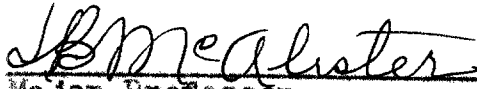


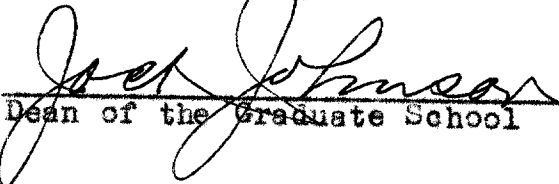
LEGAL PRINCIPLES AND PRACTICES IN THE CONSOLIDATION
OF SCHOOL DISTRICTS IN TEXAS

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LEGAL PRINCIPLES AND PRACTICES IN THE CONSOLIDATION
OF SCHOOL DISTRICTS IN TEXAS

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CHAPTER I

INTRODUCTION

In an organized society such as ours, there are bound to be conflicts between individuals and groups. In most cases these conflicts are brought about by the ways and means of securing some desired ends. At other times it is the ends sought that are the cause of the conflicts. In an organized society there must be a procedure to settle these conflicts if the society is to be self-perpetuating. There are several procedures that the members of society employ to settle these conflicts. One is by the conference method, another by arbitration, a third is by boards acting and making decisions in limited fields, and the last and most accepted is that of the courts as provided for in our Federal and State Constitutions.¹ It is the courts, acting as an instrument for settling conflicts, that will be considered in this problem for settling questions of law in regard to education in Texas.

Education is a problem of the government now. Formerly it was exercised by the individual families, but now it is assumed by the state. In the early colonial period, education

¹R. R. Hamilton and Paul R. Mort, The Law and Public Education, p. 13.

was largely a matter for each family. The first step in the direction of governmental control was the creation of the local school unit. In this school there were assembled all the children of the settlement. The teacher was first paid by the parents of the children and later by all taxpayers through taxation. The local unit of government determined in large measure the school unit. The township dominated in New England and the northern states while the county became the basis of the school unit in the southern states.²

School houses were now built where needed in the counties, and the county or district form of school organization became fixed. So what began as a social convenience and for a religious purpose was thus gradually changed into an important political institution.³

Throughout all this process of organization, subordination, and reorganization, the state has been the unit for action. The power to direct the reorganization, extension, and improvement of education provided by the communities has been clearly a power of the state, and the fact that schools arose with us largely as a community undertaking, at first without state permission and later under the provisions of permissive laws, in no way has altered the fundamental principle that the state and not the locality is the ultimate

²F. G. Crawford, State Government, p. 367.

³E. P. Cubberly, State School Aid, p. 141.

source of authority for the unit for legislative action. It is the people of the state as a whole who are supreme. The school district, town, township, city, supervisory district, and the county are all subordinate divisions and creations of the state, and as such derive all their power from the state.⁴

Where one part of the culture changes first, through some discovery, new idea, or invention, and causes a need in some other part of the culture dependent upon it, there frequently is a delay in the changes occasioned in the dependent part of the culture. An example of this is in the fact that the invention of the auto has led to an efficient means of transporting school children to larger and better equipped schools. Improved roads also have helped along with the improvement of transportation. Yet society, in some instances, has not made the use of the inventions to the best of improving schools. There are still too many small schools that are costly and inefficient. The difference between what has been discovered and invented and what society makes use of is quite naturally at a difference. The difference may be called a lag. The extent of this lag will vary according to the nature of the cultural material, but may exist for a considerable number of years, during which time there may be a maladjustment. It is desirable to reduce the period of

⁴Ibid., p. 122.

maladjustment, and to make the cultural adjustment as quickly as possible.⁵

This applies to the consolidation of school districts just as to other needed changes. Efforts to consolidate school districts will be met by local opposition. This opposition is usually stated in terms of the proposed consolidation violating some law or principle of home rule. Nevertheless, these objections must be met on a legal basis so as to foster effectively the consolidation of the school districts. The following discussion gives some of the objections to reorganization or consolidation of school districts. In projecting any proposed reorganization of local school units involving consolidation and the relocation of schools, certain objections will be met. Not all of the following will be found in any one place. Usually only one or two of them will be encountered in any one community.

The first objection is that consolidation destroys community life. The second argument is that the children are sent to schools where the community has little or no control. Thirdly, communities do not like to admit openly that they are not capable of maintaining schools for their children. Fourth, there is the selfish interest of certain individuals who have economic gains by keeping the schools in the community. Fifth, there is the opposition by the teachers and

⁵E. A. Bateman, Development of the County-Unit School in Utah, p. 1.

school administrators who may lose their jobs should the schools be consolidated. Sixth, there is the objection to having the children transported over longer distances. And seventh, there are those who fail to see the advantages of a larger school.⁶

In spite of the adverse criticism, voluntary centralization or consolidation of schools and school units is an effective and economical means of overcoming the deficiencies of small isolated schools. In a number of states, the consolidation movement has for years been promoted as a state policy.⁷ The problem of consolidation of school districts is presented in this study from the viewpoint of the court or the judiciary, because in the final analysis, it is the court that decides just what the law is, how it operates, and to whom it may be applicable.

The statutes dealing with the consolidation of school districts may be read and reread, but the reader will learn little unless he can see just how the courts apply these laws to real situations.

The reason for taking the interpretations of the courts and seeing how they are applied is that the laws, constitutional and statutory, are general and the final determination of their application is left to the courts. Both constitutional

⁶H. A. Dawson, Satisfactory Local School Units, pp. 154-158.

⁷E. P. Cubberly, State School Administration, p. 122.

and statutory laws must be decided as to their meaning and extent in specific terms when controversies arise.

An example of a problem of the courts may arise in this fashion. Everyone will agree that school funds may not be used for any purpose other than for the schools. The courts have had to decide what is educational, if school funds are allowed to be spent for this subject or this service. A specific example of this type arose a few years ago. In the case of Abney v. Fox,⁸ the courts ruled that it is permissible for the trustees to require a certain type of vaccination before school children would be allowed to attend the public schools. Here, the trustees were requiring, and providing for, medical treatment. Just how far could the trustees go in this matter? Could the trustees furnish medical aid for all diseases that are contagious? Probably not, but it would be the duty of the court to draw the line to determine for what purposes money could be expended and for what purposes money could not be spent. Difficulties in this type of case arise out of the fact that the legislature, as stated before, enacts legislation in such broad terms.

Educators have failed to realize the extent to which the administration of the school is affected by judicial interpretations.⁹ Should interested parties realize the need

⁸Abney v. Fox, 250 S. W. 210.

⁹Hamilton and Mort, op. cit., p. 15.

for consolidation of small school districts into one large district, then it is altogether possible that this seemingly needed reform may be defeated by the lack of knowledge on the part of the parties on this phase of school law. For this reason school administrators and other interested parties should study the procedure in the consolidation of school districts by giving consideration to the decisions of the courts in this field.

By and large, the courts have been most lenient on the local school administrators and officials. Courts do much to protect the interest of the school for the general welfare of the community. And it is possible that a mistake has been made in leaning too heavily on the judiciary for protection of the school system. The courts have settled many questions that were more educational than legal in nature. Such decisions have impaired the efficiency of the courts as interpreters of the law.¹⁰

Limitations and Statement of the Problem

More specifically, the writer in this study seeks to do two things: (1) to make clear the fundamental principles underlying the relation of the state and the local school officials to the school district in regard to school district consolidation, and (2) to reduce to a systematic organization the principles derived from cases which are applicable to

¹⁰Ibid., p. 566.

the problem of consolidation of school districts. Such a problem seems to find its justification by the amount of time, effort, and money spent by this state in maintaining free public schools. Such vital knowledge should be of interest to the parents of school children, the taxpayer, the educator, and local school officials.

Source of Data

The sources of data are magazine articles, the Texas Constitution, Texas Public School Law and the cases of law dealing with the consolidation of school districts.

Procedure

The procedure will be to take the laws on consolidation and then present the controversies that arose from these laws and show how these cases were decided by the judiciary. By studying the problem in this fashion, one can more nearly get a clear view of the methods and procedures of consolidating the schools in Texas.

CHAPTER II

THE FEDERAL CONSTITUTION AND STATE EDUCATION

Each state was left, by the Tenth Amendment of the Federal Constitution, to organize its educational system as it saw fit, modified only by the conditions stipulated in the land grants for schools laid down by Congress in the enabling or endowment acts and in a few specific sections limiting state action in general. It was natural that a number of types of educational organizations should arise within the different states. The attitude toward education is found faithfully reflected in the original states, and in the new states which were settled by settlers from the original states.¹

When attempts are made to abolish school districts, to consolidate them, or to alter their boundaries, suits are sometimes instituted on the grounds that Article One, Section Ten of the Constitution of the United States prohibits any state from passing any law impairing the obligation of contracts. The Federal Courts hold that the duties of a school district are obligations imposed and not a contract as was stated in In re Committee.² The Supreme Court of the United

¹H. A. Dawson, Satisfactory Local School Units, pp. 142-143.

