



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

January 3, 1958

Dr. E. N. Jones, President
Texas Technological College
Lubbock, Texas

Opinion No. WW- 334

Re: Whether Texas Technological College may present commercial television programs should the Federal Communications Commission grant a television channel for use by the College.

Dear Dr. Jones:

We quote from your request for an opinion as follows:

"In your opinion No. WW-5 under date of January 22, 1957, you ruled that:

"The Board of Directors of Texas Technological College has the authority to engage in educational television broadcasting on a non-commercial basis provided that said Board, in the exercise of sound discretion, determines that such activity is reasonably necessary for the accomplishment of the statutory purposes of the college and within the legitimate objects of its creation."

"Also, the opinion contained the following:

"Since the question is not raised by your inquiry, this opinion shall not be construed as dealing with the authority of the college to engage in any type of television broadcasting on a commercial basis, in whole or in part . . ."

"It has now developed that there is need for an opinion from you on the question of whether or not Texas Technological College is empowered under its charter to present commercial television programs should the Federal Communications Commission grant a television channel for use by the College.

"From the tenor of your opinion No. WW-5 and the cases cited therein, it would appear that the primary purpose of a television channel for the College must necessarily be educational in nature. If a television channel should be maintained by Texas Technological College and primarily devoted to educational purposes, would this prevent incidental commercial programming over facilities of the station?"

Attorney General's Opinion WW-5 (1957) recognized the authority of Texas Technological College to engage in educational television broadcasting on a non-commercial basis provided the Board of Directors of the College, in the exercise of sound discretion, determines that such activity is reasonably necessary for the accomplishment of the statutory purposes of the College and within the legitimate objects of its creation. It was also pointed out in the foregoing opinion that a college or university will ordinarily be accorded the right to perform acts incidental to its main purpose, although it will be denied the right to perform acts not reasonably incidental. The Legislature has seen fit to vest considerable discretion in the governing boards of the various state institutions of higher learning in determining what activities come within the statutory purposes of such institutions. The Board's determination is final except where it is made to appear that its action constitutes a clear abuse of discretion.

An Attorney General's letter opinion, dated January 27, 1948, addressed to Honorable Frank C. Smith, President of the Board of Directors of Texas College of Arts and Industries, upheld the right of that institution to permit the installation and operation of a broadcasting studio on the College campus. In marking the limits of such authority, the opinion said:

"Thus, your Board is not authorized to permit the construction on the campus of a broadcasting studio to be used primarily for commercial purposes, with only incidental benefits to the college. The determination of whether the proposed installation in question meets the statutory requirements hereinbefore set out is a matter within the sound discretion of your board."

Clearly, no agency of the state, which includes Texas Technological College, has authority to engage in a purely commercial undertaking for revenue raising purposes unless authority therefor exists in the Constitution or statutes

of the state. This does not mean, however, that an authorized undertaking must be absolutely devoid of any commercial aspects, or that an authorized activity is rendered unauthorized because it incidentally yields revenue from its normal operations. The undertaking becomes objectionable only when the production of revenue becomes more than an incidental part of such undertaking. Southwestern Broadcast Co. v. Oil Center Broadcast Co., (Civ.App.) 210 S.W. 2d 230.

The acceptance of commercially sponsored programs enables the student to acquaint himself with this vital aspect of the Television Industry. From a legal standpoint, it would appear no more objectionable than for the College newspaper to solicit and accept advertising for its pages. The activity, in each instance, finds legal justification in the purposes to be served. When the activity bears no relationship to such authorized purposes, it becomes unauthorized.

You are accordingly advised that it is our opinion that should the Federal Communications Commission grant a television channel for use by Texas Technological College, that said channel may accept, under state laws, commercially sponsored programs provided that the Board of Directors of the College, in the exercise of sound discretion, determine that such programs have a reasonable relationship to the authorized purposes of said station and to the statutory purposes of the college.

S U M M A R Y

Should the Federal Communications Commission grant a television channel for use by Texas Technological College, said channel may accept under state laws, commercially sponsored programs, provided the Board of Directors of the College, in the exercise of sound discretion, determines that such programs

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have a reasonable relationship to the authorized purposes of said station, and to the statutory purposes of the college.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
Leonard Passmore
Assistant

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APPROVED:

OPINION COMMITTEE

Geo. P. Blackburn, Chairman

J. C. Davis, Jr.

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John Reeves

REVIEWED FOR THE ATTORNEY GENERAL

By: James N. Ludlum