

Texas
House of Representatives

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Opinion Committee

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The Honorable John Cornyn
Attorney General
Opinions Committee
300 West 15th Street
11th Floor
Austin, TX 78701

FILE # ML-40742-99
I.D. # 40742

Dear Attorney General Cornyn:

As Chair of the House Higher Education Committee, I am submitting this request for a written opinion on questions affecting the public interest, pursuant to Texas Government Code § 402.042.

I respectfully request an opinion regarding the legality of a public junior college ("College"), as defined by Section 61.003 Education Code, giving funds to a Texas nonprofit corporation ("Foundation") which was created exclusively for charitable and educational purposes in providing support for the specific College seeking to transfer the funds.

More specifically, would such a transfer of funds be legal under the following circumstances:

1. The monies sought to be transferred were donated by a private donor to the College prior to creation of the Foundation.
2. The monies donated to the College by the private donor were gifted to the College for the restricted purpose of providing scholarship money for needy students at the College.
3. Since creation of the Foundation, the same private donor has given additional monies to the Foundation for the same or similar purpose of providing scholarships for needy students at the College.
4. The Foundation is a nonprofit corporation created under the Texas Nonprofit Corporation Act, and is a tax-exempt organization with public charity status under IRC 501(c)(3) and 509(a)(3).
5. Although the Foundation's Articles of Incorporation provide that the Foundation was created for the exclusive purpose of providing support for the College, the

Foundation is technically a separate legal entity that has a self-perpetuating board, is not under the direct control of the College, and presumably would be able to amend its Articles and Bylaws as it sees fit to the extent permitted by the Texas Nonprofit Corporation Act.

6. Both the original private donor of the scholarship funds and the regents and administration of the public junior college desire to consolidate the scholarship monies provided by the private donor within a single fund under the control of the Foundation, rather than have these scholarship monies split between separate funds controlled by the Foundation and by the College.
7. Scholarship monies transferred from the College to the Foundation would be similarly restricted to the purpose of providing scholarships for needy students of the College.
8. All of the parties (the original donor, the College and the Foundation) are agreeable to a transfer of the scholarship monies from the College to the Foundation.

The College attorney has raised questions as to the legality of such a transfer, in that the scholarship monies gifted to the College are now technically assets of the College, and thus any transfer or donation of those assets by the College to a separate legal entity, even if with the consent of the original donor, may run afoul of the illegal gratuities prohibitions in Article III, Section 52 of the Texas Constitution, and may involve an improper circumvention of laws governing decision-making and accessibility of information regarding funds of a public junior college (for example, the Public Funds Investment Act, the Texas Public Information Act, and the Texas Open Meetings Act).

Is such a transfer of scholarship monies from the College to the Foundation legally permissible? If such a transfer of funds from the College to the Foundation is legally permissible under the above-described circumstances, would it also be legally permissible without the consent of the original donor of the scholarship monies (for example, if the donor were now deceased).

I am respectfully requesting your expedited consideration and response to this request. Thank you in advance to your courtesy and attention to this matter.

Sincerely,



Irma Rangel
State Representative, District 35
Chair, House Higher Education Committee