²In re Committee, 26 R. I. 164.

States has answered such contentions in the following language:

School districts cannot have the least pretension to sustain their privileges or their existence upon anything like a contract between them and the legislature of the state, and their objects and duties are utterly incompatible with everything of the nature of a contract.³

In the case of Pierce v. Society of the Sister of the Holy Names of Jesus and Mary, the Federal Courts laid down some principles in which the Federal Government will interfere with the state in regard to education. In this case an Oregon statute made it compulsory for all children between the ages of eight and sixteen years to attend a public school. The defendants in this case were the managers of a private school and sought to obtain a writ of injunction to prevent the State of Oregon from enforcing this law. The language of the Supreme Court of the United States was as follows:

Generally it is entirely true, as urged by counsel, that no person in any business has such an interest in possible customers as to enable him to restrain exercise of proper power of the State upon the ground that he will be deprived of patronage. But the injunctions here sought are not against the exercise of any proper power. Appellees asked protection against arbitrary, unreasonable, and unlawful interference with their property. Their interest is clear and immediate, within the rule approved in Truax v. Raich, Truax v. Corrigan, and Terrace v. Thompson, *supra*, and many other cases where injunctions have been issued to protect business enterprises against interference with the freedom of patrons and customers.⁴

³Attorney General v. Lowery, 199 U. S. 233.

⁴Pierce v. Society of the Sister of the Holy Names of Jesus and Mary, 268 U. S. 510.

Here the Federal Courts have ruled that the states cannot be arbitrary, unreasonable, or unlawful in their passing of laws in regard to the function of educating the children of the state. This is an example of how the Federal Government protects a corporation from the power of the state in carrying on the function of education.

Another classic example in regard to the due process clause is that of Meyer v. Nebraska. Just after the First World War the Legislature of Nebraska passed a law forbidding any person to teach any subject in any foreign language unless the person being taught had passed the eighth grade. Meyer, a teacher, was convicted of teaching a reading class, in German, to a school child under ten years of age and who had not passed the eighth grade. The Supreme Court of Nebraska had affirmed the decision of the lower court in holding Meyer guilty of violation of this law.

The case was brought before the Supreme Court of the United States in 1923 on a writ of error. Meyer's contention was that the law violated the Fourteenth Amendment of the United States Constitution, which prohibits any state from depriving any person of life, liberty, or property without due process of law. The Supreme Court ruled that:

Evidently the Legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own.⁵

⁵Meyer v. Nebraska, 262 U. S. 390.

Another principle laid down in this case is that: "A desirable end cannot be promoted by prohibited means."⁶

The Berea College case gives some more principles that the Federal Courts use in regard to education. Berea College was a corporation duly incorporated under the laws of the State of Kentucky. In 1904, the Legislature of Kentucky made it an offense to teach both white and negro races in the same college. The courts of Kentucky found Berea College guilty of the provisions of this act and fined the Directors according to the provisions of said act. The case was brought before the Supreme Court of the United States in 1908.⁷

In deciding this case the Supreme Court of the United States laid down these principles. When a state court decides a case it decides the case upon two grounds, one federal and one non-federal, and the Federal Courts will not disturb the judgment if the non-federal ground, fairly construed sustains the position. Berea College was a corporation and the state, in allowing the creation of a corporation, may withhold powers which may be exercised and cannot be denied to an individual. In granting corporate powers, the legislature may deem that the best interest of the state would be subserved by some restrictions and the corporations may not plead that they are deprived of more rights than an individual.

⁶Ibid.

⁷Berea College v. Commonwealth of Kentucky, 211 U. S. 45.

Another principle laid down by the court is that the state courts determine the extent and limitations of powers conferred by the state on its corporations. One of the most important holdings of the court that is used extensively is the principle that political rights may be equal without being identical.⁸

The Federal Courts also have jurisdiction over acts of the local school officials because these officials are state officials and come under the jurisdiction of the Fourteenth Amendment of the Federal Constitution.⁹ This gives the Federal Government power over the actions of the lesser school officials such as the county board of trustees, the county superintendent, and the local district trustees.

There seems to be a decided reluctance by the courts to interfere with legislative attempts to deal with educational matter within the states. The legislature has in its discretion to determine what educational policies are desirable. The courts apparently recognize that fact, and hesitate to overrule the legislature except in cases involving matters with reference to which the courts have very strong convictions. In the overwhelming majority of cases in which the legislature has been overruled, the courts have used language indicative of a decided reluctance to do so. However that

⁸Ibid.

⁹Hamilton and Mort, op. cit., p. 18.

may be, the fact is clear that despite the established principle, educational policies are left to the state's determination, it remains that all attempts to determine them by legislative action are subject to judicial review.¹⁰

¹⁰Ibid., pp. 25-26.

CHAPTER III

THE POWER OF THE LEGISLATURE IN THE CONSOLIDATION OF SCHOOL DISTRICTS

The state legislature has plenary power in regard to providing education for the children of the State of Texas. That is to say that the state legislature has full or complete authority, subject only to constitutional restrictions, over free public education in Texas. The Texas Constitution makes it a mandatory duty of the legislature to establish a state educational system.¹

Education is a state function, wholly under the control of the legislature, except as that body is restricted by the State Constitution or by the Federal Constitution. Quite naturally, the legislature cannot directly administer the educational system of the state. It must make use of agencies to carry out its policies. In order for these agencies to carry out the policies of the legislature, the legislature must delegate to these agencies a great deal of power. Within constitutional limits, there is no restriction on the selection or the creation of such agencies.²

¹Mumme v. Marrs, 40 S. W. (2d) 31.

²Newton Edwards, The Courts and the Public Schools, p. 37.

If the legislature sees fit, it may authorize or even require such subdivisions of the state as counties, townships, towns, or cities, to perform certain duties with respect to the establishment and maintenance of schools. The schools may be placed under the direct control of the municipality in much the same manner as is the health or the fire department, or the municipal subdivision may be constituted a school district wholly independent of the municipality proper. The legislature, on the other hand, may ignore all existing corporate territories and establish school districts in such a manner as policy may demand, subject only to constitutional restrictions.³

An examination of the school law of Texas will reveal further the state character of the school system which has been provided. Although management and control of the schools of any district, town, or city may be placed by law in the hands of locally-elected officials; although much liberty of action may be granted to local units by the state school code; and although the large burden for the support of the schools may fall on local sources of taxation, the school nevertheless exists to carry out a state purpose, as expressed in the State Constitution and the state school law. The local governing authorities act as agencies for the state and can only do those things which the school law permits.

³Ibid., p. 38.

Powers must be specifically enumerated if the courts are to uphold the actions of the local agencies. The failure of the local agencies to comply with the mandates of the state school law may result in court action compelling the local agencies to follow the law.⁴

Every presumption is in favor of the validity of an enactment of the state legislature within the provisions of the legislative powers. In order to challenge successfully its constitutionality, it is necessary to find some constitutional provision which either restricts or prohibits the exercise of that power in the particular case. The question is not the extent of the power that has been delegated by the people to the legislature, but the extent of the limitations the people have imposed on such body. Therefore, the legislature needs no specific authority but only observe the constitutional limitations imposed by the people.⁵

The power of the legislature over the consolidation of school districts is found in the Texas Constitution as follows:

A general diffusion of knowledge being essential to the preservation of the liberties and the rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for public free schools.⁶

⁴E. P. Cubberly, State School Administration, p. 126.

⁵H. D. Alford, Procedures for School District Reorganization, p. 13.

⁶Texas State Constitution, art. 7, sec. 1.

Section Two provides for the governing and the levying and collection of taxes for the support of the free public schools. Section Three describes the school taxes and the rates to be levied on the various sources. Also Section Three provides:

. . . the Legislature may also provide for the formation of school districts by general law; and all such school districts may embrace parts of two or more counties, and that the Legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts . . .⁷

The Constitution is composed of general statements and delegation of power to the legislature in the field of public free education. There is nothing specific on the consolidation of school districts in Texas. Where, then, does the legislature get all the power to consolidate school districts? The answer is found in the duties imposed upon the Texas Legislature by the Texas Constitution. The Constitution makes it a duty of the legislature to provide for an efficient system of free public education and then gives the legislature the power to provide for the formation of school districts by general law. Here is found the answer to this question. Yet it is common knowledge that the legislature does not go to all the school districts and change the boundaries, consolidate them, or collect their taxes. Such a duty would impair the efficiency of the legislature. This is averted by delegating some of the power of the legislature to local agencies.

⁷Texas State Constitution, art. 7, sec. 3.

Limitations of the Legislature in Consolidating School Districts

The restrictions imposed on the legislature in the consolidation of school districts are found in the Texas Constitution. Any question involving the legality of an act of the legislature will be one of constitutional law.

