



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

October 4, 1951

Hon. R. O'Hara Lanier, President
Texas Southern University
Houston 4, Texas

Opinion No. V-1298

Re: Authority of the Board
of Regents of Texas
Southern University to
prescribe new courses
of study during the
biennium beginning
September 1, 1951.

Dear Sir:

We quote from your recent letter as follows:

"The general appropriation bill, House Bill 426, passed by the 52nd Legislature, 1951, placed certain restrictions on courses of study, and set up certain standards for size of academic staffs and teaching loads for all state institutions of higher education. Texas Southern University naturally was within the coverage of those provisions. However, later in this session the Legislature passed Senate Bill 286 which apparently conflicts with the regulatory provisions of the general appropriation bill.

"It is the belief of the university administration that Senate Bill 286 operates to relieve Texas Southern University from the regulatory provisions referred to above in House Bill 426. If this is true, it would mean that in effect Senate Bill 286 placed the university for all practical purposes back within the operation of Senate Bill 140, Acts of the 50th Legislature, 1947, which set up the university.

"I request your official opinion regarding the effect of Senate Bill 286 upon the general appropriation bill, House Bill 426, 1951, as well as its effect upon Senate Bill 140, 1947."

The Texas State University for Negroes was established by Senate Bill 140, Acts 50th Leg., 1947, ch. 29, p. 36 (Art. 2643b, V.C.S.). The name of the institution was changed to Texas Southern University by House Bill 82, Acts 52nd Leg., 1951, ch. 65, p. 109 (Art. 2643f, V.C.S.).

Section 2 of Senate Bill 140, supra, reads as follows:

"To provide instruction, training, and higher education for colored people, there is hereby established a university of the first class in two divisions: the first, styled 'Texas Southern University' to be located at Houston . . . to be governed by a Board of Directors as provided in Section 3 hereof; the second, to be styled 'The Prairie View Agricultural and Mechanical College of Texas' at Prairie View . . . which shall remain under the control and supervision of the Board of Directors of The Agricultural and Mechanical College of Texas. At Prairie View Agricultural and Mechanical College shall be offered courses in agriculture, the mechanic arts, engineering, and the natural sciences connected therewith, together with any other courses authorized at Prairie View at the time of the passage of this Act, all of which shall be equivalent to those offered at the Agricultural and Mechanical College of Texas. The Texas Southern University shall offer all other courses of higher learning, including, but without limitation, (other than as to those professional courses designated for The Prairie View Agricultural and Mechanical College), arts and sciences, literature, law, medicine, pharmacy, dentistry, journalism, education, and other

professional courses, all of which shall be equivalent to those offered at The University of Texas. Upon demand being made by any qualified applicant for any present or future course of instruction offered at The University of Texas, or its branches, such course shall be established or added to the curriculum of the appropriate division of the schools hereby established in order that the separate universities for Negroes shall at all times offer equal educational opportunities and training as that available to other persons of this state. . . . " (Note: Texas Southern University has been substituted herein for The Texas State University for Negroes to comport with House Bill 82, supra.)

In Article V of House Bill 426, Acts 52nd Leg., R.S. 1951, ch. 499, p. 1228, the general appropriation bill for the biennium ending August 31, 1953, appropriations are made to Prairie View Agricultural and Mechanical College, Texas Southern University, and other State institutions of higher learning. Limitations on courses of study and standards for size of academic staff and teaching loads for these institutions are found in Sections 20, 21, and 22 of Article V, supra, at pages 1469-1470. These sections provide in part as follows:

"Sec. 20. Limitations on Courses of Study. None of the appropriations herein made and authorized, whether upon the State General Revenue Fund, local instructional funds, or any other receipts and funds whatsoever except bequests and gifts, shall be expended for the continuance or establishment of a department of instruction which was not in existence on October 1, 1950, nor for courses of instruction required for any degree which was not being offered by the institution on October 1, 1950, . . ."

"Sec. 21. Standards for Size of Academic Staffs. The number of full-time teachers employed in each teaching institution named in this Article shall not,

for the fiscal year beginning September 1, 1951, exceed the ratio of one such teacher for each fifteen (15) full-time student equivalents enrolled in such institution on the sixth class day of the spring semester of 1951 or the sixth class day of the fall semester of 1951, whichever is the greater number.

". . .

". . . The intent of the Fifty-second Legislature to limit the number of teachers employed at each institution to a reasonable number so that adequate salaries may be paid those who are employed, and to preclude overstaffing which requires the money appropriated to be divided between too many teachers."

