



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD G. MARTIN
ATTORNEY GENERAL**

September 29, 1969

Honorable J. W. Edgar
Commissioner of Education
Texas Education Agency
Austin, Texas 78711

Opinion No. M-480

Re: Payment and qualification of
school attendance officer in
Ellis County.

Dear Dr. Edgar:

By recent letter you have requested an opinion from this office concerning whether a county attendance officer's salary, which is payable from the county available school fund, shall be charged to the various school districts in the county for Foundation School Program purposes.

We quote from your letter as follows:

"Ellis County is comprised of eleven school districts having a total scholastic population far in excess of 3000. Ellis County School Board is considering appointment of an attendance officer to serve as such for all its school districts, pursuant to the provision of Sections 21.036 and 21.037, Texas Education Code, (Chapter 21, subchapter B of H.B. 534, Acts 61st Legislature, R.S., 1969).

"The Ellis County School Board through its executive secretary, the county superintendent, has requested this Agency to obtain an opinion from the office of Attorney General on the following question:

"Pursuant to Section 21.037(e) of the Texas Education Code, where a county school board elects an attendance officer at a salary determinable by the county board payable from the county available school fund shall the school districts of that county be held accountable for or charged with county available funds so used, in the determination of their eligibility for

minimum Foundation School Program Funds?

". . .

"Quiry 2: Must an attendance officer elected under the provisions of Section 21.036, et seq., Texas Education Code, hold a college degree and/or teacher certification as a qualification for the position?"

Subsection (e) of Section 21.037 of the Texas Education Code is quoted as follows:

"An elected attendance officer may be compensated from the available school funds belonging to the county or independent school districts."

The above quoted subsection of the Code was taken from Article 2895, Vernon's Civil Statutes, except that such Article placed a two dollar (\$2.00) per day maximum pay for such officer, whereas Section 21.037 permits the amount of pay to be discretionary with the particular body which elects the officer.

The source of the pay for the officer is the same under the prior statute (Art. 2895) and under the provisions of Section 21.037. If the county school board elects the officer, then the officer is paid from the available school funds belonging to the county. If the officer is elected by an independent school district, then he is paid from the district's available school fund.

The permanent school fund belonging to a county would be the funds or the bonds authorized to be purchased by the county with such funds, which resulted from the sale or lease of the land granted to the various counties for public school purposes. The available school fund belonging to the county would be the income derived from the investment of the county permanent school fund. Section 6 of Article VII, Vernon's Texas Constitution; Attorney General's Opinion O-5509 (1943); also see Love v. City of Dallas, 120 Tex. 351, 40 S.W.2d 20 (1931); Rushing v. Lynch, 22 S.W.2d 482 (Tex.Civ.App. 1929) no writ.

The available school funds belonging to a county are required to be assigned to the various school districts in the county according to their scholastic population. Section 5, Article 2922-16, Vernon's Civil Statutes (Sections 16.71-16.76, Texas

Education Code).

"The Foundation School Program is thus financed by an equalized local school district effort under the specified formula, distribution of state and county available school funds on the basis of the number of scholastics, and allocation to each school district of a sum of State money sufficient to finance the remaining cost of the program in that district." 51 Tex.Jur.2d, pp. 550-551, Schools, Sect. 180.

School districts are authorized by law to expend money for numerous types of goods and services. The employment of an attendance officer adds one additional service paid for by school funds. We find nothing in the statutes that would indicate that such expenditure out of the county available school funds would decrease the amount of the county available funds taken into account in allocating state funds.

Section 16.71 of the Texas Education Code provides that the Foundation School Program shall be financed from several sources, including county available school funds, and that the "remaining costs" of the Program were to be realized from state monies. In computing the latter, the county available funds are first taken into account. There is no provision in the law exempting county available funds budgeted for an attendance officer from being taken into account in determining the "remaining costs" to be paid by the State.

In Article 2827e, provision is made to expend certain funds for vocational education out of the county available fund and it is specifically provided that "such school districts shall not be held accountable for or charged with county available school funds" in determining eligibility for State funds. No such provision is made for the school attendance officer expense. We are persuaded that if the Legislature had intended that the same rule be applied concerning attendance officers, it would have so stated.

It is therefore our opinion, based upon an analysis of the operation of the Foundation School Program, that the various school districts in Ellis County would be charged with the county available funds, used in employing the attendance officer, in determining the amount of state minimum Foundation funds that the school districts would receive from the state.

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We are assuming that the trustees of the independent school districts in Ellis County concur in approving the hiring of the attendance officer. However, such independent school districts have the option of receiving their pro rata share of county available funds rather than having such funds spent in employing an attendance officer. See the reasoning in Wester v. Oge, 68 S.W. 1005 (Tex.Civ.App. 1902, error ref.).

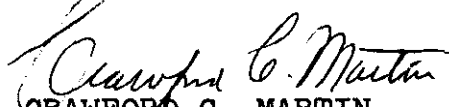
As for your second question, we find no requirement in the Texas Education Code that a school attendance officer hold a college degree or a teacher's certificate. We therefore answer your second question in the negative.

S U M M A R Y

When a county school board elects an attendance officer pursuant to Section 21.037(e) of the Texas Education Code, at a salary determined by them and payable from the county available fund, the school districts, including the independent school districts, of that county that receive the services of the attendance officer shall be charged their pro rata share of county available funds expended in employing said officer, in determining their eligibility for Foundation School Program funds.

A school attendance officer elected pursuant to the provisions of Section 21.036, et seq., Texas Education Code, is not required to have a college degree or teacher's certificate to be qualified to serve.

Yours very truly,


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APPROVED:
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