Article Three, Section Fifty-Six, of the Texas Constitution prohibits the legislature from passing, except as otherwise provided in the Constitution, any local or special law regulating among other things the affairs of school districts.⁸ A "local" or "special" law is defined as an act which designates a particular city or county by name and whose operation is limited to such city or county.⁹

The courts have gone further in their definition of a local or special law. The courts have said, in effect, that a classification based on existing or past conditions or facts excluding persons, places, things, or objects thereafter coming into the same situation or condition is special and void. So an act applicable by its terms to only two counties because of classification based on population, attempting to validate action taken by the school board of one of these counties, was unconstitutional because it was a special law as defined in Article Seven, Section Three, of the Texas Constitution.

⁸Wood v. Marfa Independent School District, 123 S. W. (2d) 429.

⁹Ft. Worth v. Bobbitt, 36 S. W. (2d) 470.

The foregoing holdings of the court were the outgrowth of an act of the Forty-Fourth Legislature, in which the legislature passed a bill that provided:

That all acts of any county board of trustees in any county in Texas with a population of not less than (8,800) and not more than (8,950), according to the last Federal Census in laying out or attempting to establish, combine, abolish, or change an independent or common school district in the county over which such county board of school trustees has jurisdiction, . . . are hereby in all things ratified, confirmed and validated . . .¹⁰

Though this act did not mention things, places, or persons, it set up a condition that limited the scope of the law. The limiting factor in this instance was the population of the counties. There were only two counties in Texas to which this provision would apply; these two counties were Terry and Dimmitt. The courts held that the act, by limiting the application to counties with a population of not less than 8,800 and not more than 8,950, was limited by the population bracket and hence a special law which invalidated the action of the legislature.¹¹

In Fritter, County Judge, et al. v. West et al.,¹² the courts ruled that Senate Bill 542, passed by the Forty-Third Legislature was unconstitutional in that the bill attempted to form a county-wide school district by a special law. Attempts of this type have been discussed previously and will

¹⁰Acts 1935, 44th Legislature, R. S. chap. 339.

¹¹Brownfield v. Tongate, 109 S. W. (2d) 353.

¹²Fritter, County Judge, et al. v. West et al., 65 S. W. (2d) 414.

not be considered again in this case. Senate Bill 542 was held unconstitutional on another count other than the attempted formation of a county-wide district by special law. This other count was that the bill was also unconstitutional in that the legislature attempted to create the offices of county trustees, prescribe the powers and duties of the officers in the school district, regulate the management of a public situation in such district, and raise funds for such purpose in violation of the section of the Texas Constitution which reads as follows:

The Legislature shall not pass, except as otherwise provided in the Constitution, any local or special law, authorizing . . . regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes.¹³

The legislature can provide, by general law, for the formation or creation of school districts, but it cannot give, to the trustees, the power to levy a maintenance tax without submitting the question of the tax levy to a vote in the district.¹⁴

In 1931 the legislature authorized the Governor of Texas to negotiate a contract with the State of New Mexico to permit school districts, incorporated towns, or union high school districts located in Texas adjoining the Texas-New Mexico state line, to promote educational facilities for such

¹³Texas State Constitution, art. 3, sec. 56.

¹⁴Millhollon v. Stanton Independent School District, 231 S. W. 332.

communities. This educational service was to include the financing of school buildings, and providing of teachers for the districts so created. The governor was authorized to appoint a commission which he did,¹⁵ and the Forty-Fourth Legislature ratified the compact.¹⁶

In 1944 the courts of Texas handed down a decision which declared the compact to be unconstitutional and void. The courts held that the legislature had no power to authorize the formation of a county line school district in which the counties were in two or more states. Specifically, the courts ruled that the legislature could not constitutionally form or delegate power to form, a school district, partially or wholly outside the state.¹⁷

Powers of the Legislature in the Consolidation of School Districts

As previously pointed out, the legislature has almost unrestricted power over the territory and boundaries of a school district, whether it is an independent or a common school district. The legislature alone has the power to create an independent school district from the territory of an incorporated city or town; however, after the creation of an independent school district from the territory of an incorporated city or town, the district and county trustees

¹⁵Acts 1931, 42nd Legislature, R. S., chap. 251, p. 418.

¹⁶Acts 1935, 44th Legislature, R. S., chap. 220, p. 516.

¹⁷Texas-New Mexico School District No. 1 et al. v. Farwell, Independent School District, 184 S. W. (2d) 642.

are authorized to assume control of the territory. There is not a set method for changing the boundaries of school districts. The boundaries of a school district can be changed by any method by legislature desires, and any agency designated by the legislature has the authority to put into effect the change of school boundaries.¹⁸ Districts are governmental agencies and are within the continued, exclusive control of the legislature. They may be enlarged, diminished, or extinguished by it, except in so far as restrained by the Constitution.¹⁹ Generally speaking, the legislature may have the authority to enlarge or consolidate school districts in such manner as it deems fit.²⁰

The legislature may provide for the creation of school districts including territory in more than one county. Prior to 1909, the legislature was forbidden by the Texas Constitution to allow the formation of a district which was situated in two or more counties.²¹

Article Seven, Section One, of the Texas Constitution, gives the legislature a broad power to be used in discharging the duty placed upon it. The courts, in the case of

¹⁸Prosper Independent School District v. County School Trustees, 58 S. W. (2d) 5.

¹⁹Shipley v. Floydada Independent School District, 250 S. W. 159.

²⁰North Common School District et al. v. Live Oak Board of Trustees, 199 S. W. (2d) 746.

²¹Parks v. West, 111 S. W. 726.

Glass v. Pool, stated to the effect, that if a statute is not manifestly in conflict with some provision of the Constitution, it must be sustained by the courts. Specifically, the courts ruled in this case that:

Statutes cannot be declared invalid on the grounds that they are unwise, unreasonable, unjust, immoral, or because it is opposed to public policy, or the spirit of the Constitution. Unless a statute violates some express provision of the Constitution, it must be held to be valid.²²

Furthermore, the legislature is not required to express details in caption, but only show the ultimate object.²³ The courts held that the caption of the act passed by the legislature providing for creation of the Dayton school district embodying more than one subject was not in violation of Article Three, Section Thirty-Five, of the Constitution as alleged.²⁴ The courts also held that the legislature could grant the power of establishing the voting places for holding the election within limits of such district.

Once the legislature has created or consolidated school districts, it may pass laws necessary and proper for the maintenance of the public school system. Such laws passed in pursuance thereof cannot be declared unconstitutional on the grounds that they are discretionary.²⁵

²²Glass v. Pool, 166 S. W. 375.

²³Tilton et al. v. Dayton Independent School District, 2 S. W. (2d) 889.

²⁴Special Laws, 1st C. S., 1926, chap. 7.

²⁵Ferguson v. Academy Consolidated School District No. 14, 14 S. W. (2d) 889.

As previously pointed out, the legislature has full power over the agencies created. The selection of the agencies and their powers and duties that they are to exercise is left to the discretion of the legislature. Whatever agencies the legislature may select as the instruments for the execution of its educational policies are completely subject to its control, within constitutional limits. Since school districts are purely creatures of the state, they possess no inherent local rights. In fact, they possess no rights at all other than those delegated to them by the legislature. Their powers and the mode of exercising these powers are defined by the legislative action and may be added to, diminished, or destroyed as the legislature may determine.²⁶

The legislature may also establish the administrative agencies necessary to attain the general diffusion of knowledge among the people as required by Article Seven, Section One of the Constitution. Wide powers are given to the state legislature in establishing and making suitable provisions for the support and maintenance of a sufficient system of public free schools, and without a doubt it may establish such administrative agencies as may be necessary to attain the end in view, namely, a general diffusion of knowledge among our people.²⁷

²⁶H. A. Dawson, Satisfactory Local School Units, p. 141.

²⁷County Board of Trustees of Young County v. Bullock Common School District No. 12, 37 S. W. (2d) 829.

The legislature has almost unlimited authority to provide for the payment of the debts of the old districts. This is quite an important power and is the occasion for a great number of court cases. However, the legislature may not transfer property of one school district without providing a means for payment of the debts of the former district. The agency, designated to make the equitable distribution of the assets and liabilities of the districts, is required to make a just and equitable distribution of the assets and liabilities of the districts involved. What constitutes an equitable distribution is a question of fact to be decided in each case.²⁸ The legislature is required to provide a means to carry into effect the orders of the agency in such instances involving the question of debts and assets.²⁹ The agency must follow the rules laid down by the legislature if such actions are to be upheld by the courts.

Under the constitutional amendment of Article Seven, Section One, the legislature may impose on county officers such additional duties and burdens as are essential in the proper organization, management, and control of districts which are defined as county line school districts. The legislature may impose the entire management of the district so created upon one county only.³⁰

²⁸Burns v. Dilley County Line Independent School District, et al., 295 S. W. 1091.

²⁹Lyford Independent School District et al. v. Willamar Independent School District et al., 34 S. W. 854.

³⁰Simpson v. Pontotoc, 275 S. W. 449.

