THE AUTHORITY OF COUNTY BOARDS TO CHANGE
SCHOOL DISTRICT LINES

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THE AUTHORITY OF COUNTY BOARDS TO CHANGE
SCHOOL DISTRICT LINES

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CHAPTER I

INTRODUCTION

Purpose of the Study

The purpose of this study is to make an investigation of the changes that have occurred in the powers of the county board of trustees to change boundary lines of school districts in Texas. Attention will be given to the enabling legislation and to succeeding laws that have gradually been passed and to the court interpretations of these laws. Changes will be traced from the initial legislation to the present-day statutes governing the powers of the county school board to change boundary lines of school districts.

Importance of the Study

One of the characteristics of the Texas education system is the large number of small school districts. In pioneer days when the homes of the people were widely scattered and communications poor, the small districts were necessary. The growth in population, the building of all-weather roads, and the invention of the automobile have changed the picture. The small district is no longer a necessity, and its continued presence is a hindrance to the educational growth of the state.
Consolidation of these small districts has been a slow and painful process. The Legislature of Texas, in the beginning, striving to maintain local government in the school districts, placed the power of consolidation in the hands of the school districts themselves by providing that boundaries be changed only by and through a vote of the people directly concerned. Rural people, in many instances, have voted to retain the little one-room schoolhouse and their small areas, and have refused to cooperate in the efforts to build larger and better schools. In order to overcome this opposition, progressive legislation has gradually been enacted giving the county board of trustees the authority to change district lines and consolidate districts in some instances without having to call an election to decide the issue. The recent Gilmer-Aiken plan to reorganize the school system of the State has brought still further new and far-reaching changes. What these changes are, how they affect the rank and file of the people, and how they have gradually grown are questions that are of concern to all teachers and to the public as well.

The teachers of Texas are concerned with any legislation affecting the schools of the State. As leaders in their schools and in their communities, it is their duty to know and understand the school laws which govern their schools. It is especially important that they know the legislation through which their school district boundaries may be changed.
The expanded power gradually given the county board of trustees to change district lines makes it more important than ever that they understand the legislation in order to improve their school or protect their interests.

Limitations of the Study

The study will be limited to the legal powers granted the county board of trustees to change boundary lines as outlined in legislative statutes and interpreted by court decisions. As a background study, attention will be given to the powers originally held by the commissioners' courts to perform the functions now exercised by the county board to change boundary lines.

Source of Data

Data used in the study consist of legislative statutes governing the powers of the county school board to change school district boundary lines, court decisions interpreting these laws, and professional literature in the files of public school laws of Texas.

Definition of Terms

Texas school laws are sprinkled throughout with a liberal number of terms describing different types of school districts. To avoid confusion in discussing these districts, it is felt that they should be defined fully and clearly in this introduction to the study.
Common School District.—The common school district is the basic school district of Texas. It is unincorporated, is, or was, established by the commissioners' courts and later by the county board of trustees, and must not contain less than nine square miles in area.\textsuperscript{1}

Article 2757 provided that "any common school district containing seven hundred inhabitants or more may form an incorporation for free school purposes only."\textsuperscript{2} The district may or may not include within its bounds any town or village incorporated for municipal purposes if the city or village has not assumed control of the schools within its limits.

Independent School District.—Independent school districts are of two kinds, municipal independent school districts, and incorporated school districts. The State Constitution of Texas provided that any city or town might be constituted a separate and independent school district by the Legislature.\textsuperscript{3} In such instance, the boundaries of the municipality and those of the independent school district were the same.

County-line Districts.—County-line districts are authorized by Article 2743, Section 1: "The boards of county

\textsuperscript{1}\textit{Vernon's Texas Statutes}, 1927, Article 2741.

\textsuperscript{2}\textit{Vernon's Texas Statutes}, 1927, Article 2757.

\textsuperscript{3}\textit{Texas State Constitution}, Article XI, Section 10.
school trustees shall have full power and authority to create common school districts to contain territory within two or more counties.\textsuperscript{4} These county-line school districts have all the rights, powers, and privileges of common school districts, and are managed and controlled by the county named in the order creating such a district.\textsuperscript{5}

\textbf{Rural High School District.---}Article 2922a provided that "in each organized county, ... the county school trustees shall have the authority to form one or more rural high school districts, by grouping contiguous common school districts" under certain specified conditions: common school districts with less than four hundred population, and independent school districts with less than two hundred fifty population.\textsuperscript{6} The purpose of such grouping would be to establish rural high schools. Article 2922b provided that all rural high school districts "shall be classed as common school districts" unless the district contains an independent district which would automatically retain its status.\textsuperscript{7}

It is necessary to understand fully the meaning of these terms if the discussion of changes in the boundary

\textsuperscript{4}Vernons' Texas Statutes, 1917, Article 2743.
\textsuperscript{5}Vernons' Texas Statutes, 1911, Article 2744.
\textsuperscript{6}Vernons' Texas Statutes, 1917, Article 2922a.
\textsuperscript{7}Ibid., Article 2922b.
lines of districts are to be made understandable, for the way in which the changes may be made vary according to the type of prevailing school district.

Method of Procedure

The study is historical in nature. The enabling legislation setting up the public school system and provisions for establishing and changing school district boundary lines are studied and subsequent measures traced. The introductory chapter contains the statement of the problem, the purpose of the study, its importance, limitations, source of data, method of procedure, and some related studies in the field.

Chapter II deals with the initial public school legislation as set up in the Texas Constitution and as created by legislative decree. A brief history of the organization of the commissioners' courts is given and a study made of their powers to change the boundary lines of school districts.

The legislation transferring the administration of the public schools from the commissioners' courts to an elected county board of trustees is the subject matter of Chapter III. Herein, a study is made of the powers as granted, the set-up of the board, and changes that were made, if any. Recent legislation dating from the passage of the rural high school law is considered. The various ways by which school districts may be grouped, consolidated, or annexed to another district are studied and discussed.
Previous Studies

School law in Texas is scattered throughout the statutes. The State Department of Education of Texas publishes biennially a bulletin entitled Public School Laws of the State of Texas.\(^8\) The bulletin is a collection of school laws with notes and annotations, and furnishes in compact form, all the laws that govern the public school system of the State of Texas up until publication of this bulletin.

A more comprehensive study of the school laws of Texas was published in 1938 by J. C. Hinsley, and revised and republished in 1948. The book is a handbook of Texas school laws and contains provisions of the Texas Constitution and statutes relating to the public schools, and is annotated with court decisions and rulings of the Attorney General.\(^9\) Hinsley describes the purpose of the book in this way:

The Editor has endeavored to bring together and arrange this material in such a manner as to simplify and lighten the task of those whose duties require them to know or make reference to the School Laws of the State. The volume is neither a textbook or a case book. It has not been the purpose of the Editor to discuss or criticize the existing law nor to propose any desirable changes. It has been his purpose to so arrange the present law relative to the Public Free Schools that those not versed in the law can readily

\(^{8}\)The State Department of Education of Texas, Public School Laws of the State of Texas.

\(^{9}\)John Carroll Hinsley, The handbook of Texas School laws, pp. 1012-1013.
discover the answers to the varied questions of law which so frequently arise in the administration, management, and control of schools.\textsuperscript{10}

Hinsley's Handbook of Texas School Laws is therefore a very valuable book to the average individual who does not always understand legal verbiage and terms. One especially valuable feature of the book is that underneath each statute passed by the Legislature, the court cases and decisions, if any, growing out of the legislation, and also the rulings of the Attorney General, are stated. A concise and complete study is made of each law and its interpretations. This collection makes it possible for each and every teacher, or interested citizen, to learn about the school laws in which he is interested.

