



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

June 18, 1951

Hon. Dennis Zimmermann  
County Attorney  
Swisher County  
Tulia, Texas

Opinion No. V-1193

Re: Eligibility to vote in  
elections to convert  
rural high school dis-  
tricts into independent  
school districts.

Dear Sir:

We refer to your request for an opinion of this office concerning eligibility to vote in an election to convert a rural high school district into an independent school district. S.B. 316, Acts 52nd Leg., R. S. 1951, ch. 42, p. 69, codified in Vernon's Civil Statutes as Art. 29221(5).

Article 29221(5), supra, provides in part as follows:

"Section 1. Upon a petition properly signed by twenty (20), or a majority, of the legally qualified property taxpaying voters residing in any rural high school district in which there is maintained a first-class high school of twelve (12) grades, offering sixteen (16) or more credits, the County Judge of said county shall issue an order calling for an election to be held not less than twenty (20) nor more than thirty (30) days from the date of filing of said petition, for the purpose of converting the rural high school district into an independent school district for school purposes. After said election is held, the Commissioners Court shall canvass the returns thereof as in other similar elections, and if the majority of the votes cast favor the change from a rural high school district into an independent school district, then said Commissioners Court shall enter its order to that effect and incorporating said independent school district. . . . Thereupon, such 'independent school district' shall thereafter be regarded as duly incorporated for free school purposes only and shall have and is

hereby vested with all the rights, powers and privileges conferred and imposed by the General Laws of this State upon independent school districts.

". . .

"Sec. 4. All bonds issued by and outstanding against any such rural high school district, as a school district, and all obligations, contracts and indebtedness existing against the rural high school district, shall become the obligations and debts of the independent school district at the time of its incorporation; and the said independent school district, after same has been incorporated, shall be held to have assumed the discharge of all such obligations, contracts and indebtedness, and the same shall be enforceable and collectible from, paid off and discharged by, the said independent school district, as if originally created by it as an independent school district; and it shall not be necessary to call an election within and for such district for the purpose of assuming such bonds and other indebtedness. . . ." (Emphasis added.)

In connection with that law, you ask these questions:

1. Is the election limited to only qualified property taxpaying voters?
2. Who is to pay for the expenses of holding the election?

It is observed that Article 29221(5) provides that the petition invoking power in a county judge to call such an incorporation election must be "properly signed by twenty (20), or a majority, of the legally qualified property taxpaying voters residing in any rural high school district" designated therein. But the law does not state the qualification of voters who may vote in a called election. It simply states that "if the majority of votes cast favor the change . . . said Commissioners Court shall enter its order to that effect."

A similar situation is apparent in Article 2742j, V.C.S., as amended. That law provides for the incorporation of certain common school districts into independent

school districts. In an opinion of this office concerning qualified voters under Article 2742j, it was held that all persons who are qualified voters and who are residents of a common school district as designated in that law, are entitled to vote in an election held under and for the purpose set out therein, citing Article 2955 on the matter of qualification. Att'y Gen. Op. V-348 (1947). Under that holding, qualified voters were not restricted to qualified property taxpaying voters. The similarity between the provisions and wording of Section 1 of Article 2742j and Section 1 of Article 2922i(5) is so striking as to make it appear that the latter was patterned after the former.

Unless, therefore, the presence of Section 4 in Article 2922i(5), which does not appear in Article 2742j, imposes some restriction on the qualification of voters under Article 2922i(5), the holding in Opinion V-348 should control the answer to your first question.

The purpose of Article 2922i(5) is singular. It is to provide for the incorporation by election of a rural high school district (classified as common under Article 2922b, V.C.S.) into an independent school district. The boundaries of the successor district resulting from such an election favoring the conversion will be coterminous with those of the former rural high school district. The obligations, bonded and other indebtedness, of the original district will become those of the successor district to discharge. Section 4 so provides. A school district can no more escape its obligations by incorporation or conversion than it could by dissolution. Rocky Mount Independent School Dist. v. Jackson, 152 S.W.2d 400 (Tex.Civ.App. 1941, error ref.).