In the case of Prosper Independent School District v. County School Trustees,³¹ the courts held that the Acts of the Forty-First Legislature, Chapter Forty-Seven, were not invalid, in that the act omitted provisions for notice and hearing of the trustees of the districts from which territory is proposed to be detached. The contention in this respect is to the effect that the absence of such provisions renders the act invalid under the due process clause of Article Seven, Section Nineteen of the Texas Constitution. This contention necessarily presupposes that a school district, in its corporate capacity, has a vested right in respect to the territorial boundaries of the district as originally established. If there is such vested right in the corporation, with respect to the territorial extent of the district, the due process clause would have no application. That no such right exists is hardly debatable, for a school district is but a subdivision of the state for governmental purposes. The transfer of jurisdiction, which is involved in a transfer of a part of the territory of one district to another district, is clearly within the power of the legislature.

The principle in this case may be applied to Senate Bill 116, Article Eight, which is commonly known as the Gilmer-Aiken Bill.³² Article Eight of Senate Bill 116 provides for

³¹Prosper Independent School District v. County School Trustees, 58 S. W. (2d) 5.

³²Acts 1949, 51st Legislature, R. S., chap. 334, p. 334.

the consolidation of dormant school districts which have been dormant for a specified number of years. The power to consolidate these dormant school districts is given to the county board of school trustees just as in the Prosper case in that the bill does not provide for notice or hearing. This is an example of how previous cases can give light to the constitutionality of parts or the whole of new legislation. In all probability someone will waste a great deal of time, effort, and possibly money on the contesting of the legality of the Gilmer-Aiken Bill on the grounds that it violates the due process clause of the Texas Constitution. Anyone who has read the Prosper case will know the measuring stick that the courts apply in testing for the use, or the lack of use of due process, hence save the time, effort, and the money used contesting such action of the legislature. Senate Bill 116, Article Eight, does not require a majority vote of the voters of the district being consolidated, nor does it require any vote at all.³³ The matter is left entirely to the county board of school trustees. The only condition is that the districts being consolidated shall have been dormant for two successive years subsequent to 1946-1947. However, there must be elections after the act of consolidation by the qualified voters on the questions of bond issues and the question of the tax levy.³⁴

³³McPhail v. Tax Collector, Van Zandt County, 280 S. W. 260.

³⁴Burns v. Dilley County Line Independent School District, 295 S. W. 1091.

Senate Bill 116, Article Nine, provides for a recourse for aggrieved parties to be heard in a court of law. The legislature, by this action, is providing a legal procedure in seeking recourse. So the bill cannot be attacked on the grounds that it does not provide for recourse for the action of the county board of trustees in consolidating dormant school districts.

In 1925, the Thirty-Ninth Legislature enacted a law which allowed the consolidation of common school districts for high school purposes only.³⁵ This action in no way affected the status of existing elementary schools. The authority to consolidate these common school districts for high school purposes only was delegated to the county board of school trustees. Such action of the legislature was not unconstitutional in that the act allowed the county school board of school trustees to form such school district without a vote of the inhabitants of districts so affected.³⁶ In the case of Baxter v. Jarrell, the courts ruled that the rural high school districts formed under this act could be formed by an election submitting the formation of such district to the voters of the districts which it is proposed to include in such consolidated district for high school purposes only.³⁷

³⁵Vernon's Annotated Texas Civil Statutes, art. 2922a.

³⁶McPhail v. Tax Collector of Van Zandt County, 280 S. W. 268.

³⁷Baxter v. Jarrell, 34 S. W. (2d) 315.

The courts have held that this act of the legislature is not unconstitutional when the county school trustees have formed a rural high school district in full compliance with the provisions of this article. The courts will not set aside such an order unless it is shown that it was the result of fraud, arbitrary action, or abuse of discretion.³⁸

Under the authority of Article 2806, the legislature provides a method by which school districts, whether common or independent, can be consolidated by election. In this method the elementary school districts lose their identity and their operation and site is left to the discretion of the district school trustees.³⁹ Thus the legislature has provided several methods by which districts can be consolidated. Under Article 2922a the school districts can be consolidated for high school purposes only and under Article 2806 the districts are consolidated for both high school and elementary school purposes. One, Article 2922a, provides that the action of the county board of school trustees may take the action in consolidation,⁴⁰ and the second, Article 2806, provides a method by which the electorate of two or more school districts may consolidate the districts.⁴¹ Both of the aforementioned

³⁸Young County Board of School Trustees v. Bailey, 61 S. W. (2d) 130.

³⁹Canon v. Basbury, 21 S. W. (2d) 76.

⁴⁰Vernon's Annotated Texas Civil Statutes, art. 2922a.

⁴¹Ibid., art. 2806.

articles have been tested for constitutionality and have been declared constitutional. These are specific examples of what the legislature may do to provide any mode and agency to facilitate the changing of school boundaries. The Gilmer-Aiken Bill has not been passed by the legislature long enough to have its constitutionality challenged in regard to the consolidation of school districts, but it seems that the act meets all the constitutional requirements laid down by the courts at this time in regard to consolidation of school districts.

As pointed out in Fritter v. West, the legislature does not possess the power to form a school district by special law.⁴² An amendment to the Texas Constitution on November 2, 1926, left only the authority to create school districts by general law. However, prior to this amendment the legislature possessed the power to consolidate school districts by special law by virtue of constitutional authority. A case arose out of this situation. By a special act of the legislature in 1925, the Morton Independent School District was created with the provision that the board of school trustees of the district consist of three members. Action of the school district in attempting to elect more than three trustees was invalid. The courts ruled that the fact that the

⁴²Fritter, County Judge, et al. v. West et al., 65 S. W. (2d) 414.

district was created by special law did not give the district the power to disobey the provisions of the act creating the school district, even though the legislature no longer possessed the power under which the district was created in the first instance. The courts also held that the amendment, pertaining to the prohibitive measure on the legislature from forming a school district by special law, was to deprive the legislature of further authority to create school districts by special act. Another principle the courts laid down was that the action taken on November 2, 1926, deprived the legislature of the authority to create districts by special law, but in no way affected the school districts previously created by special law. Neither could the legislature attempt to modify or change a school district after November 2, 1926, by a special law even though such school district had been created by a special act of the legislature prior to November 2, 1926.⁴³

The powers of the legislature in regard to the consolidation of school districts are, just as other powers found in the fundamental law of the state, limited by the Texas Constitution. In this case the power to act does not have to be explicitly enumerated in the Constitution. It is just the limitations that have to be explicit to deprive the legislature of the authority to act. The courts in deciding the

⁴³Smith v. Morton Independent School District, 85 S. W. (2d) 853.

powers must take the mandates, the enumerated powers and the prohibitive measures of the Constitution to get the true powers of the legislature in providing for the consolidation of school districts.

CHAPTER IV

CURATIVE LEGISLATION AND THE CONSOLIDATION OF SCHOOL DISTRICTS

Administrative officials not infrequently act without authority or they may do what they have a right to do in such a manner as to render the act illegal. For example, a school district may be consolidated and the consolidation be put into effect, bonds will be voted, the maintenance tax levied, and possibly a new school building or buildings will have been constructed. Then a case is brought into court and the action of creating the district is declared void, because of failure to follow the strict letter of the law. Obviously, public policy demands in many instances that the acts, though brought into being outside of the scope of the law, already accomplished, be legalized, if there is any way to do so without violating the Constitution.

The solution to the problem is in curative or validating legislation. That is, laws may be enacted with the avowed purposed of validating legal or administrative proceedings which are defective because of errors or irregularities, or even because of lack of authority. The general rule is that defects in legal proceedings may be validated by subsequent legislation if the defect in the doing of something is something

which the legislature might have authorized by prior statute, or if the thing failed to be done is something which the legislature might have rendered unnecessary in the first instance.¹

A curative statute is necessarily retrospective in character. Although a retrospective statute affecting and changing vested rights is very generally considered in this country as founded on unconstitutional principles, and consequently inoperative, and void, this doctrine is not understood to apply to remedial statutes which may be retrospective in nature. The validating acts cannot impair contracts or disturb vested rights, and can only confirm those rights already existing. The remedial act is a method to cure defects as a means of enforcing existing obligations. Basically, the only limitation upon the power of the legislature in this respect seems to be that the act ratified and confirmed must be one which was lawful for the legislature to authorize in the first instance, and that the power be so exercised as not to infringe or divest property rights and vested interests of persons which are secure against such legislative action.²

The Texas courts are reluctant to invalidate school district consolidations on technical grounds. Statutory prescriptions of details for elections on the question of the

¹Newton Edwards, The Courts and the Public Schools, pp. 14-15.

²Ibid., pp. 13-14.

consolidation of school districts and allocation of their debts are directory rather than mandatory. Thus, such irregularities as failure to follow the strict statutory requirements for public notice of an election will not affect the election unless it is affirmatively proved that the results were probably altered by the irregularity or by several irregularities. There is a presumption in favor of validity. One who contests such proceedings must prove facts that would establish it as illegal.³

Powers of the Legislature Validating the Consolidation of School Districts

A typical case in which a district was created illegally and the action of the legislature cured the defect was in the creation of the Willamar Independent School District resulting in the case of Lyford Independent School District v. Willamar Independent School District.⁴ The validity of the creation of the Willamar Independent School District was challenged by the Lyford Independent School District. The contention of the Lyford District was that the creation was void in that the creation attempted to impose, upon the Lyford District, a part of the bonded indebtedness of the Willamar District by fiat of the legislature without providing for an election or vote of the people concerning the question of bonded

³The Tenth Yearbook of School Law, p. 125.

