



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 9, 2020

The Honorable Isidro R. Alaniz  
49th Judicial District Attorney  
Post Office Box 1343  
Laredo, Texas 78042

Opinion No. KP-0291

Re: Whether a school district may purchase real property outside its boundaries for the purpose of constructing and operating a school (RQ-0304-KP)

The Honorable Marco A. Montemayor  
Webb County Attorney  
1110 Washington Street, Suite 301  
Laredo, Texas 78040

Dear Mr. Alaniz and Mr. Montemayor:

In this consolidated response, we address the question each of you asked regarding whether the Laredo Independent School District (the "District") may purchase land outside of its boundaries for the purpose of building and operating a middle school.<sup>1</sup> As you explain, the District determined that the current campus and facilities of Cigarroa Middle School are "no longer suitable or able to handle the present needs of its students," but the District is unable to locate suitable property for building a replacement campus within its boundaries. Alaniz Letter at 12. The District did locate land suitable for a middle school campus for sale just outside its geographic territory within the boundaries of a neighboring school district. *Id.* at 2; *see also* Montemayor Letter at 2. While state law permits a district to "operate a school or program, including an extracurricular program, or hold a class outside the boundaries of the district," you question whether this authorization encompasses the acquisition of land and the construction of a school campus outside district boundaries. TEX. EDUC. CODE § 11.167; *see also* Alaniz Letter at 2; Montemayor Letter at 2.

Independent school districts "possess only such powers and privileges as have been expressly or impliedly conferred upon them." *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 430 (Tex. 2016). The primary objective in construing statutes that confer such authority "is to give effect to the Legislature's intent," for which a "statute's plain language is the most reliable guide." *Silguero v. CSL Plasma, Inc.*, 579 S.W.3d 53, 59 (Tex. 2019). Courts also consider a statute as a whole, and "should not give one provision a meaning out of harmony or

---

<sup>1</sup>*See* Letter from Honorable Isidro R. Alaniz, Dist. Att'y, Webb & Zapata Cty., 49th Jud. Dist., to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Aug. 30, 2019) ("Alaniz Letter"); and Letter from Honorable Marco Montemayor, Webb Cty. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Sept. 9, 2019) ("Montemayor Letter"), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs>.

inconsistent with other provisions, although it might be susceptible to such a construction standing alone.” *Lira v. Greater Hous. German Shepard Dog Rescue, Inc.*, 488 S.W.3d 300, 304 (Tex. 2016).

Section 11.167 of the Education Code authorizes a district to “operate” a school outside of its boundaries. TEX. EDUC. CODE § 11.167. The Education Code does not define the word “operate.” Courts generally give statutorily undefined terms their ordinary and common meaning, for which courts may consider dictionary definitions, judicial constructions, and other statutory definitions. *Colo. Cty. v. Staff*, 510 S.W.3d 435, 448 (Tex. 2017). The word “operate” means to “manage and run” or to be “managed and run in a specified way.” NEW OXFORD AMERICAN DICTIONARY 1229 (3d ed. 2010); see also *Dallas/Fort Worth Int’l Airport Bd.*, 427 S.W.3d 547, 551 (Tex. App.—Dallas 2014, pet. denied) (adopting dictionary definition of “operate” in the context of an airport). In other contexts, the Legislature expressly authorized various governmental bodies both to acquire land and to construct and operate certain properties on the land. See, e.g., TEX. TRANSP. CODE § 174.205(a) (granting a commuter rail district the authority to “purchase any interest in real property to acquire, construct, or *operate* a commuter rail facility (emphasis added)); TEX. TAX CODE § 6.051(a) (authorizing an appraisal district to “purchase or lease real property and . . . construct improvements as necessary to establish and *operate* the appraisal office or a branch appraisal office” (emphasis added)); TEX. SPEC. DIST. CODE § 8150.110 (a) (permitting an imperial redevelopment district to “construct . . . *operate*, maintain, [or] acquire real property interests for . . . a sports and community venue facility (emphasis added)). In contrast, the Legislature’s limited use of the word “operate” with reference to a school district in section 11.167 suggests that it means something separate from the acquisition of real estate for, or the construction of, a building. We assume the Legislature’s choice of words was intentional, and we do not read additional language into the statute. See *FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 884–85 (Tex. 2000) (relying on the principle of statutory construction that the Legislature knows how to enact laws effectuating its intent); *Silguero*, 579 S.W.3d at 59 (a court “may not impose its own judicial meaning on a statute by adding words not contained in the statute’s language”); *In re H.S.*, 550 S.W.3d 151, 155 (Tex. 2018) (stating that when analyzing statutes, courts “accept[] that lawmaker-authors chose their words carefully, both in what they included and in what they excluded”). Thus, a court would likely conclude that section 11.167 does not expressly permit a school district to purchase land outside of its boundaries for the purpose of building and operating a middle school.

