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House of Representatives

PAUL SADLER
STATE REPRESENTATIVE
DISTRICT 8

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Opinion Committee

March 4, 1997

The Honorable Dan Morales
Attorney General
State of Texas
PO Box 12548
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FILE # MC-39450-97
I.D. # 39450

Dear General Morales:

As you know, the Seventy-Fourth Legislature enacted Senate Bill No. 1, a far-reaching reform of the public education system in this state. The bill, *inter alia*, effects the devolution of authority from the state -- specifically the State Board of Education and the Texas Education Agency -- to local school boards. Several of my colleagues and I have been concerned that the recently-adopted rules promulgated by the University Interscholastic League may exceed the League's statutory authority by encroaching on the authority of local school boards, as amended by SB1, and thus may be in violation of the new law. Consequently, I am requesting that you issue an official opinion in answer to the questions set forth below regarding SB1 and local school boards' authority over part-time employees, generally, and athletic coaches, specifically.

Background

The University Interscholastic League is a voluntary non-profit association of public schools which is a part of the Division of Continuing Education of the University of Texas. All public schools are eligible for membership in the UIL, and its conduct has been held to be state action.

Sullivan v. University Interscholastic League, 616 S.W.2d 170 (Tex.1981). In *University Interscholastic League v. Midwestern University*, 255 S.W. 2d 177 (Tex. 1953), the Texas Supreme Court described the association thus almost fifty years ago:

The League was first organized in 1910, at the State Teachers' Meeting in Abilene. Since then it has been organized annually under the auspices of The Bureau of Public School Service, Division of Extension, The University of Texas. During its first year the League's activities were confined to debates among the high schools affiliated with the

University of Texas. For the second year declamation was added and through the years since, its activities in the field of interscholastic competition have spread into many and varied subjects, *e.g.*, choral singing, extemporaneous speech, one-act plays, story telling, music appreciation, spelling, typewriting, shorthand, tennis, football, track, and numerous others. Its original membership of 28 schools had grown to 2,647 schools in 1951, despite the many school consolidations effected during those years. Its scope is thus stated by the League in an introduction to its Constitution and Rules published in 1951: "This League covers a larger geographical area, serves more different types of schools, schedules a greater variety of contests, holds a larger number of meets, and enjoys a greater school membership than any similar organization in the United States." *Its importance in the public school life of the state is alleged in the District's answer in the trial court to be so great that, while membership in the League is 'technically' voluntary, it is actually compulsory.*

The nature and scope of the membership of the Interscholastic League is such that were a school not to belong to the league and compete according to its rules, it would be effectively placed in a position of being unable to hold competitive football athletics during the current year, and that hereby both the scholastic and educational benefits of good citizenship and good sportsmanship which are derived from competitive sports would be lost unto the said school and its students. It is therefore a duty, if not a public mandate, that the school district and its agencies, the schools, maintain such membership for the benefit of the students and the public of the area.

University Interscholastic League v. Midwestern University, supra, at 178-79 (emphasis added).¹

¹ More recently, the Fifth Circuit, in holding that the University Interscholastic Leagues is not subject to federal antitrust laws because it is an instrumentality of the state, declared:

Although the UIL was originally organized in 1910 as a voluntary association of public schools, the League subsequently became a part of a bureau of the Extension Division of the University of Texas at Austin, an institution which is inarguably a state agency or governmental body. Admittedly, the organization is somewhat hybrid in form in that it is in the nature of a "service" offered annually by the University's Bureau of Public School Service and has a nonpermanent, voluntary membership. Despite its unorthodox structure, however, the UIL clearly is imbued with ample characteristics to warrant the trial court's determination that the organization is an agency of the State of Texas. The UIL is organized and administered annually as part of the Division of Extension of the University's Bureau of Public School Service; its administrative authority, the State Executive Committee, is appointed by the President of the University; its employees are employed and paid by the University; its office space and support facilities are provided by the University; its budget is prepared by the Director of the Extension and approved by the University officials; and its funds are controlled by the University Bursar and are subject to the University's bookkeeping and accounting system. *Saenz v. University Interscholastic League*, 487 F.2d 1026 (5th Cir. 1973) at 1027-28.

