



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

June 18, 1969

Honorable Preston Smith  
Governor of Texas  
Austin, Texas

Opinion No. M-422

Re: Validity of Senate  
Bill 416, Acts of the  
61st Legislature, Re-  
gular Session, 1969

Dear Governor Smith:

Your request for an opinion on the validity of Senate Bill 416, Acts of the 61st Legislature, Regular Session, 1969, providing for the creation of a Board of Regents for Stephen F. Austin State College, poses the following questions:

- "1. Is Section 1 of the act so inconsistent as to invalidate the act in its entirety?
- "2. If not, is a six member or a nine member board created and how are the members to be appointed?"

Section 1 of Senate Bill 416, Acts of the 61st Legislature, Regular Session, 1969, reads as follows:

"Section 1. (a) The control and management of Stephen F. Austin State College is vested in a board of nine regents, appointed by the governor with the advice and consent of the Senate.

"(b) Except for the initial appointees, members of the board shall hold office for terms of six (6) years expiring on January 31

of odd-numbered years. In making the initial appointments, the governor shall designate two for terms expiring in 1971, two for terms expiring in 1973, and two for terms expiring in 1975. Any vacancy shall be filled by appointment for the unexpired portion of the term. Not more than two (2) members of said Board of Regents shall be appointed from or be a resident of any one (1) State Senatorial District, and no member of the said board may be appointed from or be a resident of the county in which the University is located."

It is noted that subdivision (a) above quoted provides for a nine-member board while subdivision (b) provides for a six-member board. Neither the caption of Senate Bill 416 nor the emergency clause nor any other section of the Act indicates whether the Legislature intended to create a nine or six-member board. It is therefore impossible for this office to reconcile the conflict contained in Section 1.

Accordingly, we believe your questions are answered by the principle of law announced in Southern Canal Company vs. State Board of Water Engineers, 159 Tex. 227, 318 S.W. 2d 619 (1958), wherein the Supreme Court of Texas stated:

"Courts are reluctant to strike down a legislative act because of conflicting or vague provisions. The general rule is that inconsistencies will be resolved, if possible, in order to give effect to the dominant legislative intent manifested by a statute. 39 Tex.Jur. 205-208, Statutes, §§ 110,111. But when the provisions of a statute are so inharmonious and conflicting as to render it impossible of

execution, the courts have no alternative but to declare it inoperative and void.

Hill County v. Sheppard, 142 Tex. 358, 178 S.W.2d 261; Hamrick v. Simpler, 127 Tex. 428, 95 S.W. 2d 357; Walsh v. McConnell, Tex.Com.App., 273 S.W. 833; Dewrell v. Kearley, 250 Ala. 18, 32 So.2d 812; 39 Tex. Jur. 43-44, Statutes, § 21; 50 Am.Jur. 484, Statutes, § 472; 82 C.J.S. Statutes § 68d, p.119." (Emphasis added.)

You are therefore advised that it is our opinion the provisions of Section 1 are so inharmonious and conflicting as to render it impossible of construction and the provisions of Senate Bill 416, Acts of the 61st Legislature, Regular Session, 1969, are inoperative and void.

S U M M A R Y

The provisions of Senate Bill 416, Acts of the 61st Legislature, Regular Session, 1969, creating a Board of Regents for Stephen F. Austin State College provides for a nine-member board and a six-member board. Its provisions, therefore, are so inharmonious and conflicting as to render such provisions void. Southern Canal Company vs. State Board of Water Engineers, 159 Tex. 227, 318 S.W. 2d 624.

Yours very truly,



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**APPROVED:  
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