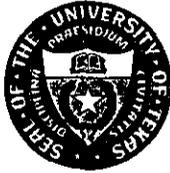


Academic Component Institutions:  
The University of Texas at Arlington  
The University of Texas at Austin  
The University of Texas at Brownsville  
The University of Texas at Dallas  
The University of Texas at El Paso  
The University of Texas-Pan American  
The University of Texas of the Permian Basin  
The University of Texas at San Antonio  
The University of Texas Institute of Texan Cultures at San Antonio  
The University of Texas at Tyler



Health Component Institutions:  
The University of Texas Southwestern Medical Center at Dallas  
The University of Texas Medical Branch at Galveston  
The University of Texas Health Science Center at Houston  
The University of Texas Health Science Center at San Antonio  
The University of Texas M.D. Anderson Cancer Center  
The University of Texas Health Center at Tyler

THE UNIVERSITY OF TEXAS SYSTEM

Office of General Counsel

201 WEST SEVENTH STREET AUSTIN, TEXAS 78701-2981

TELEPHONE (512) 499-4462

FAX (512) 499-4523

RQ-612

RECEIVED

*Ray Farabee*  
MBJ

Ray Farabee  
General Counsel

September 21, 1993

The Honorable Dan Morales  
Attorney General  
State of Texas  
Supreme Court Building  
P. O. Box 12548  
Austin, Texas 78711

SEP 24 1993

FILE #

ML-22457-93

I.D.#

22457

Re: Request for Opinion Whether, According to Chapter 830 of the Texas Government Code, The University of Texas System May Legally Limit the Number of Texas Optional Retirement Program Vendors Offering Products Under the Optional Retirement Program

Dear General Morales:

Chapter 830 of the Texas Government Code governs the Texas Optional Retirement Program (the "ORP"). This program provides for participation by eligible employees and the state in investments authorized by Section 403(b) of the Internal Revenue Code of 1986, as amended (the "Code"). Participation in the ORP serves as an alternative retirement program to active membership in the Texas Teacher Retirement System for faculty members employed in state-supported institutions of higher education.

In October, 1991, the Office of the State Auditor issued a briefing report titled "Overview of the Optional Retirement Program". A copy of this report is attached as Exhibit "A". This report criticized institutions of higher education for allowing too many vendors to offer products under the ORP program.

Specifically, the report stated at page 1:

In contrast to Texas' high number, none of the 19 other states we surveyed allows more than seven vendors to offer products. Texas' high number of vendors has a negative impact on the State's ability to negotiate for favorable rates of return and fee schedules with vendors. It may also create an unnecessarily difficult choice for Program participants who are not sophisticated regarding investments. Implementing a reduced list of vendors for new participants, or for participants wishing to change vendors, would allow the State to gain more control over the Program without severely limiting participants' choices.

The Honorable Dan Morales

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September 21, 1993

The University of Texas System (the "System") desires to limit the number of vendors. Utilizing competitive bidding procedures, the System plans to limit the number of vendors based upon information analyzed in the bidding process. The System proposes to prepare a Request for Proposals to comply with the State bidding requirements in which prospective vendors may submit bid packages. Those vendors who are the most competitive based upon factors listed in the RFP will be selected to offer ORP products. The vendors and the products they offer will also be subject to ongoing review and scrutiny by the System.

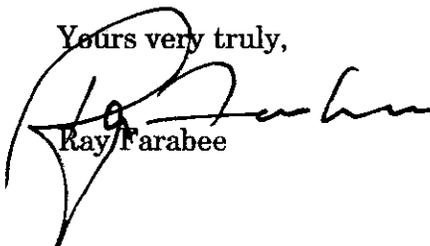
The current statutory provisions governing ORP do not address the number of vendors an employer may offer. Consequently, the number of vendors varies from institution to institution. The Texas Higher Education Coordinating Board, which is responsible for developing policies and practices in accordance with the ORP statutes, has not issued any rules, regulations, memoranda, or procedures with respect to this issue.

The only statutory reference to vendors with regard to Section 403(b) accounts is found in Section 6228a-5(2)(c) of Vernon's Ann. Civ. Stat. (Supp. 1992) governing Tax Sheltered Annuities (TSA). This section permits an employee to designate any vendor through which an annuity may be purchased. The provision, however, applies to *elective* 403(b) accounts which are obtained through an optional salary reduction agreement available to all employees. This section does not govern *mandatory* 403(b) accounts which are the result of a one time irrevocable election under the ORP program. Therefore, it does not appear that there are any statutory provisions preventing the System from limiting the number of vendors authorized to offer products under the ORP program.

We would appreciate your opinion on whether The University of Texas System may proceed in limiting the number of vendors offering ORP products through a competitive bidding process which will allow the System to offer its employees the most qualified vendors and best products from which they may choose to direct their ORP funds.

Your consideration of this request for opinion, foregoing arguments and authorities is appreciated.

Yours very truly,



Ray Farabee

Attachment