This construction is supported by a school district’s general authority to acquire real property for the purpose of constructing schools. Subsection 11.151(a) of the Education Code authorizes school trustees “in the name of the district [to] acquire and hold real . . . property.” TEX. EDUC. CODE § 11.151(a). On its face, this provision does not limit the acquisition of land to real property located in the district. However, article VII, section 3 of the Texas Constitution permits the Legislature to “authorize an additional ad valorem tax to be levied and collected within all school districts for the further maintenance of public free schools, and for the erection and equipment of school buildings *therein*.” TEX. CONST. art. VII, § 3(e) (emphasis added). Accordingly, section 45.002 authorizes an independent school district to “levy, assess, and collect annual ad valorem taxes for the further maintenance of public schools *in the district*.” TEX. EDUC.

CODE § 45.002 (emphasis added); *but see id.* § 45.105(c) (providing that local school funds from district taxes and other specified sources may be used for various purposes, including “buying school sites, buying, building, repairing, and renting school buildings, including acquiring school buildings and sites by leasing through annual payments with an ultimate option to purchase” without reference to their location). Similarly, section 45.001 of the Education Code authorizes school districts to “issue bonds for . . . the construction, acquisition, and equipment of school buildings *in the district*” and “the purchase of the necessary sites for school buildings.” *Id.* § 45.001(a)(1)(A), (C) (emphasis added). The constitutional and statutory provisions authorizing the construction and maintenance of school buildings generally contemplate that such buildings would be located on land within the boundaries of the school district.

Briefing submitted in response to this request argues that section 11.167 implies authority for an independent school district to buy land and construct a school outside of its geographic boundaries.<sup>2</sup> School districts have implied authority to perform acts reasonably necessary to carry out their expressly-granted duties. *Geffert v. Yorktown Indep. Sch. Dist.*, 290 S.W. 1083, 1084 (Tex. Comm’n App. 1927); *see also Thompson v. Elmo Indep. Sch. Dist.*, 269 S.W. 868, 870 (Tex. App.—Waco 1925, no writ) (stating that a school district’s implied powers are those “essential” to its declared objects and purposes, “not simply convenient, but indispensable,” and noting that any doubt as to the power is resolved against it). The expressly-granted authority in section 11.167 is to “operate a school or program, including an extracurricular program, or hold a class outside the boundaries of the district.” TEX. EDUC. CODE § 11.167. Thus, to find implied power for a school district to buy land and construct a school outside its boundaries, it must be reasonably necessary, and not just convenient, for a school district to take those actions in order to operate a school outside its boundaries.