Still another study that is valuable in any study of Texas public school laws is Frederick Eby's The Development of Education in Texas.\textsuperscript{11} Much school legislation has been passed since this book was published in the 1920's, but it provides the historical background for much of the school legislation of the State and gives a picture of the many difficulties that education has encountered in Texas in trying to reduce the number of school districts and to build and to improve schools.

The foregoing studies are concerned with all provisions of the Texas public school laws. Investigations of certain

\textsuperscript{10}Ibid., "Preface", p. vii.

\textsuperscript{11}Frederick Eby, The Development of Education in Texas, p. 10.
provisions of the laws are being made, in many instances, by graduate students in the colleges as subject matter for theses. One such study has been made at the North Texas State College. In 1943, Waldron W. Cooley made a study of the legal status of certain public school officials in Texas: the Legislature, the courts, the state superintendent of public instruction, the state board of education, the county board of school trustees, the county superintendent, the local school boards, and the public school teachers.12 Powers exercised by these officials are traced from their source to a review in the latest decision by Texas Civil Courts of Appeal or the Texas Supreme Court.

The present study goes a step further and attempts to study one separate phase of the public school laws: trace the growth of the powers of the county school board to change the boundaries of school districts in the State.

CHAPTER II

POWERS GRANTED THE COMMISSIONERS' COURTS TO CHANGE
SCHOOL DISTRICT BOUNDARIES

The purpose of this chapter is to make a study of the original powers granted the commissioners' courts in Texas to create and change school district boundaries in the early days of the state's history. Attention will be directed to the historical background of the commissioners' courts, to the original power granted to create and change school district boundaries, and to the changes, if any, that were made in those powers during the years when the management of the public schools of Texas was entrusted to the commissioners' courts in each county.

Establishment of the Commissioners' Courts

The first laws passed by the Legislature of the State of Texas that dealt with public schools and commissioners' courts were passed on January 31, 1854. At that time the Legislature authorized the sum of four million dollars of five per cent bonds then in the state treasury to be set apart as a public school fund and to be known as the special school fund. Interest from this was to be "apportioned and
distributed" for the support of the public schools.\textsuperscript{1} Legislation gave control of the public school lands to the commissioners' courts in each county and granted them the right to "sell and dispose of its lands in whole or in part, in manner to be provided by the commissioners' courts of each county."\textsuperscript{2} This power of the commissioners' court was taken away from it in "carpet bag" regime of education prevalent in Texas after the Civil War. In 1873 when "An Act to Establish and Maintain a System of Public Free Schools" was passed by the Fourteenth Session of the State Legislature, a county board of five directors was provided. These directors were to divide their respective counties into school districts of convenient size.\textsuperscript{3}

Not too much was accomplished by these county directors in establishing schools. Many of the early day schools were community schools that existed without adequate public support, and had to be reorganized each year. In 1884 a law was enacted putting the management of the public school system back into the hands of the commissioners' court and making it mandatory that the court divide the county into school districts.\textsuperscript{4} This law was not universally enforced on

\textsuperscript{1}H. P. M. Gammon, \textit{Laws of Texas}, Volume III, Chapter XVIII, p. 1461.

\textsuperscript{2}\textit{Texas State Constitution}, Article VII, Section 6.

\textsuperscript{3}An Act to Establish and Maintain a System of Public Free Schools, Section 14, 1875.

\textsuperscript{4}\textit{Texas School Adequacy Report}, p. 16.
account of the number of community schools existing. In 1919 legislation was enacted which definitely abolished the community system of schools. The commissioners' courts then enacted legislation to divide the counties into school districts.5

Powers of the Commissioners' Court to Change the Boundaries of School Districts

The powers granted the commissioners' courts by the Constitution and the statutes in the matter of changing boundary lines are not easily understood unless there is a thorough understanding of the different kinds of school districts established under state law. The early fathers, it is apparent, were not satisfied with the creation of thousands of small, poorly-financed districts, but they created more than one kind of school district—the common school district and the independent districts. To further complicate matters, two kinds of independent districts were provided for—one that had as many as seven hundred scholiastics and voted to incorporate itself, and the municipal independent district created by special act of the legislature and embracing the same territory as an incorporated municipality. In each of these districts, different procedures were provided for changing the boundary lines.

The common school district was the basic district. As

5Ibid., p. 17.
stated in Article 2741, it was the duty of the commissioners' court to create the common school districts. The courts were further given the power to reduce the area of any common school district, create additional districts, consolidate two or more adjacent districts, or subdivide any district it thought necessary, provided no school district contained less than nine square miles of territory, and had no outstanding bonded indebtedness.

The independent districts were granted more powers than the common school districts. In the original Act setting up the school system the incorporated cities were authorized to assume "control of the public schools within their limits, to build school houses, and provide for the gratuitous education of all children therein." It was further provided that any incorporated city that did assume control of the public schools within its corporate limits should be omitted from the school districting county and permitted to district the population within its limits in any way that the constituted authorities deemed best.

The independent school districts, too, have been allowed certain privileges in taxing property. In the case of Gulf

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6Vernon's Texas Statutes, 1927, Article 2741.

7An Act to Establish and Maintain a System of Public Schools, Chapter VIII, Section 1.

8Ibid., Section 2.
C. & S. F. Ry. Co. v Sun Independent School District, it was stated that "the valuation for state and county purposes in school districts was required to be the same as the valuation for school purposes, except in incorporated cities and towns where the valuation was required to be the same as that taxed for municipal purposes." The Independent School District, embracing the area of an incorporated city, has enjoyed special taxing privileges which it would have to give up if it divorced itself from the incorporated city. This is illustrated in another court decision. In the case of Missouri, K. & T. Ry. Co. v City of Whitesboro, a ruling was made that when a city having charge of its free public schools extends its corporation lines for school purposes only under the provisions of Article 2803 "the city ceases to constitute a separate independent school district which is exempt from tax restrictions applied to cities or other independent school districts," and the school district becomes a district subject to all statutory and constitutional provisions limiting the maximum tax rate in independent school districts.


Article 2803, which provides for the extension of city limits for school purposes, also has a provision relating to taxation. "The added territory shall bear its pro rata part of all school taxes, but no other taxes."\(^{11}\) The further provision was included that "the officers whose duty it is to assess and collect school taxes within the city limits shall also collect and assess school taxes within the territory added for school purposes."\(^{12}\)

This situation was created by early school legislation in Texas. The commissioners' courts were given power to change the boundary lines of common school districts, but they had little power to change the lines of independent school districts. Most of the independent school districts in early Texas history were incorporated cities with school district and municipal boundary lines coinciding. If the small district was annexed, it had to pay the increased tax levied by the city districts, and if the incorporated city district annexed the smaller district, it lost the special provisions it enjoyed in levying taxes. The consequence has been that little has been done in the way of consolidation. An example of this is the City of Denton independent school district and the small Brown common school district

\(^{11}\) *Vernon's Texas Statutes*, 1905, Article 2803.

just west of the city. There have not been enough scholastic
tics to justify a school at Brown for many years, yet the
district has been allowed to lie dormant. It has been to
the financial interests of both the common school district
and the large city incorporated school district to keep the
status quo. Recent Gilmer-Aiken legislation, discussed in
a portion of the study, has changed this set up.

