



THE ATTORNEY GENERAL OF TEXAS

PRICE DANIEL
ATTORNEY GENERAL

AUSTIN 11, TEXAS

February 4, 1949

Hon. John B. Stapleton Opinion No. V-766.
District Attorney
110th Judicial District Re: The legality of simultaneous separate consolidation elections which will consolidate Floydada Independent School District and such contiguous common school districts as vote favorably in their separate elections.

Dear Sir:

We refer to your letters of December 20 and 31, 1948, wherein you have requested an opinion concerning the legality of simultaneously holding separate consolidation elections between Floydada Independent School District and each of several contiguous common school districts with a view to creating a new school district which would include the Floydada District and such of the others as vote favorably on consolidation.

Article 2806, V.C.S., as amended, provides in part:

"On the petition of twenty (20) or a majority of the legally qualified voters of each of several contiguous common school districts, or contiguous independent school districts, praying for the consolidation of such districts for school purposes, the County Judge shall issue an order for an election to be held on the same day in each such district. The County Judge shall give notice of the date of such elections by publication of the order in some newspaper published in the county for twenty (20) days prior to the date on which such elections are ordered, or by posting a notice of such elections in each of the districts, or by both such publication and posted notice. The Commissioners' Court shall, at its next meeting, canvass the returns of

such elections, and if the votes cast in each and all districts show a majority in each district voting separately in favor of such consolidation, the Court shall declare the school districts consolidated." (Emphasis ours.)

This statute provides the specific method or procedure by which "A" District, "B" District and "C" District may be consolidated with the Floydada I. S. D. at the same instant to form a single new consolidated school district. It requires the presentation of a petition to the County Judge containing 20, or a majority, of the qualified voters of each of the contiguous districts praying for consolidation of such districts for school purposes.

Under its express provisions the consolidation of such four districts can be effected only where the proposed consolidation has carried by a majority vote in each district at an election held separately in each of the interested school districts. A. G. Opinion V-531 and cases cited therein. Under its requirements the Commissioners' Court would be without authority to declare a consolidation of any less number of districts than the four voting at the election called for said purpose.

Clearly Article 2806 contemplates, the required petition being proper, that an election be called to be held in each of the districts on whether the four contiguous school districts shall be consolidated to form a new school district comprising such four former school districts. Can it be said as a matter of law that any one of the districts vote on the question of consolidation with the three other districts when it votes only on the proposition whether it shall consolidate with the Floydada district as it exists at the time of the election? To state the question is to give a negative answer.

The identical question has been before this department on several occasions involving the matter of approval of bonds issued by consolidated districts, and in each instance the same conclusion was reached. As recently as November 19, 1948, the Attorney General advised such a district by letter as follows:

"Article 2806 provides, in effect, that on the petition of twenty or a majority of the legally qualified voters of each of several school districts praying for the consolidation of such districts for school purposes, the county judge shall order an election to be held on the same day in each such district. Our interpretation of this provision is that the petition must pray for the consolidation of all the school districts affected. However, the petition of each common school district prays only for the consolidation of such districts, respectively, with the . . . District. Moreover, the election notices, election returns and canvassing orders were prepared similarly. It is the opinion of this Department that this error is fundamental."

The construction by the Attorney General of the provisions of Article 2806 was widely known. It is an established principle of statutory construction that the interpretations of the Attorney General of the provisions of the law, although not binding on the courts, is highly persuasive. The interpretation of the Attorney General of the provisions of Article 2806 was of general knowledge long prior to the session of the last Legislature. However, Article 2806 was not amended or changed.

The purpose of Article 2806, in our opinion, is not for the enlargement of any one school district in any manner such as advanced by the Floydada district. Rather, it is to enable the creation of a new, larger school district by the consolidation of two or more smaller districts when each of such interested petitioning districts vote in favor thereof. County Bd. of School Trustees of Limestone County v. Wilson, 15 S. W. (2d) 144; State v. Cadenhead, 129 S. W. (2d) 743; Trinity I. S. D. v. Dist. Trustees, etc., 135 S. W. (2d) 1021; Weaver v. Bd. of Trustees of Wilson I. S. D., 184 S. W. (2d) 864; Pyote I. S. D. v. Dyer, 34 S. W. (2d) 578; Bigfoot I. S. D. v. Genard, 116 S. W. (2d) 804; A. G. Opinion No. V-562. Article 2806 specifically providing the sole procedure by which school districts may be consolidated and authorizing consolidations of such districts only when each petitioning district votes in favor of consolidating such districts, it follows that no school district may accomplish by indirection that

which may not be done directly under said statute. The Floydada district may not legally accomplish consolidation in the manner it proposes. It is an accepted rule of statutory construction that where the performance of a certain thing in a particular manner or by a particular person is directed, there is an implied command that it be not done otherwise, or by some other person. 59 C. J. 984; County School Trustees v. Marshall County L. I. Sch. Dist., 95 S. W. (2d) 204 at 206.

In Rhea C. S. D. v. Bovina I. S. D., 214 S. W. (2d) 660, cited in your brief, the facts were that there was no concerted plan on the part of the districts involved to thwart the plain provisions and procedure of Article 2806. This constitutes in our opinion a fundamental distinguishable ground sufficient for advising that the Rhea-Bovina Case is inapplicable to the question presented herein. Under the facts of Rhea-Bovina Case, the Oklahoma and Bovina districts acting under Article 2806 filed their petition on April 8, 1948, with the County Judge who promptly called an election for May 8 on the issue of their consolidation. On April 14, the Rhea and Bovina districts filed their petitions with the same County Judge who called an election for May 8 on the issue of their consolidation. In the election, the Oklahoma-Bovina Consolidation failed to carry, but the Rhea-Bovina consolidation did carry. The latter two districts were declared consolidated and said election was declared valid by the trial court whose judgment was affirmed in the cited opinion of the Court of Civil Appeals.

What the court's judgment would have been in this election contest case had the Oklahoma-Bovina Consolidation also carried, it did not attempt to decide or comment upon. But the Court did point out in its opinion at page 662 that, "The certified copy of these proceedings clearly and affirmatively evidence an intention to consolidate the Rhea district with the Bovina district, and thus we find the elections of May 8 to be valid. . ." Certainly the same copy of the proceedings showing such intention to consolidate Rhea and the Bovina districts could not in any wise be construed as evidencing an intention to consolidate the Rhea district to the Oklahoma-Bovina new school entity, assuming, for the moment, that the Oklahoma-Bovina consolidation had also carried.

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Before the election proceedings may clearly and affirmatively evidence an intention to consolidate Floydada district and districts "A", "B", and "C", the petitions required of each such district under Article 2806, the election order, election notices, the ballots used in each of such districts, and the declaration of the Commissioners' Court must show that each district proposed to be consolidated voted favorably on the proposition of consolidation with each of the other three districts. Any other proceedings, in our opinion, contravene the plain provisions of Article 2806, as amended.

SUMMARY

In the consolidation of school districts, all school districts involved must be named in the petition and other election proceedings. The proposed plan whereby contiguous school districts in simultaneous separate consolidation elections attempt to consolidate Floydada I. S. D. and such districts as vote favorably in their separate elections contravenes the provisions of Article 2806, V. C. S., as amended.

Yours very truly,

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