Though the league was established over eighty years ago, the Legislature officially sanctioned the existence of the league only as recently as 1984, when it enacted the predecessor to what is now section 33.083 of the Education Code. That section, which originally was enacted as section 21.0921 of the Education Code, was re-enacted without substantive change in the recent Education Code re-codification and provides the following:

Sec 33.083 INTERSCHOLASTIC LEAGUES. (a) *The rules and procedures of an organization sanctioning or conducting interscholastic competition, including rules providing penalties for rules violations by school district personnel, must be consistent with State Board of Education rules.*

(b) *The University Interscholastic League is a part of The University of Texas at Austin and must submit its rules and procedures to the State Board of Education for approval, disapproval, or modification.* The funds belonging to the University Interscholastic League shall be deposited with The University of Texas at Austin for the benefit of the league and shall be subject to audits by The University of Texas at Austin, The University of Texas System, and the state auditor. Copies of annual audits shall be furnished, on request, to members of the legislature.

(c) The State Board of Education may seek an injunction to enforce this section.

(d) The University Interscholastic League shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the University Interscholastic League during the preceding fiscal year. The form of the annual report and the reporting time are as provided by the General Appropriations Act.

(e) Each rule of the University Interscholastic League adopted before September 1, 1995, expires August 31, 1996, unless readopted by the league and approved by the State Board of Education after September 1, 1995. This subsection expires January 1, 1997.

EDUCATION CODE, 33.083 (emphasis added).

Section 33.083 is part of Subchapter D of Chapter 33 of the Education Code, which governs extracurricular activities. Section 33.081, which was amended as a result of the recodification to include the emphasized language set forth below, provides in pertinent part:

Sec. 33.081 EXTRACURRICULAR ACTIVITIES. (a) The State Board of Education by rules shall limit participation in and practice for extracurricular activities during school day and the school week. The rules must, to the extent possible, preserve the school day for academic activities without interruption for extracurricular activities. In scheduling those activities and practices, a school district must comply with the rules of the board.

(b) A student enrolled in a school district in this state or who participates in an extracurricular activity or a University Interscholastic League competition is subject to school district policy and University Interscholastic League rules regarding participation *only when the student is under the direct supervision of an employee of the school or district in which the student is enrolled or at any other time specified by resolution of the board of trustees of the district.*

EDUCATION CODE, 33.081 (emphasis added).

The University Interscholastic League revised its rules this year to reflect the changed statutory language emphasized in section 33.081 set forth above. *See Constitution and Contest Rules, 1995-1996*, Appendix V, P. 239. However, the association failed to amend other rules whose validity is questionable in light of the enactment of Senate Bill No. 1. Consequently, I submit to you the following questions regarding the authority of the University Interscholastic League and the newly-enacted Education Code revisions.

Proposed questions:

I. Part-time employees

1. **Does a local school board have the authority to hire part-time employees, except as specified in the code?**
2. **Can a coach of a competitive event (not just athletic, but any interscholastic competitive event) be a part-time employee?**
3. **Does the University Interscholastic League have the authority to prohibit competition by educational institutions supported by state tax funds which have appointed part-time employees to coaching positions?**
4. **Does the University Interscholastic League or State Board of Education have the rule-making authority to interfere with any employment contract between any class of employee and a local school board?**

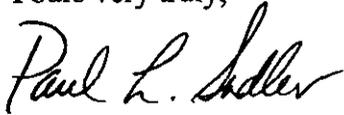
II. Limitation on the off-season activities of coaches

1. **In light of the massive transfer of power from the Texas Education Agency and the State Board of Education, does the University Interscholastic League have the rule-making authority to restrict a school employee's activity outside the classroom and off the playing field?**

2. **Does the power to restrict the school employee and the activity of the student reside with the local school board?**
3. **What equity issues are created when the University Interscholastic League proposes and the State Board of Education approves a rule which applies to a small number of public education employees?**

An expedited response to my request for an opinion will be greatly appreciated.

Yours very truly,

A handwritten signature in cursive script that reads "Paul L. Sadler".

Paul L. Sadler
Chair, Committee on Public Education