be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished by the proposed legislation. In other words, there must be a substantial reason for the classification. It must not be a mere arbitrary device resorted to for the purpose of giving what is, in fact, a local law the appearance of a general law.' (at p. 1001-1002). See also the cases there cited.

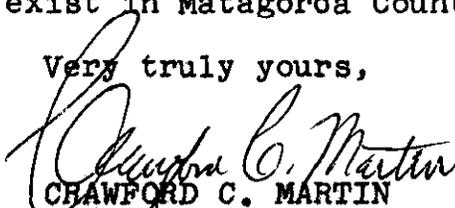
"In our opinion Article 2688n would create a class of counties without substantial basis and without sufficient legal distinguishing features and is therefore proscribed as a local or special law by Article III, Section 56, of the Texas Constitution. That being true, the statute does not operate to abolish in Matagorda County the office of County School Superintendent. See Attorney General's Opinions No. C-244 (1964), No. C-481 (1965), and No. M-488 (1969)."

On the basis of the reasoning and holding in Attorney General's Opinion M-745 (1970) and authorities therein cited, it is our opinion that H.B. 625 is unconstitutional and void and consequently the office of county school superintendent continues to exist in Matagorda County.

S U M M A R Y

House Bill 625, Acts 62nd Leg., R.S., 1971, Ch. 625, page 1186, codified as Article 2688y, V.C.S., is unconstitutional and void, and consequently the office of county school superintendent continues to exist in Matagorda County.

Very truly yours,


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Attorney General of Texas

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