



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable M. E. Gates
County Attorney
Walker County
Huntsville, Texas

This Opinion
Overrules Opinion
#0-46156-47058-7053

2/20 for as they conflict

Dear Mr. Gates:

Opinion No. 0-7241

Re: Construction of S. B. 167,
49th Legislature - State
Equalization School Law.

This will acknowledge receipt of your letter asking for our opinion upon the above-captioned subject-matter, your letter being in part as follows:

"As County Attorney of Walker County, I have been requested by Dr. Joseph R. Griggs, Superintendent of the Huntsville School, to present a question of legal interpretation relative to the state equalization law as it applies to the application of that law to the Huntsville Independent School District. I have before me your Opinion No. 0-2357a, Re: Eligibility of Graham Independent School District for Transportation. On page 3, paragraph 2 of that opinion, you make this statement: 'Special statutory provisions control those which are merely general.'

"* * *"

"The question I now present to you is really an interpretation of your statement that 'Special statutory provisions control those which are merely general.' Does this mean that the special provision of Article V take precedence over the general eligibility provisions of Article I, section 1, and especially as it relates to paragraph 4 of section 1.

"The Huntsville Independent School District does conform to the county unit system of transportation and it receives no other type of aid, either tuition or salary, and it does comprise three or more consolidated districts and it contains fifty square miles or more of territory, and it is applying for transporta-

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tion aid only on a transportation budget which shows a need therefor on the basis and at the rate provided in this Act. Under these circumstances, is the Huntsville Independent School District eligible to receive such transportation aid only, irrespective of any provision of section 1, with the approval of the Director of Equalization and the Legislative Accountant?"

At the time your request came in this Department was considering the propriety of a re-consideration of Opinion No. O-2357a, touching the question involved, and the result of our conferences is the basis for this reply.

Your question calls for a construction of Senate Bill No. 167, Chapter 361 of the Regular Session of the 49th Legislature, particularly Articles I and V thereof.

Section 1 of Article I deals with the general subject of Eligibility for Aid, and is as follows:

"Scholastic Population of the District. State aid under the provisions of this Act shall be distributed in such a way as to assist all school districts which have not fewer than twenty (20) nor more than twelve hundred fifty (1250) original enumerated scholastics within the grades classified to be taught remaining in the district after transfers out, and consolidated and/or rural high school districts which have an average of not more than two hundred (200) scholastics of each original district composing the consolidated and/or rural high school district unit; provided that the maximum limitations as to scholastic population for eligibility herein set forth shall not apply for any type of aid to any school district which is nine (9) miles or more in length or contains forty-eight (48) square miles of territory or more, provided there is not located in such district an incorporated city or town having a population of more than thirty-six hundred (3600) inhabitants, according to the last preceding Federal Census; provided further, that the maximum limitations as to the scholastic population for eligibility, herein set forth, shall not apply to any school

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district which has forty-five percent (45%) or more of its area submerged. Districts maintaining a school at home and having less than an average of one enumerated scholastic per square mile are exempt from said minimum scholastic requirement and are eligible for aid for only one teacher unless a geographical barrier necessitates the operation of two schools for the same race in said district, such geographical barrier to be determined by the State Department of Education and subject to the approval of the Legislative Accountant. If they can show budgetary need therefor, all other districts having less than said minimum scholastic requirement shall be eligible for only tuition and transportation aid to the nearest accredited school on enumerated scholastics whose grades are not taught in such district.

"All school districts in this state which have received transportation aid only on a transportation budget, during the biennium ending August 31, 1945, notwithstanding any of the provisions of any preceding or subsequent provision of this Act, shall be authorized to receive the same type of aid which it formerly received to the extent of Two Dollars (\$2.00) per month per pupil on pupils actually transported who live two and one-half (2 1/2) miles or more from the school to which they are transported, provided it can show transportation budgetary need therefor.

"Provided that school districts in counties having a scholastic population equivalent to one-half of one pupil per square mile or less in the entire county may be exempt from the average daily attendance requirement and the teacher-pupil quota requirement of this Act, if it is so recommended by the State Superintendent of Public Instruction and approved by the Legislative Accountant, for the purpose of maintaining a high school of sixteen affiliated units, with seven teachers; but in no instance may the cost to the equalization fund exceed Twenty-five Dollars (\$25.00) per pupil in such district.

"No school district will be eligible for any type of aid, except tuition aid, under the provisions of this Act, which pays any salary above those specified in this Act from any state, local, or Federal funds whatsoever except Federal funds, used to supplement salaries of Vocational Agriculture, Home Economics and Trade and Industries teachers, and funds from the Federal Lanham Act.

