

State of Texas  
House of Representatives

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Representative Jim Pitts

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AUG 10 2005

OPINION COMMITTEE

August 9, 2005

FILE # ML-44311-05

I.D. # 44311

The Honorable Greg Abbott  
Attorney General of Texas  
Opinion Committee  
209 West 14<sup>th</sup> Street  
Austin, Texas 78701

RQ-0374-GA

**Re: Request for an opinion of the Attorney General regarding whether the Texas Higher Education Coordinating Board may approve an institution for participation in the Tuition Equalization Grant program that does not have the same accreditation as a Texas public institution of higher education.**

Dear General Abbott:

In my capacity as Chair of the Appropriations Committee of the Texas House of Representatives, I request your formal opinion on the following question:

Does Section 61.222, Education Code, authorize the Texas Higher Education Coordinating Board to approve an institution for participation in the Tuition Equalization Grant (TEG) program that does not have the same accreditation as a Texas public institution of higher education?

As originally enacted, Section 61.222, Education Code, read as follows:

The coordinating board shall approve only those private or independent colleges, universities, associations, agencies, institutions, and facilities as are located within this state, which meet program standards and accreditation *comparable* to public institutions as determined by the board. [emphasis added]

For three decades following the creation of the TEG program in 1971, the Texas Higher Education Coordinating Board (THECB) interpreted Section 61.222 to limit participation in the program to institutions accredited by the Commission on Colleges of the Southern Association of Colleges and Schools (COC-SACS), the *same* accrediting body that accredits the state's public institutions of higher education. In other words, the THECB consistently interpreted the term "comparable" to mean "same" program standards and accreditation as public institutions. Consequently, all institutions approved for

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participation in the program have been COC-SACS accredited, including a variety of art institutions and two chiropractic colleges. The sole current exception is the South Texas College of Law, which is accredited by the American Bar Association, the entity that accredits every public law school in Texas.<sup>1</sup>

Indeed, the two institutions most recently approved for TEG participation under Section 61.222 had been previously barred from participation until they achieved COC-SACS accreditation. One of these institutions, The College of St. Thomas More, was founded in 1981 but not accredited by COC-SACS until 1994. The THECB allowed the College to participate in the program beginning in 1997, when the board determined that the College met the accreditation requirement and had the institutional capability to administer the program. The other institution, Texas College, participated in the program from its creation in 1971 until 1995, when the College lost COC-SACS accreditation. The THECB readmitted Texas College to the TEG program only when it reached COC-SACS candidate status in 1999. Texas College regained full COC-SACS accreditation in 2001.

In 2001, the 77<sup>th</sup> Texas Legislature amended Section 61.222 to read as follows:

The coordinating board shall approve only those private or independent colleges or universities that are private or independent institutions of higher education as defined by Section 61.003 or are located within this state and meet the *same* program standards and accreditation as public institutions of higher education as determined by the board. [emphasis added]

This amendment even more specifically defines the types of institutions that are eligible for participation in the TEG program. These include only tax-exempt institutions that are organized under Texas law and accredited by COC-SACS or the Liaison Committee on Medical Education, or institutions located in Texas that meet the *same* program standards and accreditation as public institutions. All public institutions of higher education in Texas are in fact accredited by COC-SACS, or in the case of South Texas College of Law, the same accrediting body (the American Bar Association) that accredits public law schools.

The plain meaning of the statute is that *only* a COC-SACS accredited institution (or a specialized institution that is accredited by the same accrediting body as a specialized public institution) may participate in the TEG program under Section 61.222. Moreover, this statutory change was specifically intended to conform Section 61.222 to the

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<sup>1</sup> The Baylor College of Medicine has in the past participated in the TEG program, although it does not currently do so. The College is accredited by the Liaison Committee on Medical Education, the same entity that accredits the state's public medical colleges.

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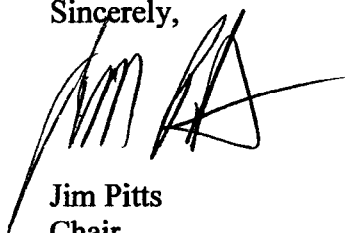
THECB's existing administrative practice of approving only COC-SACS institutions, as it has done since the program's inception in 1971.