Trustees of an independent school district “have the exclusive power and duty to govern and oversee the management of the public schools of the district.” *Id.* § 11.151(b). With regard to the expenditure of local school funds from district taxes and other specified sources, the Legislature authorized school districts to use such funds for various purposes, including “buying school sites, buying, building, repairing, and renting school buildings . . . , and *for other purposes necessary in the conduct of the public schools determined by the board of trustees.*” *Id.* § 45.105(c) (emphasis added). Taken together, these provisions initially suggest that school district trustees have the power to determine the actions reasonably necessary in a given fact situation to enable the conduct of its public schools, whether located inside or outside the district, such that they could claim an implied power to buy land and construct a school outside its boundaries. However, we cannot ignore the constitutional and statutory provisions specifying that the expenditure of ad valorem taxes and bond proceeds are for, among other things, the construction and maintenance of school buildings “in the district” and the purchase of sites for those buildings.<sup>3</sup> *See* TEX. CONST. art. VII, § 3(e) (authorizing additional ad valorem taxation “within all school districts . . . for the

---

<sup>2</sup>*See* Brief from Mr. Sigifredo Pérez, III, Kazen, Meurer & Pérez, L.L.P. at 3–4 (Oct. 10, 2019) (on file with the Op. Comm.).

<sup>3</sup>For example, one cannot use bond proceeds to construct a school building “in the district” on land outside the district. *See* TEX. EDUC. CODE § 45.001(a)(1)(A).

erection and equipment of school buildings *therein*” (emphasis added)); TEX. EDUC. CODE §§ 45.001(a)(1)(A), (C) (authorizing bonds for “the construction, acquisition, and equipment of school buildings *in the district*” and “the purchase of the necessary sites for school buildings” (emphasis added)), 45.002 (authorizing ad valorem taxation for “maintenance of public schools *in the district*” (emphasis added)). Given this language, we cannot predict with certainty whether a court would conclude that section 11.167 implies the power to purchase real property outside the district for the purpose of constructing and maintaining a school there.

What is certain is that the Legislature obligates school district trustees to “seek to establish working relationships with other public entities to make effective use of community resources and to serve the needs of public school students in the community.” TEX. EDUC. CODE § 11.1511(b)(1). Two avenues in the Education Code exist to potentially manifest a change in school boundaries, such that the purchase of land and construction of the new school in question would be authorized: one by agreement of two contiguous school districts pursuant to section 13.231, and the other by petition requesting detachment and annexation of territory contiguous to a school district pursuant to section 13.051. *See generally id.* §§ 13.231, .051. First, section 13.231 allows two contiguous school districts to

adjust their common boundary by agreement if, at the time the agreement is executed: (1) no child who resides in the territory that is transferred from one jurisdiction to the other is enrolled in a school of the district from which the territory is transferred; and (2) the taxable value of the territory that is transferred from one jurisdiction to the other does not exceed one-tenth of one percent of the total taxable value of all property in the school district from which the territory is transferred.

*Id.* § 13.231(a). Second, section 13.051 allows a majority of registered voters residing in the territory to be detached and annexed, or the surface owners of that property if there are no residents, to request detachment from one school district to another one that is contiguous to the territory if certain conditions are met. *See id.* § 13.051(a)-(j) (addressing administrative requirements, limitations based on the total taxable value of the territory and the reduction in the tax base of the school district from which territory is detached, geographic limitations, and dual district approval, among other provisions). If one of the affected school districts disapproves the petition, it may be appealed to the commissioner of education. *See id.* § 13.051(j). “In deciding the appeal, the commissioner shall consider the educational interests of the students in the affected territory and the affected districts and the social, economic, and educational effects of the proposed boundary change.” *Id.*

S U M M A R Y

A court would likely conclude that section 11.167 of the Education Code does not expressly permit a school district to purchase land outside of its boundaries for the purpose of building and operating a middle school. Given the constitutional and statutory language referencing the construction and maintenance of public school buildings "in the district," we cannot predict with certainty whether a court would conclude that section 11.167 implies the power to do so.

Very truly yours,



KEN PAXTON  
Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

RYAN L. BANGERT  
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER  
Chair, Opinion Committee

BECKY P. CASARES  
Assistant Attorney General, Opinion Committee