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"Provided that the salaries of athletic directors, band directors or lunch room supervisors may be supplemented, from funds derived from sources other than taxes, without making the school ineligible under this Section; and provided further, that teachers who also serve as bus drivers, but who perform no administrative duties, may be paid an additional salary as bus drivers out of any funds of the district derived from a local maintenance tax in excess of the local maintenance tax of Fifty Cents (50¢) on the One Hundred Dollars (\$100.00) valuation required to be levied by Section 2 of Article I hereof; provided further, that the additional salary paid for serving as bus driver shall conform to the salary scale paid other bus drivers of the district, and an itemized list of all such supplements shall be furnished the State Department of Education and the Legislative Accountant with the general budget of the district."

Article V, dealing with the specific subject of Transportation Aid, is as follows:

"The County Superintendent and County School Boards of the several counties of this state subject to the approval of the State Superintendent of Public Instruction, are hereby authorized to annually set up the most economical system of transportation possible for the purpose of transporting both grade and high school pupils from their districts, and within their districts. The county shall be regarded as the unit and the warrant made payable to the County Board Transportation Fund, on the total transportation earned within the county not to exceed the total approved cost thereof; and the County Board of Education shall distribute the funds equitably to the districts operating such transportation system not to exceed the actual approved cost of any one (1) bus so operated. The expenses of such transportation shall be paid on the basis of budgetary need as indicated by approved State Aid application, out of the funds herein allocated and appropriated for transportation aid, not to exceed Three Dollars (\$3.00) per month per pupil for high school pupils and Two Dollars and Seventy-five Cents (\$2.75) per month per pupil for elementary school pupils for those attending the most convenient accredited school; provided

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that if there be no convenient accredited school that such pupil may obtain like aid under the provisions of this Article when attending any near school of higher classification than the sending district, when designated by the County Board on the basis of Three Dollars (\$3.00) per month per pupil for high school pupils and Two Dollars and Seventy-five Cents (\$2.75) per month per pupil for elementary school pupils who reside two and one-half (2 1/2) miles or more from the nearest school in such district; provided further, that all school districts containing one hundred (100) square miles of territory or more or which have less than one (1) enumerated scholastic per square mile may receive Three Dollars and Twenty-five Cents (\$3.25) per month per pupil; provided further, that all counties having less than three (3) enumerated scholastics per square mile in the entire county shall receive Three Dollars and Fifty Cents (\$3.50) per month per pupil as transportation aid when there is a need shown therefor as provided herein.

*In no instance may aid be granted for pupils transported who attend a grade in another school, which grade is taught in such pupil's home district. No transportation aid shall be granted for a pupil being transported out of his home school district if two or more receiving schools are applying for transportation aid from such pupil's home district unless the bus routes through such district have been approved by the State Department of Education and confirmed by the Legislative Accountant. Aid shall not be granted under any provisions of this Article unless the pupil so transported actually resides more than two and one-half (2 1/2) miles from the school attended and is transported in an approved bus over an approved route. Provided that the County Superintendents shall locate a point on each bus route two and one-half (2 1/2) miles from the receiving school, and after such point is established he shall personally determine whether the school is requesting transportation aid on any pupil residing within the two and one-half (2 1/2) mile limit. No transportation aid shall be allowed on pupils living within the said two and one-half (2 1/2) mile limit and any district requesting aid on such pupil shall become ineligible for transportation aid on each bus transporting such pupils;

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provided however, all school districts conforming to County Unit System of Transportation and receiving no other type of aid, either tuition or salary, and comprising three or more consolidated districts containing fifty (50) square miles or more of territory, may receive transportation aid only on a transportation budget showing need therefor on the basis and at the rate provided in this Act.

"County Boards of Trustees are hereby authorized to employ bus drivers for one year, and the salary of no bus driver may be paid out of the County Board Transportation Fund created herein unless such bus driver is so employed. Provided further, that only pupils or persons directly connected with the school system shall be transported on school buses while in the process of transporting pupils to and from the school, and any bus driver violating the foregoing provisions shall forfeit his contract and shall be immediately discharged by the County Board of Trustees. However, subject to the provisions herein, bus drivers who own their own buses, and are so employed, may be given a contract for not to exceed two (2) years, conditioned that said bus drivers agree to make improvements on their buses, so as to more adequately insure safer transportation for the scholastics, and the route of such bus is not changed for the second year of the contract.

The crux of your inquiry is whether or not there is a conflict between Section 1 and Article V of the Act with respect to the item of transportation aid, and if so, which provision controls. The task, therefore, becomes one purely of statutory construction.

