



The Texas A&M University System

Office of General Counsel

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September 16, 2003

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OPEN RECORDS DIVISION

The Honorable Greg Abbott
Attorney General
State of Texas
P. O. Box 12548
Austin, Texas 78711-2548

FILE # ML-43267-03
I.D. # 43267

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SEP 24 2003
OPINION COMMITTEE

Re: Authority to Administer Charitable Remainder Annuity Trusts (CRATS)
and Charitable Remainder Unitrusts (CRUTS)

Dear Mr. Abbott:

We are writing to request an Attorney General opinion regarding whether or not The Texas A&M University System (TAMUS) has the authority to administer Charitable Remainder Annuity Trusts ("CRATS") and Charitable Remainder Unitrusts ("CRUTS") under the authority of Texas Education Code §85.30.

CRATS and CRUTS basically provide for periodic payments to a non-charitable beneficiary before the remainder eventually goes to a charitable beneficiary. They are authorized under Internal Revenue Code §664. The payment to the non-charitable beneficiary is based on a percentage of either the initial value of the trust corpus (CRAT), or the annual value of the corpus (CRUT). The payment is to be paid out over a term of years not to exceed 20 years, or the life of a beneficiary. At the end of either the term of years or the life income interest the corpus remainder reverts to the charitable beneficiary. These kinds of trusts are known as "split-interest" trusts. Both vehicles usually provide significant income and estate or gift tax advantages.

The setting up of these trusts involves calculating the interest of the non-charitable grantor/donor. The administration of these trusts will also require ongoing calculations in order to determine the annual payment to the beneficiary of CRUTS as well as the tax classification of the distributions to any non-charitable beneficiary. Although once in place these vehicles are fairly straightforward, more complex versions would call for fairly sophisticated decision-making by the fiduciary.

Universities

Prairie View A&M University • Tarleton State University • Texas A&M International University • Texas A&M University • Texas A&M University at Galveston • Texas A&M University-Commerce
Texas A&M University-Corpus Christi • Texas A&M University-Kingsville • Texas A&M University-Texarkana • West Texas A&M University

Agencies

Texas Agricultural Experiment Station • Texas Cooperative Extension • Texas Engineering Experiment Station • Texas Engineering Extension Service • Texas Forest Service
Texas Transportation Institute • Texas Veterinary Medical Diagnostic Laboratory • Texas Wildlife Damage Management Service

The Texas A&M University System Health Science Center

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Texas Education Code §85.30(b) authorizes the System to hold gifts "in trust". Texas Education Code §85.31(a) authorizes the System or any of its components to "receive funds" for carrying out trustee duties associated with administering these trusts. Bear in mind that any failure to accomplish the "traditional 85.30(b)" trust objective would generally only involve a question as to whether or not the trust is fulfilling a specific charitable objective. CRATS and CRUTS would involve the fulfillment of a non-charitable beneficiary's objectives as well (whose interests regarding investment or tax strategies as well as other objectives may differ over time).

These trust vehicles have become a fundamental part of gift giving strategies in today's sophisticated gift giving environment. They could prove to be a very useful tool in helping The Texas A&M University System and its components raise funds for their endowments. This is particularly relevant with the budget constraints the State of Texas is facing today. We would like to be able to proceed with implementing these vehicles in the very near future. However, we will await your response before we make any decision to do so. Please call if I can provide additional information, or otherwise be of any assistance to you in answering this request. Thank you for your consideration.

Sincerely,



Delmar L. Cain
General Counsel

cc: Tom Kale, Vice Chancellor for Business Services (SAGO)
Greg Anderson, Associate Vice Chancellor (SAGO)
Sandy Brown, Comptroller, Budgets & Accounting (SAGO)
B.J. Mathieu, Director of Individual Giving, Office of Institutional Advancement (TAMIU)
Candy Hein, Vice President, Institutional Advancement (TAMIU)