



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

November 9, 1988

Honorable Carl A. Parker,
Chairman
Senate Education Committee
Senate State Capitol
Austin, Texas 78711

Open Records Decision No. 510
Re: Whether Baylor University must comply with the Texas Open Records Act, Texas article 6252-17a, V.T.C.S. (RQ-1383)

Dear Mr. Parker:

As Chairman of the Senate Education Committee, you ask whether Baylor University is a "governmental body" under the Texas Open Records Act, article 6252-17a, V.T.C.S. Apparently, Baylor University received a request under the act for its master list of all textbooks to be used in its classes. You indicated that the university leases its bookstore to a private vendor and provides the list only to that vendor.

Your request was designated ID# 2447. On December 2, 1987, we indicated that because the status of Baylor University's athletic department as a "governmental body" under the act was pending before the Texas Supreme Court, see A.H. Belo Corporation v. Southern Methodist University, 734 S.W.2d 720 (Tex. App. - Dallas 1987, denied), 747 S.W.2d 573 (Tex. 1988), we would refrain from issuing an opinion until the case was resolved. The appeal and petition for rehearing of the A.H. Belo case before the Texas Supreme court have now been denied.

The Open Records Act applies to "information collected, assembled, or maintained by governmental bodies." Art. 6252-17a, section 3(a). Section 2(1) of the act defines "governmental body" to include:

(F) the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds, or which expends public funds. Public

funds as used herein shall mean funds of the State of Texas or any governmental subdivision thereof.

Under subsection (F), a private entity is a "governmental body" for purposes of the act to the extent that the entity is supported in whole or in part by public funds or expends public funds. A.H. Belo Corporation v. Southern Methodist University, 734 S.W.2d at 723; Attorney General Opinions JM-821 (1987); JM-154 (1984); JM-116 (1983); Open Records Decision Nos. 302 (1982); 228 (1979); see also Kneeland v. National Collegiate Athletic Association, 850 F.2d 224 (5th Cir. 1988); cf. Attorney General Opinions JM-596 (1986); JM-120 (1983).

In the A.H. Belo case the court held that certain private schools' athletic departments, including Baylor University's athletic department, are not "governmental bodies" under the act because they are not supported by and do not expend "public funds." 734 S.W.2d at 723. The court stated:

The monies generated by the schools' athletic departments are subject to a pre-determined disbursement formula established by contracts and/or the SWC by-laws. The private and state schools receive the gate receipts and broadcasting fees for the athletic events. Pursuant to the agreements between the schools and the SWC, the schools involved in the athletic competition retain a pre-determined amount of the gate receipts, (the percentage varies for different sporting events), and a predetermined amount of the broadcasting fees. The remaining monies are held, in accordance with the contractual arrangement, for the SWC and the remaining schools. This money does not vest in the school participating in the event; the school is merely a conduit or collecting agent to pass the funds on to the SWC. The SWC retains an amount equal to its predicted, annual budget for the subsequent twelve months and the remainder is distributed to the member schools in equal shares. The monies forwarded to the private schools by the SWC are contractual payments and are not public funds. (Emphasis added.)

Because the funds collected from athletic events never vested in the state schools, they did not constitute public funds when the Southwest Conference distributed them to the private schools.

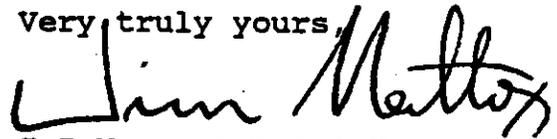
In contrast, the funds at issue here are properly characterized as public funds. See Attorney General Opinions M-861 (1971); M-391 (1969). Tuition equalization grants are authorized in section 61.221 of the Texas Education Code. The grants are provided on the basis of financial need to Texas residents enrolled in private Texas colleges or universities that are approved by the Coordinating Board of the Texas College and University System. See Educ. Code § 61.221. A grant fund is established at approved institutions that then pay the proper amount to the student. See Educ. Code § 61.227(a),(b). In Attorney General Opinion M-861, this office stated that legislation authorizing tuition equalization grants did not violate article I, section 7, or article III, section 51, of the Texas Constitution, provisions prohibiting grants of "public funds" for religious or for private purposes respectively. These decisions treated the funds at issue as public funds.

On the other hand, although tuition equalization grant funds are properly characterized as public funds, they do not vest in the university. The university is simply a conduit to pass the funds on to the students. Once the students receive the funds, they become the students' funds so long as the students expend them in accordance with the requirements of the tuition equalization grant program. To find that section 2(1)(F) of the Open Records Act applies to the university at this point would require a determination that the funds granted to and expended by the students 1) constitute public funds and 2) wholly or partially support the university. This is not the case; the funds do not remain public funds within the meaning of section 2(1)(F) when they are spent by students.

S U M M A R Y

The fact that students attending a private university receive tuition equalization grants under Chapter 61 of the Texas Education Code does not mean that the university is supported in whole or in part by or expends public funds within the meaning of section 2(1)(F) of the Texas Open Records Act, article 6252-17a, V.T.C.S.

Very truly yours,



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