Another provision in the early school legislation of
Texas has hindered the consolidation of the smaller districts
into larger ones. No changes could be made by the com-
mmissioners' court in the boundary lines of a school district
without the consent of a majority of the legal voters in the
district. Reference to this is found in a number of court
decisions. One decision held that "under a former statute"
the commissioners' court could not change the boundaries of
school districts "without the consent of a majority of the
legal voters in all districts affected by the change."13
Another ruling held an attempt of the commissioners' court
to change boundary lines "without the consent of the majority
of the voters therein" was void.14 The following decision
further highlights the fact that the early commissioners'
courts had power to change boundary lines only with the con-
sent of the legal voters in the districts affected:

A provision formerly contained in this article that once a school district has been established it should not be changed without the consent of a majority of the legal voters in all districts affected applied only to districts created by commissioners' courts and not to changes resulting from the incorporations of independent school districts.  

Article 2741, as enacted in 1905, however, gave the commissioners' court the power to change the boundary lines without the consent of the legal voters in the district. This was a decided step in the improvement of the schools of the state. In 1884-85, only one hundred thirty-two counties were organized, yet there were six thousand four hundred and seven districts organized in the state. In 1909-10, after the state had been fully organized into counties, there were seven thousand seven hundred and ninety-six school districts. The inherent conservatism of the rural people operated, in many instances, to keep intact the small local district when the decision was left in their hands as legal voters.

It is evident from the consideration of these statutes that the early commissioners' courts, before 1905, had little authority in the matter of consolidating school districts.

16 Vernon's Texas Statutes, 1905, Article 2741.
17 Texas School Adequacy Survey, p. 98.
18 Ibid.
Legislation at that time gave them this authority "if necessary for the interests of the children" and provided that the district contain not less than nine square miles of territory or have no outstanding bonded indebtedness. Article 2695, also enacted in the 1905 session of the Texas Legislature, provided for the consolidation of one school district with another without an election, but the power to do so was granted the county superintendent of public instruction, not the county commissioners' court. Under this legislation the county superintendent had the authority to consolidate a district with another, provided said district had fewer than twenty pupils of school age. The consolidation, too, had to be made before the funds for the ensuing year were apportioned.

While no mention is found in these laws regarding the power of the commissioners' courts to close a school without the consent of the legal voters in the districts affected, subsequent legislation specifically denied this power to the county board of trustees. Article 2922f, stated that the county board of school trustees "shall not have the authority to abolish or consolidate any elementary school district

19Vernon's Texas Statutes, 1905, Article 2786.
20Vernon's Texas Statutes, 1905, Article 2695.
already established except upon the vote of a majority of
the qualified electors residing in such elementary district.\footnote{21} If an elementary school within a rural high school district
failed to have an average daily attendance of at least
twenty pupils, it might be discontinued by the board of trust-
ees of the said rural high school district, and then the
county board of trustees could consolidate the area with
some other area or districts for elementary school purposes.
The county commissioners' courts, therefore, it is assumed,
did not exercise the power to close a school without the con-
sent of the voters; the county superintendent, where there
were less than twenty pupils of scholastic age, could do so,
but not the commissioners' court.

Other powers of the commissioners' courts that pertained
to boundary lines concerned the formation of county-line
districts. These districts, as defined in the first part of
the study, are comprised of contiguous sections of terri-
tory lying in one or more counties.\footnote{22} During the time that
the commissioners' courts had supervision of the management
of the public free schools, changes were made in the boundary
lines of these districts in the same way as in other common

\footnote{21}{\textit{Vernon's Texas Statutes}}, 1927, Article 2922f.

\footnote{22}{\textit{Vernon's Texas Statutes}}, 1917, Article 2743.
school districts. The changes that have been made in the 
authority to change boundary lines have come after the super-
vision of the public free schools had been vested in a board 
of county school trustees.

Legislation vesting the management of the public schools 
of Texas in the hands of a county board of trustees was 
enacted in 1911. Superintendent of Public Instruction 
Bralley, speaking in 1915, described the schools of Texas 
under the legislation set up by the early fathers as follows:

Of the 8,500 country schools in Texas today, 6,500 
are one-teacher schools, 2,000 of which run less than 
three months; while the average term of the state is 
approximately six months. It is recognized by everybody 
that the country schools are not as efficient as the 
town and city schools; and it is easily apparent that 
the one-teacher school, as a rule, is the most in-
efficient and unsatisfactory of the country schools. 
Not only are the country schools poorly organized, and 
in many cases, inefficiently taught, but the attendance 
upon the country schools is not what it should be. 
There are more than 50,000 white children in the rural 
districts of Texas of school age who do not matricu-
late annually in our public schools.23

The prime reason for such inefficiency was the great num-
ber of small school districts which, because of their size, 
were not financially able to support good or adequate schools. 
As late as 1937, there were sixty-five counties in Texas 
which did not have a consolidated school district.24

23F. W. Bralley, Address before the Texas State Associa-
tion of Teachers, 1915. Quoted from Frederick Nby, The De-
velopment of Education in Texas, p. 224.

24Myrtle L. Tanner, "Consolidation Movement in Texas," 
Texas Outlook, XXI (October, 1937), 50-51.
The condition was due, it is believed, more than anything else to the devotion of the early Texas fathers to the principles of democracy and local government. They sought to hold the direction of community affairs in community hands. The early school legislation gave the commissioners' court the right to change boundary lines only with the consent of the legally qualified voters in all districts affected. The taxes for the support of the schools, outside the per capita apportionment, were voted and paid by the local districts. In their zeal for promoting and holding democracy, the early fathers of Texas provided the state with a school system that was cumbersome, conflicting, and conducive to the retention of small districts in the country and the creation of large school systems in the incorporated cities.
CHAPTER III

THE POWERS OF THE COUNTY SCHOOL BOARD OF TRUSTEES TO CHANGE BOUNDARY LINES OF SCHOOL DISTRICTS

Purpose of the Chapter

The purpose of this chapter is to trace the growth of the powers of the county school board of trustees to change boundary lines as set out in legislative statutes and interpretative court decisions. Attention will be given to the establishment and the organization of the county board of trustees, to the powers taken over from the commissioners' courts and to subsequent legislation that has greatly increased the power of the county board of trustees to change boundary lines.

Establishment of County Board of Trustees

On June 4, 1911, legislation was enacted that vested the management and control of the public schools of a county in a county board of trustees instead of in the commissioners' courts of the counties.1 There were several reasons for such action. The school population of Texas at the time the Constitution was ratified and enabling legislation passed vesting the management of the public schools in the hands of the

1State ex rel Flores et al v Bravo, County Judge et al. (Tex. Civ. App.), S.W. (2nd.) 1052.
commissioners' courts of the county was approximately two hundred sixty-nine thousand, four hundred fifty-one. In 1911, when new legislation provided for a county board of trustees, the school population was approximately nine hundred forty-nine thousand, and in the next year it passed the million mark. The county commissioners' courts are the administrators of county government. The growth in the number of services rendered by these courts to the county increased along with the increase in school population. In the interest of the schools of the county, a board which gave its full attention to the needs of the public schools was needed. The county, too, needed the full time of its commissioners to administrate the affairs of county government. The time had come for a change.