The intention of the Legislature, as discovered from the Act, is the one unfailing rule for construing any statutory act. That intention is to be gathered from the four corners of the instrument as a whole, when read in the light of the purpose as contained in the title, and in the light of each and every part of the Act considered collectively and separately, construing the parts, where possible, in such a way that each and every part may stand as valid, and that no part thereof may be stricken out or ignored.

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When this Act is thus considered, we reach the conclusion there is no conflict between its parts, and that all parts may stand and be given a meaning consistent with all the other parts.

Specifically, we think there is no conflict between the above-quoted portions, but on the contrary, Section 1 of Article I constitutes the enacting clause covering the whole subject of aid, and Article V deals with the specific subject of transportation aid.

It is a familiar rule of construction of a statute that the office or function of a proviso, exception, or saving clause is to take out of the general enacting clause something that otherwise would be included therein. It is not required that the exception, proviso or saving clause be in the same section, article or part of the Act -- its mechanical place in the construction being of no controlling importance. Sutherland on Statutory Construction thus epitomizes the general rules, as follows:

"It is the office of the proviso to restrict the general operation of the enacting part of the act (Sec. 4932) * * *. Although originally the proviso was to restrict only the section to which it was attached, the modern rule applies the proviso to all sections of the act, if it can be determined that was the legislative intention. Although the form and the location of the proviso may be some indication of the legislative intent, form alone will not control. No presumption should arise from the mere location of the proviso that it is applicable only to the section in which it appears or to preceding sections. (Sec. 4934) * * *. Provisos and exceptions both operate to restrict the generality of legislative language. Normally a proviso occurs within the body of the section, while an exception is drafted as an individual section.

"The older rule strictly interpreted both exceptions and provisos. Today exceptions and to some extent provisos are interpreted principally in view of the legislative intent and no presumption arises because of the form of the Act that the interpretation must be strict. Generally an exception is considered as a limitation only upon the matter which precedes it, but if it is clear from the legislative intent that it is considered a general limitation on

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the entire act it will operate to restrict all provisions of the act." (Sec. 4936)

This rule of construction is akin to, if not identical with the further rule that an act dealing with a specific subject will control another act dealing with a general subject that would otherwise include the specific one.

Applying these well-recognized rules of construction, we find that Section 1 of Article I deals with the general subject of eligibility for aid. This would, of course, include transportation aid, should that section stand alone in the statute. It makes certain specific requirements in very strong and emphatic terms, as will be readily seen from the most casual reading thereof.

Article V deals with the narrow, specific subject of transportation aid. It speaks with respect to transportation not only to and from schools eligible for aid under Section 1, but contains more. It covers fully the entire subject of transportation, among other things saying:

"Provided further that all school districts containing one hundred (100) square miles of territory or more, or which have less than one enumerated scholastic per square mile may receive three dollars and twenty-five cents (\$3.25) per month per pupil; provided further, that all counties having less than three (3) enumerated scholastics per square mile in the entire county shall receive three dollars and fifty cents (\$3.50) per month per pupil as transportation aid when there is a need shown therefor as provided herein."

The obvious purpose, we think, of the Legislature was to make provision, as it did in Article V, for transportation aid, irrespective of the question of general eligibility for aid, as required in Section 1 of Article I.

Our Opinion No. 0-2357a mentioned by you, after quoting Section 10 of the Act, as it then existed, held:

"Special statutory provisions control those which are merely general. In our opinion, the special provisions of Section 10 relating to transportation aid, and with respect to districts larger than one hundred square miles, control and must be given effect. Hence, if the Graham district contains more than one hundred

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square miles, and need for transportation aid is shown, it may receive such aid, if recommended by the Director of Equalization and approved by the joint legislative advisory committee."

We think that opinion announced a correct conclusion under sound principles of statutory construction, and we here now re-affirm it, the present statutes being in all substantial respects the same as those existing when that opinion was written. Any and all subsequent opinions in conflict with this opinion are hereby overruled.

It follows, of course, that any district entitled to transportation aid, under the terms of Article V, is entitled thereto, whether such district complies with any of the general requirements for eligibility, under Section 1 of Article I or not.

Likewise any district that conforms to the County Unit System of transportation, and receives no other type of aid, either tuition or salary, and which comprises three or more independent districts, and contains fifty (50) square miles of territory, and which is applying for transportation aid only on a transportation budget, and which shows a need therefor on the basis and at the rate provided for in the Act, as does Huntville Independent School District, is entitled to such transportation aid.

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY

Ocie Speer
Ocie Speer
Assistant

APPROVED MAY 29, 1946

Arb. Ashley
FIRST ASSISTANT
ATTORNEY GENERAL

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