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December 13, 1968

Honorable Bevington Reed
Commissioner, Coordinating Board
Texas College and University System
Sam Houston State Office Building
Austin, Texas 78701

Opinion No. M-315

Re: Whether the employees
of the Coordinating
Board, Texas College and
University System, are
eligible for partici-
pation in the Optional
Retirement Program, pro-
vided by Article 2922-1i,
Sections 1-8, V.C.S.

Dear Mr. Reed:

In your recent letter to this office you requested our opinion as to whether the employees of the Coordinating Board, Texas College and University System, are eligible for participation in the Optional Retirement Program established by Article 2922-1i, Vernon's Civil Statutes.

Section 3 of Article 2922-1i provides as follows:

"(a) There is hereby established an Optional Retirement Program. Participation in the Optional Retirement Program is in lieu of active membership in the Retirement System. The Governing Boards for all institutions of higher education shall make available to all faculty members in their component institutions, agencies and units the Optional Retirement Program which shall provide for the vesting of benefits after one year of participation.

"(b) All faculty members are eligible to participate in the Optional Retirement Program, subject to such rules as may be prescribed by the Governing Board of the institution of higher education at which they are employed."

The plain and unambiguous language of this section limits the participation in the Optional Retirement Program to faculty members at institutions of higher education. Section 2(c) of Article 2922-1i defines "institution of higher education"

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as an institution of higher education as defined under the provisions of Article 2919e-2, Vernon's Civil Statutes. Therefore, this term is limited by the provisions of Section 2(f) and 2(g) of Article 2919e-2, which read as follows:

"(f) 'Other agency of higher education' means The University of Texas System, Central Administration; Texas Western College Museum; Texas A&M University System, Administrative and General Offices; Texas Agricultural Experiment Station; Texas Agricultural Extension Service; Rodent and Predatory Animal Control Service (a part of the Texas Agricultural Extension Service); Texas Engineering Experiment Station (including the Texas Transportation Institute); Texas Engineering Extension Service; Texas Forest Service; Texas Technological College Museum; Sam Houston Memorial Museum; Panhandle-Plains Historical Museum; Cotton Research Committee of Texas; Water Resources Institute of Texas; and any other unit, division, institution or agency which shall be so designated by statute or which may be established to operate as a component part of any public senior college or university, or which may be so classified as provided in this Act.

"(g) 'Institution of higher education' means any public junior college, public senior college or university, medical or dental unit or other agency of higher education as herein defined."

The term "faculty member" is defined by Section 2(d) of Article 2922-11 as follows:

"(d) 'Faculty member' means a person employed by an institution of higher education on a full time basis as a member of the faculty or staff whose duties include teaching, research, administration, including professional librarians, or the performance of professional services but does not mean a person employed in a position which is in the institution's classified personnel system or a person employed in a similar type of position if the institution does not have a classified personnel system."

The Coordinating Board, Texas College and University System, is not an "institution of higher education" within the meaning of the above quoted definition, nor do the employees of

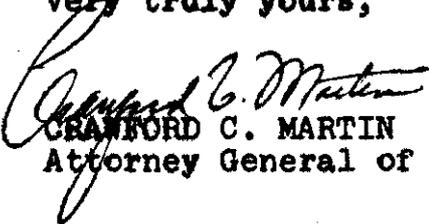
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the Board come within the definition of "the term "faculty member". The Legislature has limited participation in the Optional Retirement Program by specific definition; the definitions are unambiguous and may not be enlarged by statutory construction. You are therefore advised that employees of the Coordinating Board, Texas College and University System, are not eligible for participation in the Optional Retirement Program established by Article 2922-11 of Vernon's Civil Statutes.

S U M M A R Y

Employees of the Coordinating Board, Texas College and University System, are not eligible for participation in the Optional Retirement Program established by Article 2922-11 of Vernon's Civil Statutes.

Very truly yours,


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Prepared by W. O. Shultz
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APPROVED:
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