



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

December 20, 1960

Honorable Jack Varner
County Attorney
Nacogdoches County
Nacogdoches, Texas

Opinion No. WW-975

Re: Must a dismissed employee of an independent school district with less than 500 scholastics appeal directly to the State Commissioner of Education or must such employee appeal first to the County School Superintendent, then the County Board of School Trustees?

Dear Mr. Varner:

You recently requested the opinion of this department on the subject question. In your letter you quoted Section 1, Article 2654-7, Vernon's Civil Statutes, which reads as follows:

"Parties having any matter of dispute among them arising under provisions of the school laws of Texas, or any person or parties aggrieved by the actions or decisions of any Board of Trustees or Board of Education, may appeal in writing to the Commissioner of Education who, after due notice to the parties interested, shall examine in a hearing and render a judgment without cost to the parties involved. However, nothing contained in this Section shall deprive any party of a legal remedy."

You also quoted Article 2656, Vernon's Civil Statutes, which reads in part as follows:

"The State Superintendent shall be charged with the administration of the school laws and a general superintendency of the business relating to the public schools of the State, and he shall have printed for general distribution such number of copies of school laws as the State Board of Education may determine. He shall hear and determine all appeals from the rulings and decisions of subordinate school officers, and all such officers and teachers shall conform to his decisions. Appeal shall always be from his rulings to the State Board. . . ."

Additionally, you quoted Article 2686, Vernon's Civil Statutes, which reads in part as follows:

"All appeals from the County Superintendent of Public Instruction shall lie to the County Board of Trustees, and should either party decide to further appeal such matters, they are here given the right to elect to appeal to any court having proper jurisdiction of the subject matter; or to the State Superintendent of Public Instruction as now provided by law, . . ."

Article 2690, Vernon's Civil Statutes, reads in part as follows:

". . . In such independent school districts as have less than five hundred scholastic population, the reports of the principals and treasurers to the State Department of Education shall be approved by the county superintendent before they are forwarded to the State Superintendent. All appeals in such independent school districts shall lie to the county superintendent, and from the decisions of the county superintendent to the State Superintendent, and thence to the State Board of Education."

We notice that Articles 2654-7, Section 1, 2656 and 2686, Vernon's Civil Statutes, do not deal specifically with the subject question. However, Article 2690 does, in specific terms, answer the subject question. A reading of Article 2690 clearly reflects that all appeals in an independent school district having less than five hundred scholastics shall go to the county superintendent, then to the State Superintendent (now the State Commissioner of Education) and then to the State Board of Education.

A familiar and established rule of statutory construction is that a general provision is limited by a specific provision when such provisions are in conflict and when they are in *pari materia*. In State ex rel Peden v. Valentine, 198 S.W. 1006 (Civ. App., October 1917, writ ref.), where the court was concerned with two provisions of the Texas Constitution which were in conflict, the Court stated as follows:

". . . It is a well-settled rule in the construction of constitutional law that a general provision sufficiently comprehensive to include a given subject-matter will be controlled by another provision specifically relating to the same subject-matter. . . ."

In Perez v. Perez, 59 Tex. 322, the rule is stated thusly:

" . . . The general rule is that when the law makes a general provision, apparently for all cases, and a special provision for a particular class, the general must yield to the special clause, so far as the particular class is concerned. . . ."

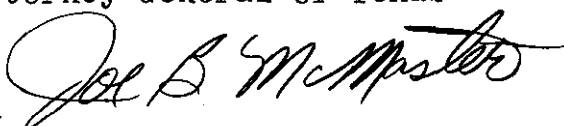
Article 2690, Vernon's Civil Statutes, is the only statute we have found that specifically deals with appeals from independent school districts with a scholastic population of less than five hundred. Articles 2654-7, Section 1, 2656 and 2686, all deal, in general terms, with appeals of rulings or decisions of certain school officials and are therefore in pari materia with Article 2690. In view of the rule of statutory construction as set out in Peden v. Valentine and Perez v. Perez, both supra, it is our opinion that Article 2690 controls the subject question.

SUMMARY

If a dismissed employee of an independent school district with a scholastic population of less than five hundred desires to appeal from such dismissal, he should appeal to the county superintendent and then to the State Commissioner of Education, and then to the State Board of Education.

Yours very truly,

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By 
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APPROVED:

OPINION COMMITTEE
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REVIEWED FOR THE ATTORNEY GENERAL
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