The enabling legislation setting up a county board of trustees provided that "the general management and control of the public free schools and high schools in each county, unless otherwise provided by law, shall be vested in five (5) county school trustees elected from the county." Four of the trustees were to be elected from the four commissioners' precincts composing a county, and one was to be elected "from

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3 Ibid.
4 Vernons' Texas Statutes, 1954, Article 2676.
5 Ibid.
the county at large by the qualified voters of the common and independent school districts of the county."\(^6\)

**Powers to Change Boundary lines**

Article 2681 stated the authority of the county board in the matter of changing boundary lines of school districts as follows: "The county school trustees are authorized to exercise the authority heretofore vested in the commissioners' court to subdivide the county into school districts, and making changes in boundary lines."\(^7\) A subsequent court decision, *Hill County Trustees v. Melton*, upheld the authority of the county board to exercise the powers to change district lines formerly vested in the commissioners' court.\(^8\)

The powers and the duties of the county boards were closely outlined and enumerated in various legislative statutes. The power to change boundary lines has been interpreted by the courts to be limited to those expressly granted. In Article 2681 it was stated that the board, in its regular meetings, should consider questions dealing with the location of high schools and the teaching of high

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\(^6\)Ibid.

\(^7\)Vernon's *Texas Statutes*, 1915, Article 2681.

\(^8\)Hill County School Trustees v. Melton, (Tex. Civ. App.), 199 S. W. 1142.
school subjects, the classification of schools and "such other matters as may pertain to the location, conduct and maintenance and discipline of schools...and other matters of interest in school affairs of the county."\(^9\) The courts have interpreted this legislation to mean a number of things the county boards cannot do as well as the things they have the power to do. One of these is the ruling that the county board of trustees cannot reduce the territory of a school district where bonds are outstanding, as the Legislature formerly had the power to do.\(^10\) The county board of trustees has the power to create and subdivide common school districts, but this power does not extend to include independent districts. The independent districts still retain their original power to do their own districting and to levy a higher tax rate in incorporated cities. They can be created only by a vote of the people. The right of the Legislature to create special independent school districts was discontinued in 1926. Prior to this time the Legislature had the power by special law to create independent school districts; it had the power to reduce the area of the independent district so long as sufficient territory was left to provide tax revenue to pay bonded debts, and it could enlarge the

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\(^9\)Vernon's Texas Statutes, 1935, Article, 2871.

\(^10\)County School Trustees of Jackson Co. v Edna Independent School District, 93 S. W. 2d. 505.
boundaries of an independent district already created "without submitting the matter to a vote of the inhabitants of the territory affected." The power taken away from the Legislature is not given to the county boards of education—an independent district can be created only by the voters of the districts. The board cannot detach part of an independent school district; it cannot change the new territory into a common school district without a petition and vote of the people affected. The county board can not, without notice, detach land from one district and add it to another.

A great deal of litigation has arisen over these powers of the county board to detach districts from one area and annex them to another. Article 2742f, which provided for detaching territory from one school district and attaching it to another, has perhaps been one of the most controversial statutes in Texas school legislation. Under the provisions of this article, the county board of trustees has the authority, when duly petitioned, to detach from and annex to any school district territory contiguous to the common boundary.


12Baker v State, 40 S. W. (2nd.) 41.


14Vernon's Texas Statutes, 1927, Article 2742f.
line of two districts, provided the board of trustees to which the area is to be annexed approves, and the petition is signed by a majority of the trustees and the qualified voters of the territory to be detached.

This authority of the board of trustees, it was ruled in the case of Lize v. County School Trustees, is limited only to detaching portions of districts. In an opinion requested of the Attorney General of Texas a number of cases are discussed. The specific question asked was:

When a majority of the qualified voters of a portion of a common school district, together with a majority of the board of trustees of the district petition the County Board of Trustees to transfer said portion of the district in which the petitioners reside, (which contains more than ten per cent of the area of the district is it mandatory that the County Board transfer the territory, or may the County Board of Trustees use their discretion in the matter?

The Attorney General's ruling is quoted in full because it is exculpatory of much litigation:

We assume that you have reference to a transfer of territory from a common school district or a contiguous common or independent school district. This opinion will be limited to the question whether the power of the county board of school trustees, when duly petitioned, to transfer territory is a discretionary power.

The Supreme Court of Texas recently had before it in the case of County School Trustees of Orange County, et al., vs. District Trustees of Prairie View Common


16 Request for an opinion from the Attorney General of Texas on authority of county boards to detach portions of school districts, April 5, 1949.
School District No. 8, 153 S. W. (2d) 434, the question of the authority of the county board in transferring territory from a common school district to a contiguous independent school district. In that case the court held unconstitutional and void Senate Bill 338 of the Forty-fourth Legislature (Acts 1935, 44th Leg., 2d S., Ch 339), which was a comprehensive law regulating the detachment and annexation of territory of school districts and superseding all laws previously enacted. The court further held that such a transfer must be regulated and governed by Section 2 of Article 2742e (Acts 1922, 41st Leg., 1st S., Ch. 109, p. 259) and Section 1 of article 2742f (Acts 1929, 41st Leg., 1st S., Ch. 47, p. 106), construed together. Board of School Trustees of Young County vs. Balliol Common School District No. 12, Tex. Com. App., 33 S. W. (2d) 538; Opinion No. O-4236, rendered to you on December 11, 1941.

Section 2 of Article 2742e and Section 1 of Article 2742f read respectively as follows:

'Section 2. That on and after the passage of this Act the county Board of School Trustees in any county in this State shall have authority and full power to create common school districts, to subdivide districts, and to change boundary lines of any or all common school districts legally coming under the jurisdiction over the county where the county Board is appointed or elected; provided that before any changes may be made in boundary lines of school districts the trustees of the common school districts affected shall be notified to appear before the county Board for a hearing, and after said hearing, or the date set for such hearing, the county Board of Trustees may pass such order or orders as will carry out the provisions of this Act; provided, further, that the trustees of the districts affected may appeal from the decision of the county Board to the district court.'

'Section 1. In each county of this State the county Board of Trustees shall have the authority, when duly petitioned as herein provided, to detach from and annex to any school district territory contiguous to the common boundary line of the two districts; provided the Board of Trustees of the district to which the annexation is to be made approves, by majority vote, the proposed transfer of territory and provided, further, that where the territory to be detached exceeds ten percent (10%) of the entire district the petition must be signed by a majority of the trustees of said district in addition to a majority of the qualified voters of the territory to be detached. The petition shall give the metes and bounds of the territory to be detached from the one and added to the other district and must be
signed by a majority of the qualified voters residing in the said territory so detached. Upon receipt of the said petition, duly signed, and upon notice of the approval of the proposed annexation by the Board of Trustees of the district to which the territory is to be added, the County Board of Trustees shall pass an order transferring the said territory and redefining the boundaries of the districts affected by said transfer, the said order to be recorded in the minutes of the County Board of Trustees. Provided that no school district shall be reduced to an area of less than nine square miles.

In your letter of request, you do not state whether the board of trustees of the district to which the transfer is proposed to be made by a majority vote approves the transfer. For the purposes of this opinion we assume that such approval has been given.

You will notice that Section 2 of Article 2742e provides for a notice and hearing before any changes in the boundary lines shall be made by the county board. The Commission of Appeals held in the Bullock case, supra, that the Legislature intended the provision for notice and hearing. Honorable T. M. Trimble, page No. 4 contained in Section 3 of House Bill 220 (Article 2742e), to operate as a limitation of the authority conferred on the county board by the other act (Section 2742f), so far as a change in the boundary lines of a common school district is involved. (Parenthetical insertions added.) Certainly, the provision for notice and hearing shows clearly that the county board may exercise its discretion in determining whether any changes will be made. There can be no question that Section 2 of Article 2742e clothes the county board with discretionary powers. Moreover, it has been held that the county board is vested with discretion to determine whether the power to detach territory from one district and annex it to another under Section 1 of Article 2742f should be exercised.