⁴Lyford Independent School District v. Willamar Independent School District et al., 34 S. W. (2d) 854.

indebtedness. In its defense the Lyford District cited Millhollon v. Stanton Independent School District,⁵ and Burns v. Dilley Independent School District.⁶

The courts held that the act creating the Lyford District did not violate the Constitution in that it did not provide for a manner in settling the question of bonded indebtedness. Section Four of the act creating the district in question provided that the board of trustees should assume all outstanding contracts or debts, including any bonded indebtedness against the district. So the courts justly held that there was no violation of the Constitution on this alleged contention.⁷

Also, the courts held that even though both districts were invalid at the time of their formation, the validating act of the Forty-First Legislature cured these defects.⁸ And the courts further stated that, "The validating act in question is not a special, but a general law, and the power of the legislature to enact curative statutes of this kind is no longer an open question in this state . . ."⁹

⁵Millhollon v. Stanton Independent School District, 231 S. W. 332.

⁶Burns v. Dilley Independent School District, 295 S. W. 1091.

⁷Ibid.

⁸Vernon's Annotated Texas Civil Statutes, art. 2802a.

⁹Lyford Independent School District v. Willamar Independent School District, 34 S. W. (2d) 854.

It is also settled that a validating act enacted by the legislature and becoming effective during the pendency of litigation of a motion for rehearing in the Supreme Court has effect to cure the defect of the creation of the school district as though the act had become effective before the institution of the suit.¹⁰

In deciding cases on the question of validation, the courts are quite frequently called upon to define fraud. In Baxter v. Jarrell, the courts held that the county judge of the county did not perpetrate fraud in leaving out the word "high" in an order for an election to consolidate school districts for the purpose of consolidation of common school districts for high school purposes. Such omission resulted in the consolidation of the schools instead of just grouping for high school purposes only. For two years, the district trustees managed the district as if it had been grouped for high school purposes only. After the two years, the trustees failed and refused to operate the school district for high school purposes only. While the trustees were administering the affairs as though all schools were consolidated for school purposes, an election was held to dissolve the district, but such election failed to effect dissolution of said district.¹¹

Immediately after the vote for dissolution had failed, the district trustees voted to discontinue one of the

¹⁰Hunt v. Atkinson, 17 S. W. (2d) 780.

¹¹Baxter v. Jarrell, 34 S. W. (2d) 315.

elementary schools by combining it with another elementary school within the high school district. The courts overruled the contention of fraud and held that the school trustees acted legally in combining the two elementary schools. The acts of the trustees were validated under a validating act of the legislature, passed by the legislature on June 8, 1927.

The suit in question was filed on February 18, 1930, so the district was a valid existing district and the legality of such could not be questioned. In other words, the action of the legislature on June 8, 1927, cured any and all irregularities in the creation of the district in question.¹²

Curative legislation also validates the action taken in regard to the levying of taxes, and the issuance of bonds regardless of whether or not the districts were valid at the time of creation.¹³ In Hayes v. Beaumont, the courts ruled that the validation of the school district also validated the appointment and organization of the district trustees.¹⁴

The legislature may validate only those school districts that it may choose. As previously pointed out though, this cannot be done by special or local law. By this, it is meant that the legislature may limit the validating act to school

¹²Ibid.

¹³Desdemona Independent School District v. Howard, 34 S. W. (2d) 414.

¹⁴Hayes v. City of Beaumont, 190 S. W. (2d) 835.

districts of certain general conditions. The legislature has full power to validate all school districts or it may validate only those that have been recognized by certain specified school officials. Then it may or may not validate those involved in court litigation. In the case of North Common School District v. Live Oak County Board of School Trustees, the courts held that the validating act could validate the school district in question because of the nature of the text of the validating act. The validating act of the district in question, in part, stated, in effect, that it would not validate all annexations and consolidations which were in litigation at the time of the passage of the act. However, in this case, the litigation had already terminated and so the courts ruled that this provision of the act did not prevent the act from validating the school districts in question because it was found that there was no litigation pending in any of the courts at the time of the passage of the act. The court ruled further in this case in that a previous judicial decision holding an attempted organization of a school district was invalid under existing law would and does not prevent the passage, by the legislature, of an act curing the alleged defect.¹⁵

In regard to the power of the legislature to validate school districts of certain legal standings the following

¹⁵North Common School District v. Live Oak County Board of School Trustees, 199 S. W. (2d) 764.

provisions taken from validating acts may be used as examples of how the legislature may limit by general validating act. The Forty-Second Legislature passed a validating act which provided that this act shall "apply only to district heretofore recognized."¹⁶ Other validating acts have provided that they shall not apply to previously created districts which have later returned to their original status.¹⁷ From these examples, one can see the authority the legislature may exercise in validating school districts.

The courts will not ordinarily interfere with the discretionary power exercised by the designated boards, and officers in establishing and maintaining districts, and in altering such districts after their formation, unless it is clearly shown that the discretion has been abused or that there has been fraud.¹⁸ Here one sees a principle which the judiciary follows in all phases of school administration and not just a principle used in consolidating school districts.

The courts, in interpreting an act of the Forty-First Legislature,¹⁹ held that, although the proceedings of the county board of school trustees in abolishing a school district and transferring the territory of another district

¹⁶Acts 1931, 42nd Legislature, 2nd C. S., chap. 39, p. 63.

¹⁷Acts 1935, 44th Legislature, R. S., chap. 221, p. 530.

¹⁸Barthart v. County Board of School Trustees of Young County, 108 S. W. (2d) 770.

¹⁹Acts 1930, 41st Legislature, 5th C. S., chap. 5.

was unauthorized, the aforementioned act validated such action of the county board of school trustees.²⁰

In other instances the legislature has enacted validating legislation so as to validate all districts involved in litigation. Such a validating act cures the defect as if the defect had been cured before the institution of the suit.²¹

Prohibitions on the Legislature in Regard to the Passing of Curative Legislation

One must bear in mind that curative legislation passed by the legislature is not a complete cure all for all the invalidating actions of the agencies in the consolidation of school districts. There are some consolidation and acts of agencies that cannot be cured by the validating acts of the legislature.

The Forty-Third Legislature passed a bill, Senate Bill 542, which allowed the creation of a county-wide school in Kinney County, Texas. The bill was ruled unconstitutional in that it was a local or special law.²² Though there had been a validating act, after the passage of the law, the act could not make the action, under authority of an unconstitutional act, legal and binding.²³

²⁰Cowan v. Clay County Board of Education, 41 S. W. (2d) 513.

²¹Pyote Independent School District v. Dyer, 34 S. W. (2d) 578.

²²Fritter, County Judge, et al. v. West et al. 65 S. W. (2d) 414.

²³Ibid.

Neither will a curative act validate a school district established and recognized when, in the action of consolidation, there is evidence of fraud upon the rights of residents and taxpayers in one of the former districts.²⁴

An interesting case in regard to validation arose in this fashion in Zapata County. It seems that School District Number One of the county was created by the commissioners court of the county on September 23, 1911. The legislature had passed a law effective June 4, 1911 taking away the power of the commissioners court to create school districts and vested such power in the county board of school trustees. Therefore, the act of the commissioners court in creating this school district was invalid. Before the district could be validated by any of the validating acts, there would have to be a bonafide attempt by the proper authorities to lay out and establish such district and thereafter secure recognition by the local and state officials. But this did not happen. The courts held that the mere use of a district, after being created by the commissioners court, would not create such a district as would be validated by any one of the validating acts. It could not be validated by the validating act of 1941 because the act became effective June 30, 1941, and the county board of school trustees did not pass the order re-establishing the district until August 4, 1941.

²⁴Cleveland v. Gainer, 194 S. W. 593.

The court ruled that the district was illegal and did not exist and therefore all bonds were also illegal and void.²⁵

The district was declared invalid on the grounds that the agency creating the said district did not have the authority to create the district and furthermore that the validating acts since 1911 could not validate this district, nor did the length of time which the district had been in operation affect the validation in any way, though the school district had been in operation for thirty years.²⁶

Even though the legislature passes curative acts to validate the action of agencies which have not followed the letter of the law, it is wise for the agencies and officials to follow the letter of the law in all cases. In other words, these agencies and officials should not depend upon the legislature too heavily to cure their irregular actions by curative legislation. In order to decide the question of whether or not an act can validate an irregularly formed school district, the courts must consider first the constitutionality of the acts which provide for the consolidation, and second, the validating act itself, to see if the act would validate the district in question. It is possible that the legislature has expressed its will in the validating act not to validate school districts that have not been heretofore recognized,

²⁵State ex rel Flores et al. v. Bravo County Judge et al.
162 S. W. (2d) 1052.

