



Lee F. Jackson, Chancellor

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Health Science Center at Fort Worth

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Dallas Campus

MAY 25 2011

OPINION COMMITTEE

May 20, 2011

FILE # ML-46754-11
I.D. # 46754

RQ-0974-GA

The Honorable Greg Abbott
Attorney General of Texas
Attn: Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548

Re: Request for Attorney General Opinion

Dear General Abbott:

Section 51.0031(c), Texas Education Code, states "if a governing board has under its control at least \$25 million in book value of endowment funds, such governing board may invest all funds described in this section [51.0031] under prudent person standards." The University of North Texas System ("UNT System") requests an opinion on whether § 51.0031(c) authorizes the Board of Regents of UNT System ("Board of Regents") to invest all funds under its control in the following two circumstances:

- (1) If the Board of Regents has under its control at least \$25 million of endowment funds held and managed at one or more UNT System component institutions, may the Board of Regents invest, under prudent person standards, funds under its control that are held and managed at another UNT System component institution that individually has not met the \$25 million threshold; and
- (2) If the Board of Regents has under its control at least \$25 million of endowment funds held and managed at one or more UNT System component institutions, may the Board of Regents invest, under prudent person standards, funds under its control that are held and managed at the UNT System level.

As more fully explained in the enclosed Brief in Support of Request for Attorney General Opinion, we believe that if the Board of Regents has under its control at least \$25 million in book value of endowment funds, then § 51.0031(c), Texas Education Code, authorizes the Board of Regents to invest all funds under its control under prudent person standards.

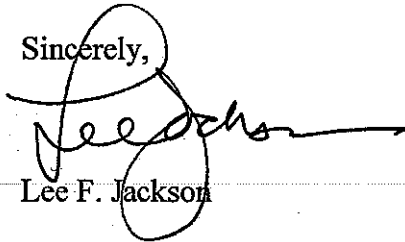


The Board of Regents governs, manages, and controls UNT System and the UNT System component institutions. UNT System functions in support of its component institutions, which include the University of North Texas, the University of North Texas Health Science Center at Fort Worth, the University of North Texas at Dallas, and the University of North Texas at Dallas College of Law. The Board of Regents has under its control funds held and managed at each component institution as well as funds held and managed at the UNT System level. The Board of Regents also has under its control at least \$25 million in book value of endowment funds.

The Public Funds Investment Act, Chapter 2256, Texas Government Code, authorizes governing boards to invest funds in investments and according to standards established by the Public Funds Investment Act. In addition, the Texas Education Code authorizes governing boards of institutions of higher education that have under board control at least \$25 million in endowment funds to invest all funds under board control under prudent person standards. We seek your opinion on whether § 51.0031(c), Texas Education Code, authorizes the UNT System Board of Regents to invest all funds under its control under prudent person standards.

Thank you for your consideration of this request. If you have any questions, please contact me as indicated below or Nancy S. Footer, Vice Chancellor & General Counsel, at 214.752.5972.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee F. Jackson", with a long horizontal flourish extending to the right. The signature is written over the printed name "Lee F. Jackson".

Lee F. Jackson

Enclosure

cc: C. Dan Smith, Chairman
Board of Regents, University of North Texas System

UNTTM
UNIVERSITY OF
NORTH*TEXAS
SYSTEM

OFFICE OF GENERAL COUNSEL

May 20, 2011

The Honorable Greg Abbott
Attorney General of Texas
Attn: Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548

Re: Brief in Support of Request for Attorney General Opinion

Dear General Abbott:

The University of North Texas System ("UNT System") has requested an opinion on whether § 51.0031(c) authorizes the Board of Regents of UNT System ("Board of Regents") to invest, under prudent person standards, all funds under its control.

UNT System contends that § 51.0031(c), Texas Education Code, authorizes the Board of Regents to invest, under prudent person standards, all funds under its control, including funds held by UNT System and by each Component Institution.

I. STATEMENT OF FACTS

UNT System is a university system and agency of the State of Texas. TEX. EDUC. CODE Ch. 105; TEX. EDUC. CODE § 61.003(10). UNT System includes: (1) the University of North Texas; (2) the University of North Texas Health Science Center at Fort Worth; (3) the University of North Texas at Dallas; and (4) the University of North Texas at Dallas College of Law (each a "Component Institution"). TEX. EDUC. CODE § 105.001. Each Component Institution is an institution of higher education. TEX. EDUC. CODE Ch. 105; TEX. EDUC. CODE § 61.003.

The Board of Regents is granted authority to govern, manage, and control UNT System and to adopt rules for the disbursement of funds. TEX. EDUC. CODE §§ 105.101(a) and 105.106. The Board of Regents is granted authority to control endowment funds. TEX. EDUC. CODE § 105.104. The Board of Regents has under its control funds that are held and managed at each Component Institution and the UNT System. In addition, the Board of Regents has under its control at least \$25 million in book value of endowment funds, both in the aggregate and at the University of North Texas and the University of North Texas Health Science Center at Fort Worth, individually.

II. ISSUE

Whether § 51.0031(c), Texas Education Code, authorizes the Board of Regents to invest, under prudent person standards, all funds under its control in the following two circumstances:

- (1) If the Board of Regents has under its control at least \$25 million of endowment funds held and managed at one or more Component Institutions, may the Board of Regents invest, under prudent person standards, funds under its control that are held and managed at another Component Institution that individually has not met the \$25 million threshold; and
- (2) If the Board of Regents has under its control at least \$25 million of endowment funds held and managed at one or more Component Institutions, may the Board of Regents invest, under prudent person standards, funds under its control that are held and managed at the UNT System level.