In the case of Prosper Independent School District et al., vs. Collin County School Trustees, 51 S. W. (2d) 748, affirmed, 53 S. W. (2d) 5, the court made the following statement:

'It will be noted that authority is lodged in the county board of trustees to transfer territory, contiguous to two school districts, from one to another, under certain enumerated conditions. Generally, the lodging of authority in any designated board or forum carries with it the right of such board or forum to determine whether a proper case has arisen for the exercise of such power. So, in the instant case, we think the county school board is vested with a discretion to determine
whether the power given it by Section 2 shall be exercised in any given case. The clause of Section 1, declaring that the county board of trustees shall pass an order transferring said territory, prescribes the manner in which the county board of trustees is to make known its judgment in the matter; that is, that it must be by an order duly passed and entered in the minutes of the county school trustees, and does not mean that all discretion is taken from such trustees when a statutory petition for annexation is presented."

The above quoted language was approved by the court in the case of Schlemmer et al., vs. Board of Trustees of Limestone County (Writ of Error refused), 59 S. W. (2d) 284. The following appears in the opinion of the court:

"In deference to said authorities, we hold that the county board of trustees of Limestone County, in acting upon appellants' petition, were invested with discretion to grant or refuse the same as they might deem proper and just."

In view of the foregoing authorities you are respectfully advised that the county board of school trustees, when duly petitioned to detach territory from either a common or an independent school district and annex the same to a contiguous district, is vested with discretion to determine whether the transfer shall be made.17

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY: George W. Sparks
Assistant

The county board must take over the management, control, and disposal of the property of an independent school district after it had been abolished if the district has, at the time of abolition, outstanding bonds or other indebtedness,

17Opinion 0-4932, Attorney General of Texas, 1943.
enforceable either at law or in equity.\textsuperscript{18} In this case, the county board was held to have power to manage, control, and dispose of any properties, levy and collect taxes, and sue and be sued.

Another important expressed duty of the county board set up in Article 2676a was the classification of all schools in the county into elementary and high schools. If it was held more convenient for a pupil to attend a school outside his home district he was permitted by legislation to transfer per capita money from his home district to a receiving district.\textsuperscript{19} County boards hold hearings on transfers, and such transfers are often contested and upheld in order for school districts to hold enough scholastics to maintain a certain number of teachers. Exercise of this power by the county board has given them considerable influence in maintaining or altering the status of schools. If the county board so votes, a school may be allowed to be operated and classified with very few pupils in average daily attendance. The power to classify schools carries, or should carry, the responsibility of determining whether the school shall be allowed to continue, and to determine the number of teachers allowed for the school.

\textsuperscript{18}Vernon's Texas Statutes, 1927, Article 2676a.

\textsuperscript{19}Vernon's Texas Statutes, 1936, Article 2678a.
The beginning of the major changes that have taken place in extending the powers of the county school board was the rural high school legislation passed in 1916. Article 2922 authorizes two methods by which a county school board may create a rural high school district. First, the board may group a common school district with less than four hundred scholastics or an independent district with less than two hundred fifty scholastics, with one or more common or independent districts falling in the same classification so far as scholastics population is concerned, provided all such districts have touching boundaries. To accomplish this result it is only necessary that the county board of school trustees pass an order. Previously it had been required that the county board notify the trustees of the districts affected, and give them a chance for a hearing. Henceforth, too, such changes could only have been affected or initiated by a petition of the inhabitants of the district affected. Giving the county board of trustees the power to group contiguous schools was indeed a broad extension of its original powers. 20

Second, the board of county school trustees may annex one or more common or independent school districts with less than two hundred fifty scholastics or to an independent district with more than four hundred scholastics or to an independent district with more than two hundred fifty scholastics.

20 Vernon's Texas Statutes, 1947, Article 2922a.
No election is required. Prior to the amendment of Article 2922a in 1947, it was necessary to get the consent of the board of trustees of each district to be affected in case of annexation of districts, except where an election was required.

In all of these situations the county school trustees have the authority to create a rural high school district by the grouping or annexing of districts in their own motions, without a petition or an election and without the consent or approval of the officers or resident of the school districts affected, except as such county school trustees are limited by the provisions of Article 2922c which provides that:

... no rural high school district, as provided for herein shall contain a greater area than one hundred square miles, or more than ten elementary school districts, except that the county school board of school trustees may form rural high school districts, as provided in Article 2922a, containing more than one hundred square miles upon the vote of a majority of the qualified electors in the said proposed rural high school district voting at an election called for such purposes; and provided further, that the said board may form a rural high school district containing more than ten elementary districts upon a vote of a majority of the qualified voters in each of the elementary districts within such a proposed rural high school district.22

Where the proposed new district would contain more than one hundred square miles of territory, the proposition to


22Vernon's Texas Statutes, 1947, Article, 2922c.
create such a district must be submitted to the qualified voters of the territory at an election to determine whether such a district shall be created. But the Article does not specify that a favorable vote must be given in all the districts affected; instead it provides for "a majority of the qualified electors in the said proposed rural high school district." In the case of the elementary schools, the proposition for the creation of such district must be submitted to the qualified voters in an election held in each such district. In this situation, if the proposition to create such a district fails to receive a majority vote in any of the districts which it is proposed to include in the rural high school district, then the county school trustees cannot change such a district.

In the rural high school districts, the effect of this legislation gives precedence in power to the towns in the area. It is possible for an election to be held authorizing creation of a rural high school district from eight rural districts and one district containing a large city or town. The preponderance of voters in the city may outweigh all the rural voters and the election in the rural districts be against the measure. The majority vote, however, is the deciding factor.

Ibid.
A number of court decisions have clarified some phases of the legislation setting up the rural schools. One case decision held that where an election was held for the formation of a rural high school district containing over one hundred square miles that it was not necessary to secure the approval of the trustees of the districts affected thereby. 24 Another ruling held that the "county school trustees have power without the consent of the trustees of the district affected to annex three common school districts to a previously formed rural high school district classified as a common school district" 25 where the combined scholastic population would be less than four hundred. Where such districts cover more than one hundred square miles of territory, an election is necessary.

The foregoing legislation applies only to the creation of rural high school districts. Article 2806 provided for consolidation of school districts other than those designated as rural high school districts. 26 On the petition of twenty or a majority of the legally qualified voters of each of several contiguous common school districts, or contiguous independent school districts, the county judge of


26 Vernon's Texas Statutes, 1919, Article 2806.
the county would issue an order for an election to be held on the same day in each district. If a majority of the voters in each district vote for consolidation, the commissioners' court is authorized to declare the school districts consolidated. A court decision states that "this article (2306) relates solely to the matter of consolidation of school districts and has no application to the matter of annexing or grouping school districts to form rural high school districts under provisions of Articles 2322a and 2099."

Other rulings on the powers of the county board to change boundary lines of school districts further extend the power of the county board of trustees. In the case of Mathis v Pritchard a ruling held that the "county school trustees have power to consolidate districts already organized without a petition of the electors therein." Another decision held that "under authority given the county school trustees to subdivide the county into school districts and change district lines the trustees have broad discretion and need not submit proposed changes to a vote."
Article 2922 has had a far-reaching effect on subsequent school history in Texas. This is the law providing for free tuition in certain districts and for attendance in high school in or out of the home district. One of the outstanding shortcomings of the small rural schools has been the number of grades to be taught by the one or two teachers. The practice has been, in many instances, that the small county school has discontinued teaching high school subjects and those scholastics eligible to attend school have been carried on buses or by other transportation to the larger high schools in nearby areas. The State has guaranteed free schooling to those transfers from the small districts, and the sum of twelve dollars per secondary pupil and six dollars per month per elementary pupils has been guaranteed the larger districts. The individuals themselves do not pay, but the State assumes the responsibility. Money for the tuition is derived from the State funds per capita and the local districts after the per capita funds are exhausted.

