



# TEXAS EDUCATION AGENCY

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Jim Nelson  
Commissioner of Education

August 22, 2000

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OPINION COMMITTEE

FILE # ML-41585-00

I.D. # 41585

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Attorney General John Cornyn  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711

RQ-0273-JC

Dear General Cornyn:

This letter is to request your opinion as to the authority of Texas school districts to operate educational programs outside of the geographic boundaries of the district. Dr. Herman Smith, Superintendent of Greenville Independent School District, posed a number of questions regarding a proposal by Boles Independent School District to operate a campus within the boundaries of Greenville ISD (attached as Exhibit "A"). The agency believes that Boles ISD has the authority to do so, but requests your opinion to clarify the issues raised in his questions 1 and 4. We believe that this agency is the appropriate entity to respond to the other requests made by Dr. Smith regarding state and federal education program requirements at such a campus. A copy of the agency response to those questions is attached as Exhibit "B". I have also attached as Exhibit "C" a brief submitted to the agency on these issues by the law firm representing Boles ISD.

As you are aware, the Texas Constitution authorizes the Legislature to "provide for the formation of school district by general laws".<sup>1</sup> The Legislature has created school districts with geographic boundaries that do not overlap and cover all of the state.<sup>2</sup> School districts are generally governed by elected boards of trustees, with the authority to "govern" and "oversee the management" of the district.<sup>3</sup> The Legislature has also reserved certain powers to school districts by virtue of Section 7.003 of the Texas Education Code, providing that "[a]n educational function not specifically delegated to the agency or the board under this code is reserved to and shall be performed by school districts or open-enrollment charter schools".

This agency has concluded that nothing in Texas law precludes a school district from operating an educational program outside of its geographic boundaries, provided that

<sup>1</sup> Tx. Const. Art. VII, Section 3.

<sup>2</sup> See generally, Chapter 13, Texas education Code, particularly Sections 13.010, 13.051 and 13.053. Note that an open-enrollment charter school has a geographic service area that does overlap the territory of one or more school districts and is limited by the terms of the charter under Section 12.111(13), Texas Education Code.

<sup>3</sup> Section 11.051, Texas Education Code. Note also Section 11.002, stating that school districts and open-enrollment charters "have the primary responsibility for implementing the state's system of public education..."

the school board has concluded that a public purpose is served that warrants the expenditure of its funds.<sup>4</sup> The structure of the school finance system in Texas supports such a conclusion, as a district would receive, in additional state aid, its average amount of expenditure per student for each additional student enrolled.<sup>5</sup>

The agency has advised school districts that have inquired that it is permissible to operate educational programs outside of the geographic boundaries of the district, and is aware of several instances in which that has happened<sup>6</sup>. School districts additionally contract for placement of certain students outside of the district under Section 29.008, Texas Education Code, and operate "shared service arrangements" under Section 29.007 that can involve a district operating the cooperative program at a location outside of its borders.

A related question is whether a school district may expend state or local funds for the purpose of operations outside of its geographic boundaries. It has long been settled that a school district may expend local funds to educate transfer students. *Love v. City of Dallas*, 40 S.W. 2d 20 (Tex. 1931). School districts are also authorized to expend local taxes and state funds not dedicated for a specific purpose for "purposes necessary in the conduct of the public schools determined by the board of trustees" under Section 45.105, Texas Education Code. Our agency has concluded and previously advised school districts that local maintenance taxes and state funds may be expended outside of the geographic boundaries of the school district.

The conclusion that a district may expend local maintenance and operations taxes and state funds outside of its geographic boundaries is also consistent with the constitutional basis for establishing school district property taxes. That provision authorizes a maintenance and operations tax "for the management and control of the public school or schools of such districts" and a bond tax "for the erection and equipment of school buildings therein".<sup>7</sup> It is our understanding that your office has determined that bond taxes may not be expended outside of the boundaries of the district, based on the implicit constitutional limitation on facilities.<sup>8</sup>

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<sup>4</sup> Such a determination is of course always implicitly required by Article III, Section 52 of the Texas Constitution.

<sup>5</sup> This obviously oversimplifies the complexities of the school finance system but is generally true for a "Tier II" district like Boles ISD. State funding guarantees (and in some cases limits revenue to) an amount of total revenue per student in state and local funds, the actual amount varying with tax rate and certain adjustments based on characteristics of the district and its students. See generally, Chapters 41, 42 and 46, Texas Education Code. Under that system, an additional student will produce the guaranteed (or limited) amount of total revenue in additional state funds as the total guaranteed amount has increased but the other factors (local tax collections, tax rate and district/student characteristics) remain the same.

<sup>6</sup> We are currently aware of one campus, operated by Santa Gertrudis ISD within the boundaries of Kingsville ISD. Until recently, Houston ISD also provided services to the Harris County juvenile detention center at a location within Clear Creek ISD. That facility recently became an open-enrollment charter school pursuant to Chapter 12 of the Texas Education Code.

<sup>7</sup> Implementing legislation for the two authorized taxes is found at Sections 45.001 (bond taxes) and 45.002 (maintenance taxes), Texas Education Code.

<sup>8</sup> Several statutory provisions dealing with facilities follow this distinction, e.g., Sections 45.001(a)(1)(A), and 45.082(b)(1) and 45.111(a), all Texas Education Code. Note expenditure of

My questions are as follows:

1. May a school district operate an educational program outside of the geographic boundaries of the district?
2. If the answer to question 1 is "yes", is there any law governing district funds from maintenance taxes, bond taxes, or state funds that would preclude their use for an educational program physically located outside of the district? Please, in this context, address local maintenance taxes and state funds used to make payments under the Public Property Finance Act<sup>9</sup>.

Thank you for your consideration of this request. Should you need any additional information, please feel free to contact me or David A. Anderson, General Counsel, at (512) 463-9720.

Sincerely,



Jim Nelson  
Commissioner of Education

Cc: Dr. Herman Smith, Superintendent, Greenville ISD  
Dr. Graham Sweeney, Superintendent, Boles ISD

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general funds of a district under Section 45.105(c), Texas Education Code, is not geographically limited.

<sup>9</sup> Chapter 271, Texas Local Government Code.