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MIKE MONCRIEF
STATE SENATOR
President Pro Tempore, Texas Senate

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RQ-0556-AC

May 23, 2002

John Cornyn, Esq.
Texas Attorney General
209 West 14th Street
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-42631-02
I.D. # 42631

Re: Attorney General Opinion Concerning Interpretation of the Texas Education Code

Dear General Cornyn:

This letter requests an Attorney General Opinion concerning the relationship between the detachment and annexation processes authorized in Chapters 13 and 41 of the Texas Education Code. The detachment/annexation process in Chapter 41 is available only to school districts authorized to exercise an option under Chapter 41 to equalize wealth. The detachment/annexation process under Chapter 13 is available to any school district.

Section 13.051 grants authority to local school districts to provide for the detachment of property from a school district and the annexation into another contiguous school district. This section provides that detachment and annexation can be initiated only upon petition signed by a majority of the registered voters residing in the subject territory or the petition of the property owners of vacant property. Approval or disapproval of the proposed detachment and annexation must be based upon findings of the educational interests of the current students residing or future students expected to reside in the affected territory. A detachment and annexation of this nature must be approved by a majority of both boards of trustees in the affected districts.

Chapter 41 of the Education Code governs the required wealth equalization procedures of school districts. Section 41.003 provides that if a school district has a wealth per student level that exceeds the equalized wealth level it may achieve equalization through one of five methods. The most popular options used by school districts are the purchase of "attendance credits" or contracting to educate non-resident students for the other districts. Both of these options require voter approval before implementation.

Another option for equalization is the detachment of territory. Section 41.061 provides that by agreement of the governing boards of the two school districts, territory may be detached from one of the districts and annexed to the other district if the wealth per student is equalized. The Education Commissioner must certify that the detachment and annexation agreement will properly equalize wealth levels. Section 41.062 provides that "except to the extent of any conflict with this chapter and except for any requirement that detached property must be annexed to a school district that is contiguous to the detached territory, the annexation and detachment is governed by Chapter 13."

Sections 41.203 and 41.211 apply to the procedures under which the Texas Education Commissioner may forcefully require detachment and annexation in the event that a school district does not achieve equalization. Section 41.203 expressly provides that the Commissioner may only forcefully detach and annex certain types of property "other than property used primarily for agriculture or for residential purposes."

Pursuant to Section 402.042 of the Texas Government Code, I'd like to request a written opinion on the following questions affecting the public interests:

1. May school districts detach and annex property by agreement pursuant to Section 41.061 without a request by petition pursuant to Section 13.051 signed by the majority of the registered voters or property owners in the subject territory?
2. Considering the limited ability of the Commissioner to forcibly detach a school district's property, may school districts agree to detach property that is "primarily for agriculture or for residential purposes," without voter/property owner consent?
3. The Texas Education Agency ("TEA") is required to notify districts of their Chapter 41 status under Section 41.004 not later than July 15, although the districts' actual status for that school year may not be finally computed until the following September. May a school district notified of their Chapter 41 status on a preliminary basis irrevocably detach property before its actual wealth per student is finally computed by TEA?
4. Section 13.005 of the Texas Education Code provides that the effective date of a territorial transfer is effective on the first July 1 that is more than 30 days after the date of the order or ordinance accomplishing the annexation. Section 41.004 (d) appears to provide for a different effective date. Which effective date prevails?

John Cornyn, Esq.
May 23, 2002
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Because of the importance of the issues and their effect on school children in the State of Texas your immediate attention to this matter is requested. Thank you for your time and consideration.

Sincerely


Mike Moncrief



JOHN J. CARONA
STATE SENATOR

COMMITTEES:
STATE AFFAIRS
BUSINESS & COMMERCE
SUBCOMMITTEE ON BORDER AFFAIRS
HEALTH & HUMAN SERVICES,
VICE CHAIRMAN

May 21, 2002

The Honorable Mike Moncrief, Chairman
Senate Health and Human Services Committee
Room 4E.2, State Capitol
Austin, Texas

Dear Mike:

I am writing to request that you, in your capacity as Chairman of the Senate Health and Human Services Committee, submit the attached letter requesting an Attorney General opinion. I would sincerely appreciate your help on this matter.

Best regards,

A handwritten signature in black ink that reads "John Carona".

John Carona

Attachment

JJC/mm