²⁶Ibid.

those in the process of litigation, or those pending litigation. Should the legislature express its will that such districts falling into these categories not be validated, then the courts have no power but to declare such districts invalid.

CHAPTER V

THE ROLE OF THE COUNTY OFFICIALS AND THE ELECTORATE IN THE CONSOLIDATION OF SCHOOL DISTRICTS

Introduction

It is on the local level of government that one is likely to come into contact with the problems of consolidation of school districts. One must remember that local school officials get all of their authority from the state legislature and any action taken by them must conform to the strict letter of the law. These local agencies must not do anything unless the legislature has given them the expressed authority to act and has prescribed the procedure for the action. Such expressions to act and the procedure to act for these agencies will be found in the statutes passed by the legislature.

The Role of the Electorate in the Consolidation of School Districts

The electorate of a school district or districts may, on certain conditions, vote upon the question of consolidation of school districts. In closely contested elections on consolidation, the right of individual voters is often contested in order to cause enough votes to be declared invalid to change the outcome of the election. Such declarations, challenging the validity of a vote or votes, are to be decided

in a court of law. In deciding such cases, the courts frequently have to decide questions on residence of some of the voters. The courts must determine, in each case, just what constitutes an unqualified voter. The courts have ruled that a person who has moved to a home, purchased outside the district, and who had rendered his children in the scholastic census of the district in which the new home is located, is not entitled to a vote on a question of consolidation. Neither can an owner of land in the district, who has moved to a town in another district, and was assessed and paid his poll tax in the other town be allowed to vote. The courts held that a person who rented a farm in the district and remained away for more than two years before the election, except for short visits, and who had not paid a poll tax was also ineligible to vote on the consolidation of school districts. The courts also held that anyone who spends most of his or her time outside the district is not entitled to a vote on a proposal to consolidate school districts.¹

There are also some other classes of persons who are not qualified to vote in the elections. These classes are: persons under twenty-one, idiots and lunatics, paupers supported by the county, persons convicted of any felony, unless restored to full citizenship and the right of suffrage, or pardoned,

¹Hill v. Mays, 278 S. W. 919.

and all soldiers and seamen employed in the service of the army or navy of the United States.²

The right to vote on a question of consolidation of school districts is not restricted to the qualified electors who own taxable property in the districts, but such is the right of all qualified voters.³ However, in questions involving the lending of credit or assuming bonded indebtedness, only the qualified taxpaying voters are eligible to vote.⁴

Article 2806 gives the procedure for the consolidation of school districts by the qualified voters of the districts. This article states that:

On the petition of twenty or more of the legally qualified voters of each district of each of several contiguous common school districts, or contiguous independent school districts, praying for the consolidation of such districts for school purposes, the county judge shall issue an order for an election to be held on the same day in each district . . . The commissioners' court shall, at its next meeting, canvass the returns of such election, and if the votes cast in each and all districts voting separately in favor of such consolidation, the Court shall declare the school districts consolidated.⁵

This article is for the purpose of consolidation for all school purposes. At other times this procedure may be followed in the consolidation of school districts for high school purposes. As noted in the above article, the county judge

²Vernon's Annotated Texas Civil Statutes, art. 1954.

³O'Brien v. Snelson, 82 S. W. (2d) 678.

⁴City of Ft. Worth v. Zane-Cetti, 278 S. W. 183.

⁵Vernon's Annotated Texas Civil Statutes, art. 2806.

is the proper official to receive the petition.⁶ Once the petition has been turned in to the county judge, and the election called as required by law, the courts cannot issue an injunction to interfere with the canvassing of the returns or with the declaring of the results of the election on the question of consolidation, regardless of whether the petition for election was sufficient.⁷ However, the county judge cannot call an election to consolidate until he has received a petition bearing the names of twenty duly qualified voters of the districts desiring to be consolidated. Upon receiving the petition, it becomes a duty of the county judge to order an election for the purpose as stated in the petition.⁸

Where there is a proposal to consolidate two or more school districts by a vote of the qualified voters, there must be a majority vote cast in each of the districts so as to effect consolidation. A tie vote in one of the districts does not constitute a majority vote in such district, and consolidation is not effected even though the other district polled a majority vote.⁹

The courts have ruled that the interests of the voters in an election to determine whether one school district would unite with another gives the voters the right to have the

⁶Driver v. Edwards, 107 S. W. (2d) 1109.

⁷Kennedy v. Broughton, 70 S. W. (2d) 500.

⁸Popnoe v. Corbin, 215 S. W. (2d) 197.

⁹McGehee v. Boedeker, 200 S. W. (2d) 697.

true results of the election finally declared, regardless of the results of the election as these were initially declared. And it is immaterial whether the right is a legal or political one in deciding such cases. The courts also declared that a valid election is analogous to a valid law.¹⁰ Ordinarily, the exercise of legislative or political powers, and the redress of political wrongs are not a subject to be reviewed by the judiciary.¹¹

In a special election to determine if two or more districts should consolidate, the election is not void for non-compliance with Article 3012 and Article 3018,¹² and Article Six, Section Four of the Texas Constitution pertaining to general elections requiring that the ballots be numbered.¹³

The electorate also has the power to give their consent to the grouping of school districts for high school purposes only. The majority of the voters of the districts must give their consent before the county board of trustees can group districts with more than one hundred square miles or more than ten elementary school districts. In this election, there must be a voting place within all of the elementary school districts. After the voting, all the votes are counted as a

¹⁰De Shazo v. Webb, 109 S. W. (2d) 264.

¹¹Consolidated Common School District No. 15 v. Wood, 112 S. W. (2d) 231.

¹²Vernon's Annotated Texas Civil Statutes, arts. 3012, 3018.

¹³Texas State Constitution, art. 6, sec. 4.

whole and not by individual districts. Should there be a majority vote for grouping then such grouping is effected.¹⁴

The authority to call an election for grouping for school districts for high school purposes is vested in the authority of the county board of trustees rather than the county judge.¹⁵

As noted in the foregoing discussion, all the powers of the electorate, in regard to consolidation, are powers that were delegated to it by the legislature. In order for the electorate to exercise its powers, it must act in the manner as prescribed by the legislature. The legislature also prescribes the requirements as to what qualifications are needed to vote on the various issues. As pointed out, all qualified voters are eligible to vote on the question of consolidation, but this right does not allow all of these voters to express their wishes in regard to assuming debts. The right to assume debts is left entirely to the qualified taxpaying voters of the district, within the limitations imposed by the legislature.

Here again, there is a reluctance on the part of the courts to invalidate the action of a body that determines school policies. The courts give the electorate much leeway in expressing the will of the people in regard to the formation of school policies.

¹⁴Vernon's Annotated Texas Civil Statutes, art. 2922c.

¹⁵Countz v. Mitchell, 38 S. W. 770.

The Role of the County Board of School Trustees
in the Consolidation of School Districts

The county boards of school trustees are delegated much of the authority to consolidate school districts. Such a delegation of power is the result of action taken by the legislature. Without specific authorization by the legislature, the county board of school trustees is without authority to act. The individual members of the county board are elected by popular vote of the electorate of the county.

The offices of the county board of school trustees are provided by statutory law passed by the legislature.¹⁶

The duties and the qualifications of the members of the county school board are:

And the said board of county school trustees when appointed shall have and exercise all the rights and powers conferred upon the county boards of trustees by the provisions of the general law, provided also that the county board may create one or more school districts in any unorganized county attached to said organized county for judicial purposes and provide for the organization of schools therein by the appointment of trustees for said districts. The county board of school trustees of any organized county are authorized to exercise the authority heretofore vested in the commissioners court with respect to subdividing the county into school districts and making changes in district lines.¹⁷

The qualifications of the county school trustees are also prescribed by statutory law. The qualifications are:

The county school trustees shall be qualified voters of the precinct or county from which they are

¹⁶Vernon's Annotated Texas Civil Statutes, art. 2676.

¹⁷Acts 1927, 40th Legislature, 1st C. S., chap. 7, p. 17.

elected, and four of them shall reside in different commissioners' precincts. They shall be of good moral character, able to speak the English language, shall be persons of good education, and shall be in sympathy with public free schools.¹⁸

Before a county trustee can officially hold office, there are statutory requirements that must be met. These are:

The returns of their election shall be made to the county clerk within five days after election shall have been held, to be delivered by him to the commissioners' court at its first meeting thereafter to be canvassed and the results declared as in the cases of other elections. The county clerk shall issue to said trustees their commissions and impress thereon the seal of the said court after they have taken the official oath and filed same with said clerk.¹⁹

The county board of school trustees constitute a corporate body and may sue and be sued in the name of county school trustees.²⁰

As stated before, the county school trustees have a great deal of power in the consolidation of school districts. The exercising of this power is not subject to review by courts except when it is shown that such actions taken by the board were unauthorized by law or that the board abused its discretion.²¹

¹⁸Vernon's Annotated Texas Civil Statutes, art. 2677.

¹⁹Ibid.

²⁰Ibid., art. 2683.