Even though the statute is unambiguous, its meaning is further confirmed by statements of legislative intent. I would particularly refer you to the public hearing on S.B. 149, the 2001 legislation that amended Section 61.222, held by the House Committee on Higher Education on February 27, 2001. In his remarks introducing S.B. 149, the House author, Representative Bob Hunter (R-Abilene) makes it clear that the legislation conforms the statute to the THECB's longstanding administrative practice and requires participating institutions to be accredited by COC-SACS. *See* House Higher Education Committee, 77<sup>th</sup> Legislature, Regular Session, February 27, 2001 (beginning at 20:50). Further confirmation of this intent may be found in the Senate Journal dated June 30, 2005, and in the House Journal dated July 11, 2005. In these statements, the Senate and House sponsors of the amended Section 61.222, Senator John Carona (R-Dallas) and Rep. Hunter, affirm that only COC-SACS accredited institutions are eligible for participation in the TEG program.

The Attorney General of Texas has historically taken into consideration the clear intention of the Legislature and the previous administrative practice of the appropriate state agency when interpreting the proper application of a statute. In this case the plain and unambiguous language of Section 61.222, Education Code, as amended by the 77<sup>th</sup> Legislature in 2001, needs no further explanation, but is nevertheless consistent with both. As Chair of the House Appropriations Committee, which appropriates the funds for the TEG program and is responsible for monitoring the proper and lawful expenditure of those funds, I believe that only COC-SACS accredited institutions may participate in the program. Consequently, an institution accredited by an accrediting body that does not accredit Texas public institutions of higher education is *not* eligible for participation.

Thank you for your prompt attention to this opinion request.

Sincerely,

A handwritten signature in black ink, appearing to be 'Jim Pitts', written over a horizontal line.

Jim Pitts  
Chair  
House Committee on Appropriations



**TEXAS HIGHER EDUCATION  
COORDINATING BOARD**

P.O. Box 12788 Austin, Texas 78711

AUG 12 2005

OPINION COMMITTEE

August 12, 2005

FILE # RR-0374-GA

I.D. # 44330

**RR-0374-GA**

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The Honorable Greg Abbott  
Attorney General of Texas  
Opinions Committee  
209 West 14th Street  
Austin, TX 78701

Re: Request for Attorney General Opinion regarding the eligibility of Dallas Christian College to participate in the Tuition Equalization Grant program under Texas Education Code, Section 61.222

Dear General Abbott:

On behalf of the Texas Higher Education Coordinating Board (THECB), I am requesting an opinion regarding the eligibility of Dallas Christian College to participate in the Tuition Equalization Grant (TEG) program under Texas Education Code, Section 61.222.

TEG was established by the Texas Legislature in 1971 to provide financial assistance to Texas residents enrolled in an approved private Texas college or university. It is funded by legislative appropriations, is available only to Texas residents with financial need, and is administered by THECB. Texas Education Code, Section 61.221. THECB determines if an institution is eligible to participate in TEG and is directed to approve "only those private or independent colleges or universities that are private or independent institutions of higher education as defined by Section 61.003 or are located within this state and meet the same program standards and accreditation as public institutions of higher education as determined by the board." Texas Education Code, Section 61.222.

In Spring 2005, Dallas Christian College (DCC), located in Dallas, Texas, requested approval to participate in TEG. THECB has determined that DCC is not a "private or independent institution of higher education as defined by Section 61.003." The question, therefore, is whether or not DCC meets "the same program standards and accreditation as public institutions of higher education as determined by the board."

Ms. Carol McDonald, President of Independent Colleges and Universities of Texas, Inc., has written to THECB, providing information regarding the legislative history and legislative intent of Section 61.222. She believes that this history and intent would exclude participation of DCC in TEG. A copy of Ms. McDonald's letter is enclosed herein as Attachment 1.

Ms. McDonald's position in this matter is supported by a letter from The Honorable Bob Hunter, Texas House of Representatives. Representative

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Hunter was the author of Senate Bill 149, 77th Texas Legislature, which amended Section 61.222, and he instructs that "The bill was designed to limit the Coordinating Board's approval of institutions for participation in the Tuition Equalization Grant (TEG) program to those that had received the same accreditation as Texas public institutions, i.e. full accreditation by the Commission on Colleges of the Southern Association of Colleges and Schools (COC-SACS)." A copy of Representative Hunter's letter is enclosed as Attachment 2. The Honorable Jim Pitts, Chairman, Committee on Appropriations, Texas House of Representatives, also wrote to THECB, supporting Representative Hunter's letter. A copy of this letter is enclosed as Attachment 3.