Indeed, Section 6 of Article 2786b, V.C.S. specifically provides as follows:

"In each instance wherein a common school district has been or shall hereafter be converted into an independent school district and in each instance wherein a district of any kind or class has been converted into a district of any kind or class the boundaries of said original district and of said successor district being coterminous, the indebtedness of said original district shall be held and considered and is hereby declared to be the indebtedness of said successor district without the necessity of an

election of any character for the assumption of such indebtedness, and the duty is hereby imposed on the governing board of such successor district to levy and collect annually taxes against all of the property in said district, sufficient to pay the interest and to pay or provide a proportionate part of the principal thereof. . . ." (Emphasis added.)

Thus, Section 4 of Article 29221(5) merely expresses the law as set forth in Article 2786b with respect to the obligations of a school district converted without change of boundaries into another type of school district, and makes it clearly applicable to rural high school districts converted into independent school districts. Section 4 states that all bonds outstanding against any such rural high school district, as a school district, shall become the debts of the successor independent school district. The underscored phrase constitutes a limitation on the assumption of bonded indebtedness under this law, and prohibits the assumption of outstanding bonded indebtedness of elementary districts of the rural high school district which had not previously been assumed by the rural high school district, as such, under an election as provided in Article 2922h, V.C.S. It appears that Section 4 of Article 29221(5) was carefully and successfully framed to avoid violation of Section 3a of Article VI, Constitution of Texas. Clearly, it is not the purpose of Section 4 or any part of Article 29221(5) to authorize therein an election for the assumption of bonded or other indebtedness.

Since the avowed intent of Article 29221(5) is not to authorize an election for the assumption of a debt, bonded or otherwise, its sole purpose being to provide an election for the conversion of a rural high school district, it is our opinion that all persons who are qualified voters under Article 2955, V.C.S., and who are residents of the rural high school district are entitled to vote in an election held for the purpose set out in Article 29221(5). See also Art. 2954, V.C.S.

With respect to your second submitted question, Article 2746b, V.C.S., provides in part as follows:

"All expenses incurred in connection with or incidental to any school district election in connection with the public school within such school district shall be paid out

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of the available maintenance fund belonging  
to such district . . ."

See Att'y Gen. Ops. 0-623 (1939), 0-4919 (1942), 0-7187  
(1946).

It may not be amiss to direct the attention of those rural high school districts which contemplate converting or incorporating into independent school districts to the case styled Bigfoot Independent School Dist. v. Genard, 116 S.W.2d 804, affirmed in 133 Tex. 368, 129 S.W.2d 1213 (1939). It held that where, after a common school district has voted a maintenance tax, the district was regularly converted into an independent school district, the independent school district could not impose the maintenance tax without having first obtained the approval of the property taxpaying voters of the new district, notwithstanding the independent district embraced the identical territory which formed the common school district. Also see Pyote Independent School Dist. v. Dyer, 34 S.W.2d 578 (Tex Comm.App. 1931).

#### SUMMARY

All persons who are qualified voters and who are residents of a rural high school district of the designation and description set out in Senate Bill 316, Acts 52nd Leg., R.S. 1951, ch. 42, p. 69 (Art. 29221(5), V.C.S.), are entitled to vote in an election held thereunder for the conversion of such a rural high school district into an independent school district. Arts. 2954, 2955, V.C.S.; Att'y Gen. Op. V-348 (1947).

Under Article 2746b, V.C.S., the expenses of such an election shall be paid out of the available maintenance fund belonging to the district. Att'y Gen. Ops. 0-623 (1939), 0-4919 (1942), 0-7187 (1946).

APPROVED:

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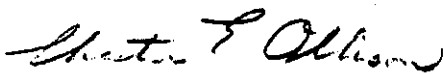
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Yours very truly,

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