Under this arrangement, many of the rural districts have limited their schools to the elementary grades and have sent the secondary school pupils by bus to nearby larger districts. This, in turn, has created an unsatisfactory situation for the large secondary school. In the City of Denton, for
example, the taxpayers of the town are assessed taxes at a much higher rate than the rural areas. These taxes support the city school system. Yet the surrounding school districts, with a much lower tax assessment, send their high school pupils to the city school and receive the same advantages as the town pupils whose parents are paying for the extra facilities over those provided for rural schools. Under the existing laws, consolidation up until 1949 had remained more or less stationary, and little was being accomplished in relieving the situation. The rural areas, under contract, sent their secondary pupils to the larger independent districts without assuming the same financial obligation as the city taxpayer. This has been accepted under the general assumption that city districts are more able to support schools than the rural areas, because they have greater property resources.

The results of this "hodgepodge" legislation for school district lines in Texas is illustrated by a statement of the Gilmer-Aiken Committee in its recommendations for a reorganization of the Texas school system:

"Defects of grave nature exist in our present policies and procedures for managing education at the state level. These defects are not connected with personalities; they are not due to lack of wisdom on the part of anybody. Our management machinery has just accumulated, rather than being planned, the time has come when we must overhaul it for the big job that lies ahead."

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The findings of this chapter alone, it is believed, will substantiate the claim of the Committee. They may be summarized as follows:

1. A county board of trustees in 1911 was authorized by legislation to assume the management and control of the public schools in a county in the place of the commissioners' court which had previously exercised this function.

2. The powers formerly held by the commissioners' court to change the boundary lines of a school district were vested without any change in the county board of trustees.

3. The county board of trustees has the power to create and subdivide common school districts, but this power does not extend to include independent districts; they still retain their power to do their own districting and to levy a higher tax rate in incorporated cities than is permitted by law in other school districts.

4. The right of the Legislature to create independent school districts or to change the lines of independent schools by special act has been abolished.

5. The power of the county board of trustees to change boundary lines of school districts has been extended by the passage of legislation authorizing consolidation of common school districts.

7. The powers of the county board of trustees to change boundary lines of school districts differ according to
the type of district created either by the board or by other agencies.

8. Much litigation has resulted from the changes made in the school laws extending the power of the county board of trustees to change boundary lines of school districts. Legislation designed to give the county board more power has been declared unconstitutional in some instances.

9. Many inequalities have resulted from the complexity of the legislation and the conflicting powers of the different types of school districts.

10. Conferring the power of classifying a school has given the county board of trustees much power in determining which schools are maintained and the number of teachers to be provided in these schools.

11. The transfer and transportation laws have worked an undue hardship on the large independent school systems and on the taxpayers who support these systems.

12. There is no one person at fault for this situation; the legislation governing the public school system was initiated at a time when conditions were far different from the present; expanding needs have called for legislation which has accumulated in patchwork fashion without any certain plan of procedure.

13. The laws governing the power of the county school board to change district school lines are a maze; they need to be simplified, recodified, and centralized. The mass of
conflicting detail about different laws and different interpretations of these laws, as presented in this chapter, bears witness to this need. The machinery of the school system has grown so topheavy that it is difficult to understand, difficult to administrate, and unfair to the children of the state who have a right to equal educational opportunities.
CHAPTER IV

REORGANIZATION OF THE PUBLIC SCHOOL SYSTEM OF
TEXAS UNDER GILMER-AIKEN LEGISLATION

Purpose of the Chapter

The purpose of this chapter is to make a study of the recently enacted Gilmer-Aiken school legislation in order to determine its effects on the general set up of changing district school boundary lines. Attention will be given to this historical background of the study, recommendations of the committee, the legislation, and a discussion of its probable effects on the unwieldy system of school consolidation that has gradually resulted in changing and amending the original school laws of the state.

Historical Background of Gilmer-Aiken Legislation

Legislative members who have had experience as teachers in the school system of the state have long been aware of the need for a reorganization of the public school system. In 1946 while the Legislature was in session in Austin, authorization was made for the formation of a committee to study the public school system of the state for the purpose
of recommending needed school legislation to the legislature when it next convened in regular session. The membership of the committee, the educators who helped in the committee, and the procedure followed are all explained in an accompanying letter sent by the committee of the legislature when the report on the survey was made. The letter is reproduced because it presents in concise form the essential facts:

In compliance with House Concurrent Resolution No. 48 of the Fiftieth Legislature, the Gilmer-Aiken Committee, after eighteen months of intensive study and preparation, presents in this report our recommendations for your consideration.

All of the recommendations contained herein were arrived at after months of study, analysis, and survey. County committees in 254 counties assisted in the selection of issues and gathering data.

There are eighteen members of the Gilmer-Aiken Committee. We were fortunate in enlisting the support of some seventy-five other technical and professional people of Texas to assist us in our study. They served, as did the members of the county committees, without compensation, even paying their own expenses to Austin and other points where the advisory committee met.

Without the assistance of these groups, nothing constructive could have been accomplished. With their help we submit here a list of proposals which we feel are sound, constructive and representative of the combined judgment of the people of Texas. We extend to all of you here our grateful thanks.

Our committee is in accord with the proposals taken as a whole, and feel that their support by the people of Texas will most certainly improve the educational opportunities of our youth.1

Respectfully submitted,

James R. Taylor, Chairman
Gilmer-Aiken Committee

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1Gilmer-Aiken Committee, op. cit., p. 2.
The Gilmer-Aiken recommendations, it is indicated from
the submitting letter, were based on a serious study and sur-
vey of the needs of education in Texas. Its proposals, it
was stated, were based upon the following facts and convictions:

    Education is big business in Texas now. It must
become even bigger fast. A million babies have been
born in Texas within the past six years. These babies
are going to grow up with inferior education at the
very time when they need superior education, if Texas
citizens do not act promptly and positively.

    The education we have now is not 'bad'. It has
many excellent features, is making some very good citizens.
As a whole we can be proud of our public schools—but
not too proud of our public school system.

    Our system for providing education does have some
flaws. Those flaws are serious, but they are neither
so numerous or so influential as the good features of
what we have now.

    Every bit of evidence that we have indicates that
we need a much better system for operating education
in the future than we have had in the past. Flaws which
could be overlooked ten years ago will stop progress
now. Antiquated or inefficient machinery will not be
good enough for the modern job we simply must do.

    The system for education in Texas must be designed
to fit the needs of a great state, a growing state, a
modern state with no time or excuse for lost motion.

    Proposals for improving education in Texas must be
based upon the needs of the state. Personalities,
petty quarrels, local self-interest, political align-
ments, selfishness—these must be forgotten by any
group entrusted with designing a better education for
Texas.2

    The Committee was thus faced with the problem of remedy-
ing the "flaws" in the system of public school education. Any
number of proposals were made, but a number of paramount is-
ssues were selected for study. Two of these are directly con-
cerned with this study: equalizing opportunity for the very

2Ibid., p. 3.
minimum kind of education the citizens of Texas have said that they want, and financing this minimum program of education.3

These proposals strike at the very root of the problems considered in this study. It has been shown that the large city school systems, because of greater sources of income and greater latitude in taxing procedures, have been able to build excellent school systems and provide facilities that meet the varying needs of all the pupils. The small rural districts have not been able to do this because they did not have the resources. Rural people, in many instances, have refused to consolidate with other districts in order to acquire more resources on which to draw for support. The building of all-weather roads and the improvements in means of bus transportation have made possible the transfer of pupils over wide areas to one central point. The large city school systems, under existing laws, have had the power to annex these smaller districts, but if they did not they lost their special taxation privilege granted to cities whose boundary lines coincide with those of the independent school district. The small rural district, if it became a part of the city independent district, had to bear its pro rata share of higher taxes. The result has been confusion, litigation, and unequal opportunities of education for the children of the state.