²¹Donie Independent School District v. Freestone Consolidated Common School District No. 13, 127 S. W. (2d) 205.

The county school trustees are given the power to group common school districts falling within certain classifications. The classifications are based on the area, in square miles, of the proposed district and the scholastic population of the districts so grouped. One of the classifications that may be grouped for high school purposes by the county board are those contiguous common school districts having less than four hundred scholastic population and a contiguous independent school district having less than two hundred and fifty scholastic population. Also the county school trustees may annex one or more common school districts, or one or more independent school districts having less than two hundred and fifty scholastic population to a common school district having four hundred or more scholastic population. Or the county board may annex a common school district having four hundred or more scholastic population to an independent district having two hundred and fifty or more scholastic population.²² An act of the Fiftieth Legislature amended this act so the consent of the district trustees is not required in annexing or grouping of these districts for high school purposes.²³

There are certain types of districts that the county board of school trustees cannot annex or group for high school purposes. The county board has no authority to annex or

²²Vernon's Annotated Texas Civil Statutes, art. 2922a.

²³Acts 1947, 50th Legislature, chap. 398, p. 798.

group districts when the rural high school district will contain more than one hundred square miles, or contain more than ten elementary school districts. Such power to annex or group such districts in this classification have to be voted upon by the electorate.²⁴

It is always wise for the county board of school trustees to give notice and provide for a hearing to the school trustees on proposals of annexation, consolidation, or grouping. It is true that notice and hearing are not always required, but little time is lost and much litigation could be avoided should this general rule be followed.

One important rule that should be brought out at this time is the rule that the courts follow in determining jurisdiction in cases where there are two agencies or tribunals possessing concurrent powers. This rule is brought out amply in the case of the State v. Baker. The case arose in the following fashion. The electorate had signed a petition and handed it over to the county judge as provided by statute.²⁵ While the action was pending, the county board of school trustees decided to annex the district in question under Article 2922a.²⁶ The question the courts had to settle was which agency had the authority to carry out its intentions. The courts ruled that in this case where there were co-ordinate jurisdiction

²⁴Vernon's Annotated Texas Civil Statutes, art. 2922c.

²⁵Ibid., art. 2806.

²⁶Ibid., art. 2922a.

over a particular matter by two distinct tribunals, the tribunal first acquiring the jurisdiction has the right to retain jurisdiction until it has completely disposed of all matters and issues so presented to it and no co-ordinate tribunal has any right to interfere with the tribunal first acquiring jurisdiction.²⁷

A recent authority of the county school board of trustees is found in the laws passed by the Fifty-First Legislature. Senate Bill 116 of this legislature provides that the county board of school trustees has the authority to consolidate school districts that have been dormant for two years subsequent to 1946-1947. No notice or hearing is required. Neither is any election needed on the question of consolidation, but there must be one after the consolidation for the purpose of setting the tax rate and on the question of outstanding bonded indebtedness. Neither do the county trustees have to consider the number of school districts being consolidated or the area of the districts after the consolidation has been effected.²⁸

County line school districts may be consolidated upon a petition of twenty duly qualified voters being presented to the county board of school trustees of the respective counties. In order legally to consolidate these county line

²⁷State ex rel George et al. v. Baker, 40 S. W. (2d) 41.

²⁸Acts 1949, 51st Legislature, R. S., chap. 334, p. 334.

school districts, the county school board in each of the respective counties must order an election on the question of consolidation in the school districts desiring consolidation. Should the common school districts vote, by a majority vote in each district to consolidate then the county school board of trustees shall have the authority to consolidate such districts.²⁹

The Role of the Incorporated City in the Consolidation of School Districts

In many instances the cities of the state are incorporated for school purposes. This means that the cities have dual functions, that of providing services normally performed by a city and also the function of providing for the school system. The city has the power to extend its boundaries to include the boundaries of the school district in the case that the school boundaries exceed the city limits.³⁰

Article 2803 permits the city, which is incorporated for school purposes, to annex territory to the city for school purposes only.³¹ This article does not change the character of the district so enlarged. The city still has control of the schools within the limits of the city as provided by

²⁹Acts 1927, 40th Legislature, 1st C. S., chap. 84, p. 228.

³⁰Vernon's Annotated Texas Civil Statutes, art. 2803.

³¹Ibid.

Article Seven, Section Three of the Texas Constitution.³²

The residents of the district desiring to be annexed to the city for school purposes must present to the city a majority petition of the residents stating that the district wishes to come into the city for school purposes only. When the majority of the residents have signed the petition, they cannot complain because there is no election to determine whether or not they should pay their prorata share of the annexing districts existing indebtedness.³³

³²Texas State Constitution, art. 7, sec. 3.

³³Kuhn v. City of Yoakum, 257 S. W. 337.

CHAPTER VI

THE EFFECT OF CONSOLIDATION UPON THE BONDS AND THE TAX MEASURES OF THE CONSOLIDATED DISTRICTS

The Effect of Consolidation upon Outstanding Bonds

A bond has been defined as an instrument issued by a corporate body in order to borrow money, in which the issuer promises to pay, within a stated time, a certain stipulated sum with interest at some fixed rate. The interest may be paid annually, semi-annually, or quarterly as the case may be. It is an evidence of indebtedness issued under legislative authority by the state or by some of its minor subdivisions. It is negotiable in character and form, payable at a future date, and transferable by endorsement or delivery.¹

School bonds are not mortgages upon the property of the district even though the statutes makes the bonds a lien upon the property of the inhabitants of the district. They are merely evidences of the legal debts of the district issuing them. The personal and real property of the district cannot be sued upon for the payment of a debt.²

¹H. P. Rainey, Public School Finance, pp. 184-185.

²Ibid.

The statutes provide for the price of the bonds and the interest they are to bear. Bonds in this state may not be sold for less than face value.

The authority to issue bonds is given to the school districts by a statute passed by the legislature.³ When the school districts issue bonds, they must follow the strict letter of the law.

The legislature, in providing for the consolidation of school districts, must also provide a procedure to assume the outstanding bonded indebtedness of the districts affected by the consolidation. The legislature cannot pass any law which would impair any debts of the school districts.

The courts have ruled that indebtedness cannot become the obligation of a school district until, at an election, the qualified taxpaying voters of the district give their consent by a majority vote to assume such indebtedness. If, at such election, the question is decided in the affirmative, the trustees are authorized to levy taxes on the property within the district at large to take care of the interest and the sinking fund of the indebtedness assumed. Until the election, the bonded indebtedness of each of the elementary districts, in cases of grouping for high school purposes, remains a charge exclusively against the issuing district; and until these bonds are retired, or assumed by the high

³Vernon's Annotated Texas Civil Statutes, art. 2786.

school district in the manner prescribed by law, it is the duty of the trustees to levy from year to year on the district issuing the bonds a tax sufficient to discharge the obligation.⁴

The courts have also held that when a statute gives the authority to school trustees to make the adjustment of the outstanding indebtedness of school districts whose boundaries have been changed or consolidated, the change must be made in the manner prescribed by law. Article 2922h⁵ prescribes the steps to be taken in determining whether the rural high school district shall assume and pay off the outstanding indebtedness of constituent elementary school districts.⁶

Although the right to vote in an election to consolidate two or more school districts is not limited alone to the qualified taxpaying voters of the districts affected, the qualified taxpaying voters are the proper electors to vote on the question of lending credit, expending money, or assuming debts.⁷ In fact, no other voters than the qualified taxpaying voters may vote upon the issue of assuming bonded indebtedness.⁸

⁴McPhail v. Tax Collector of Van Zandt County, 286 S. W. 501.

⁵Vernon's Annotated Texas Civil Statutes, art. 2922h.

⁶County School Trustees v. Edna Independent School District, 9 S. W. (2d) 506.

⁷O'Brien v. Snelson, 82 S. W. (2d) 679.

⁸City of Ft. Worth v. Zane-Cetti, 278 S. W. 183.

Even though there has been an election to consolidate and the election results were in favor of such consolidation, this does not mean that the voters gave their consent to assume the outstanding bonds of the districts so consolidated. The assumption of the outstanding bonds of the districts involved in the consolidation must be voted upon in a separate election.⁹ The voters may vote upon the question of assuming the bonded indebtedness at the same election as the election to consolidate, but there must be separate ballots and separate ballot boxes for the two issues, one being that of consolidation, and the other issue being on the question of assuming outstanding bonds.¹⁰

In case there is a mistake in the drawing up of the map of a school district and part of the land belonging in the school district is not called upon to pay the school tax and the mistake is rectified and school taxes are levied, the constituents of the area in question cannot contest the action on the grounds that such action constitutes consolidation and that a vote is required in order for the voters of this area to have a chance to vote upon the question of assuming bonded indebtedness.¹¹

⁹O'Brien v. Snelson, 82 S. W. (2d) 679.

¹⁰Lightner et al. v. McCord, County Attorney, 151 S. W. (2d) 362.

¹¹Santa Rosa, Inc., v. Lyford Independent School District, 78 S. W. (2d) 1061.

