



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

May 20, 1977

Honorable Oscar H. Mauzy
Chairman
Senate Education Committee
Senate of the State of Texas
Austin, Texas

Opinion No. H-997

Re: Whether MH/MR state
schools are entitled to a
distribution from the
Available School Fund.

Dear Senator Mauzy:

You have requested our opinion regarding whether state schools of the Department of Mental Health and Mental Retardation are entitled to a distribution of the state available school fund.

The Available School Fund is created by article 7, section 5 of the Texas Constitution, and the composition of the state available school fund is described in section 15.01(b) of the Education Code.

In our opinion, state schools of the Department of Mental Health and Mental Retardation, even though created as separate school "districts," are not eligible to receive a portion of the state available school fund. The Education Code, which provides for the distribution of the available fund, is not applicable to the institutions of the Department of Mental Health and Mental Retardation:

This code shall not apply to those eleemosynary institutions under the control and direction of the Department of Mental Health and Mental Retardation or to the institutions and activities of the Texas Youth Council.

Education Code § 1.04(b). Although it might be argued that the Education Code, by excepting from its application "the eleemosynary institutions under the control and direction of the Department" does not thereby except the school districts of the various institutions, it is clear that the districts

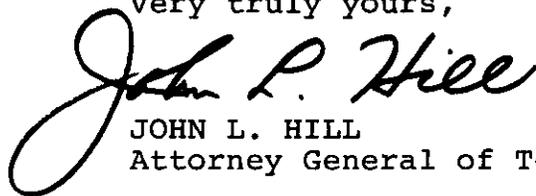
are creatures of the Department. In every case, the territorial limits of the district are coextensive with the boundaries of the institution. Furthermore, members of the Board of Mental Health and Mental Retardation serve as ex-officio trustees for each district. See, e.g., V.T.C.S. arts. 2668a; 2668b; 2668c; 2668d; 2668e; 3263e.

Since the Education Code provides for the distribution of the state available school fund, and since the Code is inapplicable to institutions under the control of the Department of Mental Health and Mental Retardation, it is our opinion that the state schools of the Department are not entitled to a distribution of the state available school fund under current provisions of the Education Code.

S U M M A R Y

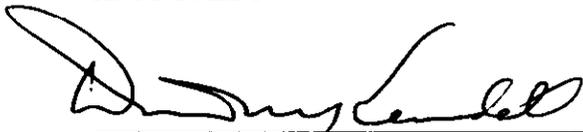
State schools of the Department of Mental Health and Mental Retardation are not entitled to share in the distribution of the state available school fund under current provisions of the Education Code.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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