3Ibid.
The Gilmer-Aiken Committee, instead of giving its time to a study of problems involving the changing of boundary lines, gave serious study to some method of financing the public schools that would apply equally to the large city school district and the small rural district as well. It set up the following principles as guides in the study:

1. Local taxation should support approximately 25 per cent of the total cost of foundation program in the state as a whole, but the amount raised by each locality should accord with its taxing ability. Every local system in Texas should be required to raise some local funds for education; all private property should be subject to local taxation for education.

2. The uniform local effort required should not exhaust the local taxing power for education. Each locality should have leeway to raise funds over and beyond the minimum program.

3. The state should provide the remaining cost of the minimum foundation program in each local unit.

4. State funds should be so distributed that opportunity for having a minimum foundation program will be equal in each system and between the races.

5. The formula for distributing state funds should be so written that personal judgment in allocating funds is reduced to a minimum.

6. All school funds should be handled to assure their safekeeping, and subject to careful state auditing. 4

The result of the study was the formulation of a plan whereby local and state support are combined to finance a minimum foundation program, with the state underwriting the cost above a reasonable, uniform local effort. Article VI, of the new reorganization plan, the Gilmer-Aiken legislation, describes the procedure to be used. 5 Because of the importance

4 Ibid., p. 5.
5 Ibid.
of this plan and its significance for public schools in Texas, each section will be discussed in full. Section 1 reads as follows:

Section 1. Finance of Foundation Program. The minimum Foundation School Program established in this Act shall be financed by:

a. Requiring an equalized local school district effort to the extent hereinafter provided toward the support of the program;

b. Distribution of the Available School Fund on the basis of the number of scholastics; and;

c. Allocation to each local district a sum of State money for the purposes of this Act sufficient to finance the remaining costs of the minimum foundation program in that district computed and determined in accordance with the provisions of this Act.6

These changes are radical from the standpoint of past experience in changes in school laws. Distribution of the available school fund on the per capita basis is an institution in Texas education. No new precedents were set up in distributing the available fund and little newness in equalization fund.

Section 2 of the Act specified that the sum of the amounts to be raised by the local districts as a minimum foundation fund is forty-five million dollars ($45,000,000) for the first year.7 Each school district is to pay a part of this State total out of local maintenance tax funds, and the amount it will pay will be determined by an economic index.

6Ibid., Article VI, Section 1.

7Ibid., Article VI, Section 2.
Section 3 explains the economic index and how it is formulated. It reads as follows:

The economic index of a county shall be calculated to approximate the per cent of the total taxable ability in the State which is in a given county, and shall constitute for the purpose of this Act a measure of one county's ability to support schools in relation to the ability of other counties in the State. The economic index for each county shall be determined and based on the following weighted factors, which shall be recomputed and computed every four (4) years:

a. Assessed valuation of the county—weighted by twenty (20).

b. Population of the county according to the last preceding Federal Census—weighted by eight (8).

c. Income for the county as measured by: value added by manufacturers, value of mineral products, value of agricultural products, payrolls for wholesale establishments, payrolls for service establishments—weighted collectively by seventy-two (72).

The economic index is to be determined for each county by the Central Education Agency, the new administrative set up for reorganizing the public school systems of Texas. Information on which the index is computed is furnished the Agency by the County Tax-Assessor of each county as a part of his designated duties.

Determination of this economic index will eliminate the old way of uneven or unequal assessments from county to county. The Committee stated in its recommendations that "under our existing laws many school districts are not contributing their share of local school taxes because of low

\[\text{Ibid.}, \text{ Article VI, Section 3.}\]
assessed valuations or low tax rates." It was further stated that ninety-eight counties report lower total assessed valuations for school purposes than for state and county purposes. The economic index provided for calculating the financial ability of each county, not on tax assessments but on a number of other factors.

Section 4 deals with the local funds to be provided in each district. The Central Education Agency is to determine the amount of local funds to be provided by each district in the following manner:

Divide the state and county valuation of the county into the state and county valuation of the district, finding the district's percentage of the county valuation. Multiply the district's percentage of the county valuation by the amount of funds assigned to all the districts in the county. The product shall be the amount of local funds that the district shall be assigned to raise toward financing its foundation program.

If a district has no school, the amount of local funds assigned to each district will be assigned to the district or districts in which the children attend school, and the local funds collected will be transferred to such receiving district or districts. If the district fails to collect a local maintenance tax equal to the amount of funds assigned against it as determined by the Economic Index, the district will still be eligible for its full per capita apportionment.

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10 Article VI, Gilmer-Aiken Act, Section 4.
and Foundation Fund grants "but the amount as determined by this Section shall be charged against the district as receipts"\textsuperscript{11} whether such amount of local taxes is collected or not. Any local funds of a district in excess of the amount as determined by this legislation may be spent for any lawful school purpose or carried over until the next year.

All school districts in Texas are eligible to participate in the benefits from the legislation. Dormant school districts--those in which a school has not been held for two years--must be added by the county board to another district or districts.\textsuperscript{12}

The provision for the county board of trustees to add a "dormant" district to other districts is the only mention made of the board's power to change boundary lines of districts. The problem attacked here is the elimination of the financial questions that have plagued the progress and consolidation of Texas public schools. If the small districts are annexed or added to the larger districts, the equalization of the tax burden eliminates the stumbling block hitherto existing. The large city system, with limits coinciding with those of the incorporated town in which it is

\textsuperscript{11}\textit{Ibid.}

\textsuperscript{12}\textit{Ibid., Article VII.}
located, can now extend its district lines without losing any financial returns; all the districts, common and independent, rural and city, are figured by the same agency and on the same basis.

What will be the results of this legislation? Will the schools consolidate at a more rapid pace than heretofore? Events in Denton County will illustrate and answer these questions. In the Denton Record-Chronicle of July 6, 1949, the following news item appeared:

Those two words—Gilmer-Aiken—put Denton schools nearer the realization of being an independent district Tuesday—Independent from municipal connections.

In rapid-fire order, at a joint meeting of city and county trustees and city commissioners this happened:

1. The city board accepted five outlying 'dormant' school districts from the county board.
2. The city school board recommended to the city commission that an election be called to declare Denton schools independent from the city and become an independent school district.13

In a subsequent meeting a week later to work out final decisions of the transaction, eight other school districts which had been sending students to the Denton High School under contract asked to come into the city system of schools, and they were permitted to do so.14 Elementary schools will be continued in each of these districts, but twelve new districts were annexed or added to the Denton city system of

14 Ibid., July 13, 1949.
schools as the result of the Gilmer-Aiken legislation. Many of the in-coming districts do not have sufficient tax income, but this will have to be raised if the districts are to receive the benefits of the Gilmer-Aiken legislation. This action of the school districts is combining freely and of their own will, it is believed, is sufficient proof that unequal finances have been the main stumbling block in the path of consolidation of schools.

Another recommendation of the Gilmer-Aiken Committee was the establishment of local administrative units "fitted to give efficient management." The recommendation reads:

The strength of public school education lies, in the final analysis, in the kind of management given at the local level. This state is particularly true when a state is attempting to provide a minimum foundation program of education for every child without wasting money.