III. DISCUSSION

The Public Funds Investment Act ("PFIA") authorizes investment of public funds under control of a governing body of certain governmental entities. TEX. GOV'T. CODE § 2256.003. State agencies, including institutions of higher education, are among the governmental entities that may invest pursuant to the PFIA. TEX. GOV'T. CODE §§ 2256.003(a)(2); 2256.002(4), (13). The PFIA provides for funds to be invested in specifically authorized investments. TEX. GOV'T. CODE §§ 2256.003(a); 2256.009 *et.seq.*

The PFIA is in addition to or cumulative of a governmental entity's investment authority granted by other law, and the PFIA does not prohibit an investment specifically authorized by other law. TEX. GOV'T. CODE § 2256.024(a); Op. Tex. Att'y Gen. No. GA-0768 (2010). Governing boards of institutions of higher education are granted specific investment authority by § 51.0031(c), Texas Education Code, which states "if a governing board has under its control at least \$25 million in book value of endowment funds, such governing board may invest all funds described in this section [51.0031] under prudent person standards." TEX. EDUC. CODE § 51.0031(c).

Section 51.0031 also grants authority to a governing board to deposit or invest certain funds, and describes those funds as "funds under its control." TEX. EDUC. CODE § 51.0031(a). Funds under a governing board's control are more particularly defined in § 51.002:

- (a) The governing board of each institution listed in Section 51.001 of this code may retain control of the following sums of money collected at the institution, subject to Section 51.008 of this code:
 - (1) student fees of all kinds;
 - (2) charges for use of rooms and dormitories;
 - (3) receipts from meals, cafes, and cafeterias;
 - (4) fees on deposit refundable to students under certain conditions;
 - (5) receipts from school athletic activities;

- (6) income from student publications and other student activities;
- (7) receipts from the sale of publication products and miscellaneous supplies and equipment;
- (8) students' voluntary deposits of money for safekeeping;
- (9) all other fees and local or institutional funds arising out of and by virtue of the educational activities, research, or demonstrations carried on by the institution; and
- (10) donations and gifts to the institution.

TEX. EDUC. CODE § 51.002(a).

In construing a statute, the primary objective is to give effect to the legislature's intent. *Texas Lottery Com'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex. 2010). The plain meaning of the text as expressing legislative intent shall be relied upon unless a different meaning is supplied by legislative definition or is apparent from the context. *First State Bank*, 325 S.W.3d at 635. It is presumed that the legislature selected each word used in the statute with care and that each word used was put there for a purpose and each word not used was omitted for a purpose. *First State Bank*, 325 S.W.3d at 635; *In re General Elec. Co.*, 271 S.W.3d 681, 687 (Tex. 2008). A general provision must yield to a succeeding specific provision regarding the same subject matter. *Springer v. Johnson*, 280 S.W.3d 322, 329 (Tex. App. – Amarillo 2008, no pet.).

Chapter 51, Subchapter A, Texas Education Code, applies to each institution of higher education and authorizes the governing board of each institution to retain control of certain funds. TEX. EDUC. CODE §§ 51.001; 51.002(a). However, in granting investment authority, the language of § 51.0031(c) is not directed or limited to each institution of higher education nor to funds held and managed at each institution of higher education. Rather, § 51.0031(c) is directed to governing boards, and the statute, without limitation, grants to “a governing board that has under its control at least \$25 million in book value of endowment funds,” the authority to “invest all funds described in this section under prudent person standards.” TEX. EDUC. CODE § 51.0031(c) (emphasis added).

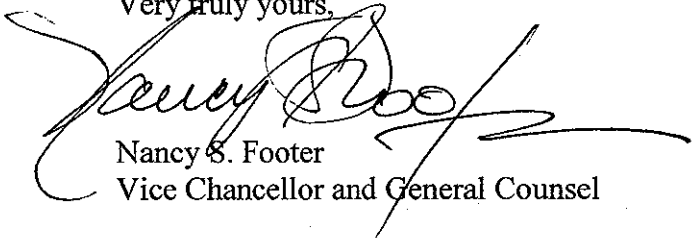
Therefore, if a governing board of one or more institutions of higher education has under its control at least \$25 million in book value of endowment funds, then that governing board may invest all funds under its control under prudent person standards. This would include funds held and managed at each institution of higher education even if, individually, that institution has not met the \$25 million threshold. This would also include funds held and managed at a university system level.

IV. CONCLUSION

Assuming the Board of Regents has under its control at least \$25 million in book value of endowment funds, then the Board of Regents may invest all funds under its control under prudent person standards, including funds held and managed at a Component Institution that has individually met the \$25 million threshold, funds held and managed at a Component Institution that individually has not met the \$25 million threshold, and funds held and managed at the UNT System level.

Attorney General Abbott
May 20, 2011
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Very truly yours,

A handwritten signature in black ink, appearing to read "Nancy S. Footer", with a long horizontal flourish extending to the right.

Nancy S. Footer
Vice Chancellor and General Counsel

cc: C. Dan Smith, Chairman, Board of Regents, University of North Texas System