In voting upon the question of assuming bonded indebtedness, there is a need for posting notices in three public places at a reasonable length of time before such election is to be held. The burden of proof, in this instance, is upon those parties who are contesting the election. The parties must show that there was a lack of sufficient notice, and that such lack of notice caused an assumption that did not represent the will of the people. Neither will the failure to mark the poll limits, or post the markers, invalidate the election on the assumption of bonded indebtedness, even though such are required by statute.¹²

Each procedure for consolidation or grouping is provided with a method for settling the question of outstanding bonded indebtedness. As stated before, such provisions are requirements imposed by the state legislature upon the local agencies. Article 2807 provides the method when the school districts are consolidated under the provisions of Article 2806.¹³ Article 2922h provides the method of voting upon such questions when the school districts are grouped under the provisions of Article 2922a or 2922c.¹⁴

The legal principles that should be remembered in the question of assuming the bonded indebtedness of school

¹²Lewis v. Stanton Independent School District, 294 S. W. 863.

¹³Vernon's Annotated Texas Civil Statutes, arts. 2806, 2807.

¹⁴Ibid., arts. 2922a, 2922c, 2922h.

districts are: that only the qualified taxpaying voters are allowed to vote on such proposals, that the election to consolidate and the election to assume bonded indebtedness are not the same questions, but two separate and distinct issues, and that the legislature is the agency that possesses the power to provide for the procedure for the assumption of bonded indebtedness.

The Effect of Consolidation upon the Tax Measures
of the Consolidated Districts

When two or more school districts are consolidated, annexed, or grouped there is a need to levy new maintenance taxes and taxes to discharge existing obligations. It is the same as if a new district had suddenly come into existence and an election must be held to determine whether taxes shall be levied for the new district.¹⁵ Though the new school district must have an election to determine if there are to be tax levies, there must be an authorization by the legislature to levy such taxes. Article 2814 provides for this power. The article states that:

Taxing and bonding powers as are provided for elsewhere in the laws of this State are hereby guaranteed to such consolidated districts and rural school aid shall be extended to any or all of the schools of the districts so consolidating which comply with the laws and rulings governing the distribution of State aid to rural schools and independent districts.

¹⁵Pyote Independent School District v. Dyer, 34 S. W. (2d) 518.

Appeals shall be made to the county superintendent and county board.¹⁶

The above article is for those school districts consolidated under the provisions of Article 2806.¹⁷

Article 29221 provides for the taxing and bonding powers of rural high school districts. The article states that:

The board of trustees of a rural high school district provided for in this Act shall have the power to levy and collect an annual ad valorem tax . . . and provide further, that no such tax shall be levied and no such bonds shall be issued until after an election shall have been held where in a majority of the qualified taxpaying voters, voting in said election, shall have voted in favor of the levying of said tax, . . . provided, that the local tax previously authorized by a district or districts included in a rural high school district, as provided herein, shall be continued in force until such time as a uniform tax may be provided for the benefit of the rural high school district . . .¹⁸

The above law provides the authority for the local agencies to levy and collect taxes for districts annexed or grouped under Article 2922a or 2922c.¹⁹ School districts have no inherent rights or implied rights to levy and collect taxes without specific authorization by the state legislature, then taxes can be levied only in districts where authorized by the taxpaying voters of the districts affected.²⁰

¹⁶Vernon's Annotated Texas Civil Statutes, art. 2814.

¹⁷Ibid., art. 2806.

¹⁸Ibid., art. 29221.

¹⁹Ibid., arts. 2922a, 2922c.

²⁰Wingate v. Whitney Independent School District, 129 S. W. (2d) 385.

The legislature may limit the amount of tax rates of the districts.²¹ However, there is no limitation on the amount that towns and cities may levy for school purposes other than those specified in the city charter.²² The courts have held that a city incorporated for school purposes may not tax the property in the city limits at one tax rate and a different rate on property outside the city limits. Should this be allowed, then the result would be an unequal and disproportionate taxation.²³

The legal principle to be remembered in regard to tax measures in the consolidation of school districts is that no tax measures are in existence after an election to consolidate has carried and such must be provided for. The legislature is the agency which delegates the power to tax. The local agencies are powerless to act without such authorization. The courts will not invalidate tax measures upon irregularities, but the local agencies and officials should strive to follow the strict letter of the law. The legislature also sets the tax rates except in cases of incorporated schools and then such tax rates are determined in the city charter.

²¹City of Athens v. Moody, 280 S. W. 514.

²²Texas State Constitution, art. 7, sec. 3.

²³City of Ft. Worth v. Lane-Cetti, 278 S. W. 183.

The legislature has the power to validate the actions of the local agencies in their efforts to vote bonds and assume bonded indebtedness in the same manner as the legislature may validate the consolidation of school districts.

CHAPTER VII

CONCLUSIONS AND RECOMMENDATIONS

It was noted in the introduction that the writer sought to find the fundamental legal principles used in the consolidation of school districts. It was found that the problem of consolidation is not one of local nature alone. As pointed out in the second chapter, the federal government supposedly left the education of the children of the nation to the individual states. Yet, the Fourteenth Amendment prohibited the states from depriving any person of life, liberty, or property without due process of law. So from the standpoint of the federal government, the state government has control over education only as long as it does not violate some provision of the Federal Constitution which is the supreme law of the land and no state can carry on or allow anything to be done which would violate it. This is true in the states' actions to provide for public free education. The principle derived from this study is that the Tenth Amendment is an absolute in so long as the states, in providing for public education, do not violate some other provision of the Constitution. Other than constitutional limitations, there are some restrictions that the federal government has imposed on the states in regard to the use of lands that the federal government gave to the states for educational purposes.

It was found that on the state level of government that it was the Texas legislature which had the most power over the action of the consolidation of school districts. The prohibitions imposed on the state legislature were those prohibitions found in the Texas State Constitution. Power to act is not needed in order for the legislature to provide for the consolidation of school districts. It is the prohibitions that limit the state legislature in its actions in the consolidations of school districts. It was found that the legislature has control of public education only in Texas. The Texas legislature cannot provide for the formation of a school district partially or wholly out of Texas. The legislature is also given broad powers in validating actions of the agencies that it has created to carry on the process of public education on the local level. However, such validations are limited by the state constitution. In other words, the legislature cannot validate some action which would be in violation of the state constitution. The legislature can only validate those actions of local agencies which it could have caused to be permitted in the first instance. Even though the legislature has such broad powers over education it is the local agencies that carry on the function of filling in the details and actually consolidating the school districts since the legislature is forbidden by the Texas State Constitution from passing any local or special law to consolidate school districts.

So it is the local agencies, the electorate and the county board of school trustees that do the actual consolidating of the school districts. Such agencies do not have any inherent power or natural rights to do anything that the state legislature has not given the expressed authority to do. Other local governmental officials have some duties to perform in the consolidation of school districts, but these duties rest upon some action of the electorate or the county board of school trustees. These duties consist of calling for the election to consolidate which may be done by the county judge in some instances or by the county board of school trustees in other instances. The commissioners courts are the official bodies to count the votes in elections to consolidate school districts.

The county board of school trustees may consolidate school districts on its own initiative in some instances and at other times it is mandatory that the school board consolidate school districts on certain conditions. In this case the county board has no discretion but to follow the mandates of the law.

The electorate, as mentioned before, also has the power to consolidate school districts. The courts are very lenient with the electorate in its power to consolidate school districts. The electorate is the public and the courts feel that the desires of the public should be closely observed in the formation of the public school policy. Then too, the

other agencies are but representative of the people, but the electorate supposedly represents the true voice of the people. However, it must be remembered that all of the powers of the electorate comes from delegations of power by the state legislature in regard to public education.

Another conclusion in this study is that the courts are most lenient with all the agencies in their actions in providing for public free education. Possibly this is so because there is probably no field of public administration that has so many laymen actively engaged in carrying on a state function under the color of the law. It is true that there is a need to secure better public school personnel in those agencies that form school policy, but there is also a need to keep the formation of school policy on the local level and spread out through the masses.

The legislature, in giving local agencies the power to act, gives them a dual power. This dual power is the power to act wisely, which is desirable, but the legislature without desiring to do so, also gives the local agencies the power to act unwisely. Sometimes the unwise actions of the local agencies can be declared unlawful and at other times the courts are powerless and consequently let the unwise action rule. The courts merely try the cause on the legal basis of the action taken by the agencies and not on the basis of what is wise or what is unwise. The solution to this problem is that the people in their role as electors of public

officials should exercise their discretion in the selection of those public officials who will, by virtue of their office, have control over public education. This discretion should be exercised by the people in selecting all officials from the district trustee to the state legislator.

It is an easy thing to recommend that school laws should be kept simple; but simplicity should not be the end sought so the school system can be more efficiently administered. It must be remembered that the schools are for the purpose of educating the children of the state and not for the purpose of making a system of public education what will be easy to manage. Should there be a way to make the laws simple and still provide for an efficient method of educating the public, then by all means this method should be adopted. So the recommendation in this respect is that the laws should be simple only so long as they protect and provide for free public education.

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