



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

July 13, 1960

Honorable J. W. Edgar  
Commissioner of Education  
Austin, Texas

Opinion No. WW-882

Re: Authority of the Board of Trustees of a school district to require as a prerequisite for entrance of pupils into the first grade that they be inoculated with two Salk vaccine injections for poliomyelitis.

Dear Dr. Edgar:

You have requested an opinion as to whether the Board of Trustees of a school district has the authority to require as a prerequisite for entrance of pupils into the first grade that they be inoculated with two Salk vaccine injections for poliomyelitis. This question requires an interpretation of statutes setting forth the authority of school district trustees, particularly Article 2749, Vernon's Civil Statutes, dealing with the trustees of common school districts, and Article 2780, Vernon's Civil Statutes, dealing with the trustees of independent school districts. These two Articles are as follows:

Article 2749. (2823-4 Control of schools)

"Said trustees shall have the management and control of the public schools and public school grounds; and they shall determine how many schools shall be maintained in their school district, and at what point they shall be located; provided, that not more than one school for white children and one school for colored children shall be established for each sixteen square miles of territory or major fraction thereof, within such district; and they shall determine when the schools shall be opened and when closed. They shall have the power to employ and dismiss teachers; but in case of dismissal, teachers shall have the right of appeal to the county and

State Superintendents. They shall contract with teachers and manage and supervise the schools, subject to the rules and regulations of the county and State Superintendents; they shall approve all claims against school funds of their district; provided, that the trustees, in making contracts with teachers, shall not create a deficiency debt against the district."

Article 2780. (2892 Power of trustees)

"Said trustees shall adopt such rules, regulations and by-laws as they may deem proper; and the public free schools of such independent district shall be under their control; and they shall have the exclusive power to manage and govern said schools, and all rights and titles to property for school purposes heretofore vested in the mayor, city councils, or school trustees by articles 3995, 4013 and 4032, Revised Statutes of 1895, or other statutes, general and special, except such cities as are exempted by this title, shall be vested in said board of trustees and their successors in office; and their claims shall apply to any action or suit which may arise to which said board is a party. Acts 1905, p. 263."

It was held by this Department in Attorney General's Opinion No. O-4539 (1942) that the Board of Trustees for the Wharton Independent School District had the authority to require pupils attending the school to be vaccinated for smallpox as a prerequisite to entrance into school. Among the authorities cited in that opinion in support of its holding are Staffel et al v. San Antonio School Board of Education, et al., 201 S.W. 413 (1918), err. ref.; City of New Braunfels, et al., v. Waldschmidt, et al., 109 Tex. 302, 207 S.W. 303 (1918); Zucht v. King, et al., 225 S.W.267 (1920), err. ref.; Booth et al., v. Board of Education of Fort Worth Independent School District, 70 S.W.2d 350 (1934), err. disp. In our opinion it is clearly established under these decisions and the authorities cited therein that an ordinance, rule, or regulation by a duly constituted local governing body, whether a municipality or a school district, and within the scope of the delegated authority of the body, is not in violation of either the State or the Federal Constitution by reason of requiring vaccination for smallpox as a prerequisite for entrance to school. We believe these authorities are controlling of the question of the constitutionality of a rule by the Board of Trustees of a school

district requiring vaccination for poliomyelitis as a prerequisite for entrance to school.

Two of the four cases cited above involved questions of the authority conferred upon school district trustees by special Acts of the Legislature, while the remaining two involved questions of the propriety of city ordinances imposing vaccination requirements upon school age children. These cases are therefore not controlling, but are merely persuasive, as to the question of the authority conferred upon school district trustees by the two Articles of the general law set forth above. However this may be, it is our opinion that these two Articles do give authority to the trustees to require poliomyelitis vaccination as a prerequisite for entering school. These Articles vest in the trustees the power to "manage and supervise" or "manage and govern" the schools of their district. This general delegation of the power of supervisory control over the operation of schools is subject only to the requirement that the power be exercised reasonably--i.e., that it not be exercised without adequate information or otherwise arbitrarily and in abuse of the board's discretion. Trustees, Pleasant Grove Independent School District v. Bagsby, 237 S.W. 2d 750 (Civ. App. 1950), ref. n.r.e., cert. den. 72 S.Ct. 40, 342 U.S. 821, 96 L. Ed. 621 (1951); Bozeman v. Morrow, 34 S.W. 2d 654 (Civ. App. 1931); see Booth et al. v. Board of Education, supra. The present question, therefore, is whether the requirement of poliomyelitis vaccination is a reasonable exercise of the board's power.

The power to control and supervise schools doubtless includes the power to see to the prevention of conditions within the school which are such as to make the very act of attending school a serious threat to the health of the school child and the community generally. Furthermore, it need hardly be remarked, for it is a matter of common knowledge, that poliomyelitis is a peculiarly cruel disease, striking down the young in preference to the old and often leaving those victims who survive horribly and incurably crippled. In our opinion even a remote possibility that the congregation of unvaccinated children at school would increase the incidence of poliomyelitis among them or in the community at large would make the requirement of vaccination a reasonable one; that such a requirement would not be unreasonable is indeed the very least that can be said in its favor. You have informed us of information supplied you by the State Department of Health to the effect that poliomyelitis is a communicable and contagious disease, and on the basis of which it appears that the possibility of such an increase in the incidence of the disease as was just mentioned is by no means remote. Accordingly we have reached the conclusion that the Board of Trustees of a school district does have authority to require as a prerequisite for entrance of pupils into the first grade that they be inoculated with two Salk vaccine injections for

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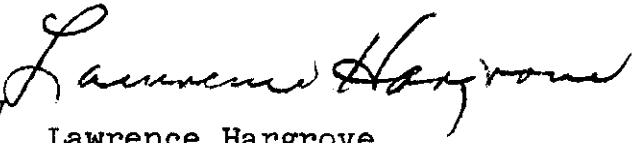
poliomyelitis.

SUMMARY

The Board of Trustees of a school district has authority under Articles 2749 or 2780, Vernon's Civil Statutes, to require as a prerequisite for entrance of pupils into the first grade that they be inoculated with two Salk vaccine injections for poliomyelitis.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
Lawrence Hargrove  
Assistant

LH:hb

APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL  
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