



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 29, 1996

The Honorable James Warren Smith, Jr.
County Attorney
Frio County
P.O. Box V
Pearsall, Texas 78061-1138

Letter Opinion No. 96-022

Re: Whether a former member of a school district board of trustees who resigned prior to the effective date of section 11.063 of the Education Code is eligible for employment as a teacher in that district (ID# 35270)

Dear Mr. Smith:

You ask whether a former member of the Pearsall Independent School District Board of Trustees, who resigned from the board on February 10, 1995, and whose appointed replacement was sworn in on February 15, 1995, is subject to the one-year prohibition against employment with the school district contained in section 11.063 of the Education Code. That section is a new provision that was added in the Seventy-fourth Legislature's Senate Bill 1, a revision of the Education Code. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 1, 1995 Tex. Sess. Law Serv. 2207, 2227. Section 11.063, which became effective upon passage of Senate Bill 1, *see id.* § 86, at 2505, provides: "A trustee of an independent school district may not accept employment with that school district until the first anniversary of the date the trustee's membership on the board ends."

Before the enactment of Senate Bill 1, the Education Code contained no such prohibition; former section 23.20 of the Education Code provided only that "[a] trustee of a school district is prohibited from applying for or soliciting employment with that school district until the trustee's current term has expired or until the trustee has resigned and a successor has been named to fill the vacancy created by the resignation," Act of May 29, 1993, 73d Leg., R.S., ch. 964, § 1, 1993 Tex. Gen. Laws 4200, 4200, *repealed* by Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 58(a)(1), 1995 Tex. Sess. Law Serv. 2207, 2498. Under former section 23.20, the former trustee in question would now be eligible for employment with the Pearsall Independent School District; but if section 11.063 applies, the former trustee is ineligible for employment until February 15, 1996.

Section 11.063 refers to "[a] trustee," not a *former* trustee, but the reference must include a former trustee, at least to some extent, or else the prohibition would be useless. To construe the provision as applying only to persons who are currently trustees would render it a nullity and an absurdity, as any trustee who resigned and was replaced would

then no longer be a “trustee” subject to the one-year prohibition. “[I]t is not presumed that the legislature intended to do or require an absurd, foolish, impossible, or useless thing.” 67 TEX. JUR. 3D *Statutes* § 133, at 738 (1989).

Still, your opinion request raises the question of whether the provision applies to a person who already was a former trustee on the date the statute became effective. Having researched the provision’s legislative history and having found nothing helpful, we must rely on rules of construction to determine the appropriate meaning to ascribe to the provision.

Section 311.022 of the Government Code provides that “[a] statute is presumed to be prospective in its operation unless expressly made retrospective.” A memorandum you submitted with your request suggests that a court might interpret section 11.063 as applying only to a person who is a trustee and then becomes a former trustee on or after the date of effectiveness of that provision. The alternative construction would be that the prohibition includes all persons who have been trustees within one year prior to the effective date of the provision. The first of these two constructions would make section 11.063 prospective in its application; the second would make it retrospective. Section 11.063 is not made expressly retrospective anywhere in the session law that added it, so the presumption in favor of prospectivity would make that provision apply only to a person who is a trustee and becomes a former trustee on or after the effective date of the provision.

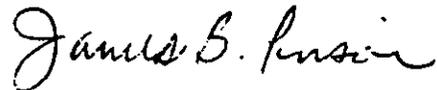
We note that there would probably be no constitutional impediment to section 11.063 if its prohibition did include former trustees who had been trustees within one year prior to the effective date of the provision. *See generally State v. Project Principle, Inc.*, 724 S.W.2d 387, 390 (Tex. 1987) (holding that teaching certificate is merely license conferring no vested rights, not contract within meaning of Tex. Const. art. I, § 16, which prohibits retroactive laws impairing vested rights); *Bryant v. State*, 457 S.W.2d 72, 78-79 (Tex. Civ. App.—Eastland 1970, writ ref’d n.r.e.) (holding that right to practice law is not such property right as is immune to regulation under legislature’s police power, and such regulation does not violate constitutional prohibition of retroactive laws). To construe section 11.063 so that it is retrospective would, nonetheless, violate the constructional presumption in favor of prospective application of statutes. *See. e.g., Coastal Indus. Water Auth. v. Trinity Portland Cement Div., Gen. Portland Cement Co.*, 563 S.W.2d 916 (Tex. 1978) (noting rule that statutes will be applied prospectively even when there is no constitutional impediment to retroactive operation) (citing authorities).

For the foregoing reasons, we believe a court would hold that section 11.063 applies only to a person who is a trustee and becomes a former trustee on or after the section’s effective date, May 27, 1995. We therefore conclude that the former trustee about which you ask is not subject to the prohibition of section 11.063.

S U M M A R Y

The one-year prohibition in Education Code section 11.063 against a former school district trustee's employment with that former trustee's school district applies only to a person who is a trustee and becomes a former trustee on or after the section's effective date, May 27, 1995.

Yours very truly,

A handwritten signature in cursive script that reads "James B. Pinson".

James B. Pinson
Assistant Attorney General
Opinion Committee