When we use 'administrative unit' we mean school districts, not single schools in a district. An administrative unit is a legal entity, having the power to levy and spend taxes for school purposes, and managing one or more schools. The size of an administrative unit does not necessarily have anything to do with the size of individual schools. For example, suppose we have five administrative units each operating one school. We might combine the five into one, but the one could continue to operate five schools if that seemed best. The proposals which follow have to do with getting good local units for managing education; these units can then do the best job of locating schools and deciding on their size.\(^5\)

Three proposals were made concerning changes in school districts. One concerned the addition of dormant districts and

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their addition to other districts. Another recommended that present laws pertaining to grouping of school districts should be continued as they now exist. A provision would give each county in the state the privilege of becoming a county-wide independent school district, as provided hitherto by law for some counties. The other proposal read:

Two or more contiguous counties or parts of two or more contiguous counties should be allowed on a voluntary basis to form one single administrative unit.16

Denton Municipal district, it has been illustrated, is in the process of becoming an administrative unit by the addition of dormant districts and of others coming in to the district of their own free will. Another outstanding administrative unit has been formed as a result of the proposal for districts from two or more contiguous counties. Voters in four cities, Justin, Rhone, Roanoke, and Haslet in Denton, Wise, and Tarrant Counties, respectively, joined together to form the Northwest Independent School District in June, 1949, and in July they voted a $250,000 bond issue to build a consolidated building for the new district. Elementary schools will be maintained in the previous districts. A property tax of $1.50 per $100 was voted on state and county valuations and the new district is to assume all the indebtedness of the five former districts. The new school plant will

16 Ibid.
be located on a forty-acre plot of ground which will give facilities for a wide activity program.

These are two favorable illustrations of the outcomes of the Gilmer-Aiken legislation. Promise of litigation to come has already appeared on the horizon. In the Dallas Morning News of July 21, 1949, the following news item appeared:

Some Brazos County school districts face an existence without money to operate.
It is the first known case in which efforts to conform to Gilmer-Aiken law requirements have left schools without a tax levy.
No election has been called to fix a tax rate for the new AllenFarm-Consolidated School District, although the Peach Creek and Minter Springs districts were added to it by the Brazos County Board of Education. The districts had a fifty cents school maintenance tax, compared to $1.50 for the consolidated district. The residents objected to the tax increase and protested the merger with A-K, but the board overruled them.
The question raised here is whether any levy can be made against residents of Peach Creek and Minter Springs if the trustees of the consolidated district call no election. Some qualified legal opinion is that in no case could the $1.50 be levied, and there was a question as to whether the fifty cent raise could continue.17

Another district in Brazos county, Smetana, will have to raise the tax rate to receive the benefits of the Gilmer-Aiken legislation, but it has not called an election. If one is not called, the levy will be made on the residents of the three districts merged into the new Smetana district.

In the opinion of the County Superintendent of Public

17 The Dallas Morning News, July 21, 1949, p. 4, Section 1.
Education of Brazos County, an election to equalize the levy in the three districts would be mandatory in another year.\textsuperscript{18}

The issues will ultimately be decided in court decisions. If the Gilmer-Aiken legislation is upheld by the courts, it would appear at the present time that a long step has been taken in overcoming the handicap that the small district schools have been to the efforts to build school plants that can adequately serve the needs of the school population.

\textbf{Summary}

This chapter has been a study of the recently enacted Gilmer-Aiken legislation to reorganize the public school system of Texas. Legislation aimed at equalizing the opportunities of Texas school children and abolishing the inequalities of different methods of assessing school revenue has been enacted. Recent developments in Denton County indicate that the legislation will result in the merger of many small districts into administrative units comprising a number of schools under the direction of one head and one board of trustees. Resentment of rural tax payers is also appearing, and court litigation will decide the issues in the final analysis.

\textsuperscript{18}Ibid.
CHAPTER V

SUMMARY AND CONCLUSIONS

Summary

This study has been an investigation of the powers of the county school board to change boundary lines as granted by legislation and interpreted by the courts of the state. Attention was given to the original powers possessed by the commissioners' courts to make changes in boundary lines, and to the extension and enlargement of the powers under more recent legislation.

Conclusions

The following conclusions have been reached from the study of the legislation and court decisions regarding the powers of the county board of trustees to change boundary lines:

1. The original powers granted the commissioners' courts gave no authority to change the boundary lines without holding an election of the people concerned.

2. Under this provision Texas had thousands of small school districts without means of financing adequate school plants.

3. The commissioners' courts had power to create common school districts but not independent school districts.
4. The commissioners' court had no authority to consolidate schools; the county superintendent could do so where the scholastics numbered fewer than twenty pupils.

5. A county school board of trustees was provided for in state legislation in 1911.

6. The county school boards were granted all the powers previously held by the commissioners' courts to change boundary lines in school districts.

7. The legislation providing for rural high schools gave the county school board extended powers in changing boundary lines.

8. Under rural high school statutes, the county board could group contiguous school districts for the purpose of forming a rural high school by passing an order. The consent of the trustees in the affected districts or of the inhabitants of the districts was not necessary.

9. In the matter of consolidating schools for purposes other than for establishment of rural high schools, the original legislation called for an election to be ordered on petition of the voters in the districts affected. Later legislation amended this to permit the county boards to consolidate districts already organized without an election of the voters residing in the districts.

10. The Gilmer-Aiken legislation has made it mandatory on the county school boards to consolidate or annex "dormant" school districts to contiguous operating districts.
11. The number of common school districts in Texas has decreased rapidly with the increase in the powers of the county board to change boundary lines without calling elections or requiring the consent of the trustees of the districts.

12. There has been a steady trend within the past three decades to increase the powers of the county school board in changing boundary lines. The effects of the changes can be seen in the steadily decreasing number of small districts, and increase in size of an area of the independent school districts.

13. Recent merger of many small schools into administrative units indicates that the Gilmer-Aiken legislation, by removing financial inequalities of districts, will accomplish in a short time what almost a century has failed to do in the removal from the Texas public school system of many of the small school districts with inadequate funds or resources to maintain a school.
BIBLIOGRAPHY

Books


Eby, Frederick, *Education in Texas: Sources*, Austin, Texas University Press, 1921.


Legal Documents

An Act to Establish and Maintain a System of Public Free Schools, Austin, State Department of Education, 1875.


Opinion 0-4938, Attorney General of Texas, April, 1949.

The Southwestern Reporter, St. Paul, West Publishing Company, Volumes 9, 1889; 13, 1890; 24, 1894; 40, 1897; 52, 1899; 57, 1900; 65, 1902; 111, 1908; 143, 1912; 149, 1912; 192, 1917; 199, 1917; 250, 1923; 257, 1927.

The State Constitution of Texas, Article VII, Section 6., Article XI, Section 10.

Vernon's Texas Statutes, Kansas City, Missouri, Vernon Law Book Company, 1905, 1911, 1915, 1917, 1925, 1927, 1934, 1936, 1945, 1947, Articles 2676, 3681, 2678a, 2695, 2724a, 2741, 2745, 2744, 2757, 2766, 2767a, 2803, 2822a, 2822-1, 2922c, 2922f.
Articles

Bralley, F. L., "Address before the Texas Association of Teachers," Quoted in Iby, Frederick, The Development of Education in Texas, p. 221.


Unpublished Material


Newspapers

The Dallas Morning News, July 31, 1949, p. 4, Section 1.