Unfortunately, a review of the legislative record does not provide the expressed legislative intent. THECB would appreciate your assistance in the interpretation of this statute. The following information may be helpful in the consideration of your opinion.

1. DCC is accredited by the Association of Biblical Higher Education (ABHD). It is not accredited by the Commission on Colleges of the Southern Association of Colleges and Schools (COC-SACS). Texas Education Code, Section 61.003(15), therefore, clearly excludes DCC from participation in TEG as a private or independent institution of higher education because it does not meet the third criteria established in the definition of private or independent institution of higher education. The definition of that term is:

"Private or independent institution of higher education" includes only a private or independent college or university that is:

(A) organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes);

(B) exempt from taxation under Article VIII, Section 2, of the Texas Constitution and Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501); and

(C) accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or the Liaison Committee on Medical Education.

2. THECB considers DCC to be a "private postsecondary educational institution" as defined in Texas Education Code, Section 61.302(2) as follows:

"Private postsecondary educational institution" or "institution" means an educational institution which:

(A) is not an institution of higher education as defined by Section 61.003;

(B) is incorporated under the laws of this state, maintains a place of business in this state, has a representative present in this state, or solicits business in this state; and

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(C) furnishes or offers to furnish courses of instruction in person, by electronic media, or by correspondence leading to a degree or providing credits alleged to be applicable to a degree.

As a private postsecondary educational institution, DCC is subject to the provisions of Texas Education Code, Sections 61.301 - 61.319, unless exempted under Texas Education Code, Section 61.303. THECB has determined that DCC is exempt from those provisions because it is accredited by ABHD, an accrediting agency recognized by THECB under its rulemaking authority in Texas Education Code, Section 61.310. THECB has defined the term "recognized accrediting agency" as:

Any accrediting agency the standards of accreditation or membership for which have been found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption from the operation of this chapter. 19 Texas Administrative Code (TAC) 7.3(15).

This is the only authority under which THECB may determine that an accrediting agency has met certain standards. Administrative rules found in 19 TAC 7.4(a) list all such agencies and both ABHD and COC-SACS are included.

3. I am unaware of any law or administrative rule that requires that public institutions of higher education be accredited by any accrediting agency. I do not know of any authority that has been granted by the Legislature to THECB to require that public institutions be accredited or to determine that public institutions should be accredited by a particular accrediting agency.

All public institutions, however, are accredited by COC-SACS. It is important to note that COC-SACS does not accredit programs. COC-SACS accredits institutions that meet certain institutional standards established by COC-SACS. There are other accrediting agencies that approve programs at public institutions, especially medical and professional programs. For example, a nursing program will probably be accredited by the National League of Nursing but THECB does not require that a nursing program be accredited.

4. As stated above, Texas Education Code, Section 61.222 was amended in 2001. Prior to that amendment, Section 61.222, read as follows:

The coordinating board shall approve only those private or independent colleges, universities, associations, agencies, institutions and facilities as are located within this state, which meet program standards and accreditation comparable to public institutions as determined by the board. (emphasis added)

Ms. McDonald and Representative Hunter point out that the 2001 amendment does not have the requirement that the program standards and accreditation be

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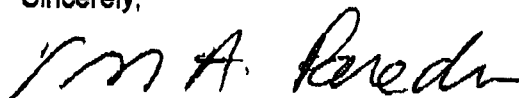
"comparable to public institutions," and they emphasize that the important change was to require that the institutions meet the same standards as public institutions.

Under both the prior version and the current statute, THECB has historically approved institutions which are COC-SACS accredited for participation in TEG. There have been exceptions, however, including the approval of Texas College to participate in the program even though the institution was a candidate for COC-SACS accreditation and not accredited by COC-SACS. South Texas College of Law has been approved to participate in the program for several years but that institution is not accredited by COC-SACS. It is accredited by the American Bar Association (ABA), an accrediting agency that is not "recognized" under THECB rules. The ABA is, however, the accrediting agency for all the public schools of law.

In summary, THECB is concerned that the exclusion of DCC under Texas Education Code, Section 61.222, might be considered unreasonable in light of THECB's recognition of ABHD as an accrediting agency which has been "found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption" from the provisions of Texas Education Code, Sections 61.301 - 61.319.

Thank you for your consideration of this matter. If you have any questions or need additional information, please contact our General Counsel, Jan Greenberg, at 427-6143.

Sincerely,



Raymund A. Paredes

**Attachments**

cc: Robert Shepard  
Neal Adams