THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

August 30, 1962

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

Opinion No. WW-1425

Re: Whether, under the facts stated, a school district may grant certain requested transfers of pupils without invoking the penalties prescribed in Section 4 of Article 2900a, Vernon's Civil Statutes.

Dear Dr. Edgar:

You have requested an opinion from this office upon the question of:

> "Legally, may a school district grant or allow such requested transfers of pupils without invoking the penalties prescribed in Section 4 of Article 2900a, where the current dual school system has not been abolished by an election or final court decree?"

In connection with the question posed you set forth the further information that:

> "A Texas school district has not abolished its dual school system in the manner authorized in Sections 1 and 2 of Article 2900a; no petition prerequisite to the calling of an election therefor having been initiated or presented. Since it did not maintain integrated schools for the 1956-57 school year, it does not come within the exception set out in Section 3. Its dual system, operation of a twelve-grade system separately for each race, has not been abolished by judicial decree; nor is the district currently engaged in litigation of the nature involved in Opinion WW-931.
>
> "Recently its school board has received an application from a Negro parent resident requesting transfer of his children previously enrolled in the district Negro school to enrollment in its white attendants school for the 1962-63 school year, beginning September.

Section 1 of Article 2900a, Vernon's Civil Statutes, provides:

> "That no board of trustees nor any other school authority shall have the right to abolish the dual public school system nor to abolish arrangements for transfer out of the district for students of any minority race, unless by a prior vote of the qualified electors residing in such district the dual school system therein is abolished."

Section 4 of Article 2900a provides that:

> "Any school district wherein the board of trustees shall violate any of the above provisions shall be ineligible for accreditation and ineligible to receive any Foundation Program Funds during the period of time of such violation. Any person who violates any provision hereof shall be guilty of a misdemeanor and shall be fined not less than One Hundred Dollars ($100) nor more than One Thousand Dollars ($1,000)."

Section 3 of Article 2900a provides that:

> "School districts which maintained integrated schools for the 1956-1957 school year shall be permitted to continue doing so hereafter unless such system is abolished in accordance with the provisions of this Act. No student shall be denied transfer from one school to another because of race or color." (Emphasis added).

As the last sentence of Section 3 of Article 2900a provides that a student's race or color cannot be a factor in denying the transfer of such student from one public school to another, the question is raised in regard to the facts posed in the instant case, as to what effect this has upon the provisions contained in Section 1 of Article 2900a that no board of trustees or other school authority shall have the authority to abolish the dual public school system except after an election as provided for pursuant to Article 2900a. Put in another way--does the last sentence of Section 3 of Article 2900a offer a means by which the language and effect of Section 1 of Article 2900a can be circumvented?

39 Tex. Jur. 222, Statutes, Sec. 118, provides that:

> "The court will never adopt a construction that will make a statute absurd or ridiculous, or one that will lead to absurd conclusions or consequences, if the language of the enactment is susceptible of any other meaning. Nor will application be made of any rule of construction that, in the circumstances, will lead to absurdity. Thus it has been decided that a statute or provision should not be given a construction rendering it fruitless, futile, meaningless, purposeless, or useless, when the language can be otherwise construed. The reason of the rule is that the Legislature is not to be credited with doing or intending a foolish, useless or vain thing, nor with requiring a futile, impossible or useless thing to be done."

To give both a literal and general effect to the phrase contained in Section 3 of Article 2900a that:

> ". . .No student shall be denied transfer from one school to another because of race or color.",

would be to completely ignore the remaining provisions contained in Article 2900a and thus nullify or render ineffective those provisions of Article 2900a which deal with the method set forth by the Legislature for abolishing dual school systems. To give a construction to the above-quoted phrase which would in effect allow the board of trustees of a school district to circumvent the express provisions of Section 1, Section 2, and Section 4 of Article 2900a, by abolishing the dual school system by the method of transfers rather than the method of election prescribed by the Legislature, would be contrary to the rules of statutory construction laid down by the courts of this State.

The Court in the case of Davis v. Estes, 44 S.W.2d 952 (Comm.App. 1932) stated that:

> "It is a familiar rule of construction that, if a statute be subject to two interpretations, it should not be given one that would render it impossible of enforcement. . . ."

Also, the Supreme Court of Texas held in Lone Star Gas Company v. Sheaner, 157 Tex. 508, 305 S.W.2d 150 (1959) that:

> ". . .Courts will construe the language of a statute liberally to attain its true objective,

> but not to destroy or reduce its effectiveness." (Emphasis added)

In yet another case, the Supreme Court stated in Brazos River Conservation and Reclamation District v. Costello, 135 Tex. 307, 143 S.W.2d 577 (1940) that:

> ". . .The dominant rule controlling the construction of a statute is to ascertain the intention of the Legislature expressed therein. An Act should be given a fair and sensible construction, in order to carry out the purposes for which it was enacted, and not be construed in such manner as to nullify or defeat its purposes. . . ." (Emphasis added)

A reading of Article 2900a as a whole clearly reveals that the intent of this enactment was to provide for local option elections in school districts to determine whether to maintain or abolish a dual school system. The very purpose of the Act is completely nullified, however, if a construction is given to the last sentence of Section 3 of Article 2900a which would allow the dual school system to be abolished by means of individual transfer of students rather than by election.

We are of the opinion that the last sentence of Section 3 of Article 2900a must be construed to relate solely to the provisions of Section 3 of Article 2900a. This, we feel is consistent with the principle stated in 39 Tex.Jur. 209, Statutes, §113 that:

> ". . .a statute be construed as a whole and that all of its parts be harmonized, if possible, so as to give effect to the entire act according to the evident intention of the Legislature. . .It follows that a provision will not be given a meaning out of harmony with other provisions and inconsistent with the purpose of the act, although it would be susceptible of such construction if standing alone."

In addition, the last sentence of Section 3 of Article 2900a amounts to what is known in statutory construction as a "proviso." 39 Tex. Jur. 192, Statutes, §102, states that:

> "Generally a proviso is construed in connection with the article or section of which it

forms a part, . . .

"Ordinarily a proviso is limited to the clause which next precedes it and to which it is attached. . . ." (Emphasis added)

See also, Fenet v. McCuistion, 105 Tex. 299, 147 S.W. 867 (1912).

In view of these rules of statutory construction laid down by our courts, we are of the opinion that the phrase, ". . .No student shall be denied transfer from one school to another because of race or color.", contained in Section 3 of Article 2900a, cannot be used as a method of circumventing the other provisions set forth in Section 1, Section 2, and Section 4 of Article 2900a, but must be restricted in application to the provisions contained in Section 3 of Article 2900a.

Therefore, we are of the further opinion that no board of trustees of a school district or other school authority may transfer students, pursuant to the provision contained in Section 3 of Article 2900a, without incurring the penalities contained in Section 4 of Article 2900a, unless the provisions of Section 1 and Section 2 of Article 2900a are first complied with, if the result and effect of such transfers would be to abolish the dual school system within a school district. We are not passing upon the constitutionality of the quoted statutes.

SUMMARY

No board of trustees of a school district or other school authority may transfer students, pursuant to the provision contained in Section 3 of Article 2900a, without incurring the penalities contained in Section 4 of Article 2900a, unless the provisions of Section 1 and Section 2 of Article 2900a are first complied with, if the result and effect of such transfers would be to abolish the dual school system within a school district.

Yours very truly,

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APPROVED:

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