"Sec. 22. Teaching Loads. During the biennium for which these funds are appropriated, it is declared the intent of the Fifty-second Legislature that the Governing Boards and heads of all State institutions of higher education shall offer only such courses and teach only such classes for which there is such a demand that each full-time teacher shall have a teaching load that is economically justified; that they shall offer no elective course with an enrollment of less than ten (10) students in the lower division classes, and six (6) students in the upper division classes, and further that required courses under these limits should be kept to a minimum. . . ."

Senate Bill 286, Acts 52nd Leg., R. S. 1951, ch. 409, p. 752, codified as Article 2643b-1, V.C.S., provides as follows:

"Section 1. The Board of Directors of the Agricultural and Mechanical College of Texas shall prescribe the courses of study and the degrees to be offered at the Prairie View Agricultural and Mechanical College. The Board of Regents of Texas Southern University shall prescribe the courses of study and degrees to be

offered at the Texas Southern University. The courses of study and the degrees authorized by the governing Boards of the respective institutions named above shall conform to the provisions of Senate Bill No. 140, Acts of the 50th Legislature, 1947.

"Sec. 2. Funds appropriated to the Prairie View Agricultural and Mechanical College and the Texas Southern University by Article V of House Bill No. 426, Acts of the 52nd Legislature, 1951, may be expended for the purpose of conducting such courses of study as may be prescribed under the provisions of Section 1.

"Sec. 3. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only."

The legislative history relative to House Bill 426 and Senate Bill 286 reveals that the last legislative action concerning House Bill 426 was the adoption of a Conference Committee Report thereon by the House on May 10, 1951. The last legislative action concerning Senate Bill 286 was the adoption of a Conference Committee Report thereon by the Senate on June 8, 1951. Insofar as legislative action is involved, Senate Bill 286 was the later expression of the legislative will. If any provisions of these two acts are in conflict, "the first in time or position must give way to the last, and the latter act will stand as the final expression of the legislative will." Ex parte de Jesus de la O, 227 S.W. 2d 212, 213 (Tex. Crim. 1950). See Att'y Gen. Op. V-990 (1950), and authorities there cited.

The conclusion that Senate Bill 286 will control in case of conflict between its provisions and those of House Bill 426 is supported also by the rule that a specific statute (Senate Bill 286) will control over a general statute (House Bill 426) enacted at the same session of the Legislature, regardless of the date of enactment of the two statutes. In such a situation, the specific statute will be treated as an exception to the general provision. Cain v. State, 20 Tex. 355 (1857); Wright

v. Broeter, 145 Tex. 142, 196 S.W.2d 82 (1946).

The 52nd Legislature in Section 1 of Senate Bill 286 expressly provided that the courses of study to be offered at Texas Southern University and Prairie View Agricultural and Mechanical College "shall conform to the provisions of Senate Bill 140, Acts of the 50th Legislature, 1947." In Section 2 it further provided that the appropriations granted to these two schools by Article V of House Bill 426 "may be expended for the purpose of conducting such courses of study as may be prescribed under the provisions of Section 1." The provision in Senate Bill 140 requiring the establishment of courses upon demand of qualified applicants is clearly in conflict with the provisions of Section 20 and with Sections 21 and 22 of Article V in House Bill 426 insofar as these sections would curtail the offering of courses which have been demanded.

The effect of Senate Bill 286 is to except Texas Southern University and Prairie View Agricultural and Mechanical College from the restrictions appearing in Sections 20, 21, and 22 of Article V, House Bill 426, where there is a demand for a course in accordance with the provisions of Senate Bill 140. Since these schools are required to establish such courses as are demanded, it is evident that the institution might not be able to comply with this requirement and at the same time maintain its staff and minimum course enrollment within the limits set out in Sections 21 and 22. However, we are of the opinion that the schools are not authorized to offer duplicate sections in any elective course for which the enrollment does not meet the minimum specified in Section 22.

SUMMARY

Senate Bill 286, Acts 52nd Leg., R. S. 1951, ch. 409, p. 752, exempts Texas Southern University from the provisions of Sections 20, 21, and 22 of Article V of House Bill 426, Acts 52nd Leg., R.S. 1951, ch. 499, p. 1228, (the general appropriation bill) relating to limitations on courses of study, standards for size

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of academic staffs, and teacher loads
when a course is offered upon demand
pursuant to the provisions of Senate
Bill 140, Acts 50th Leg., 1947, ch. 29,
p. 36, codified as Article 2643b, V.C.
S.

APPROVED:

J. C. Davis, Jr.
County Affairs Division

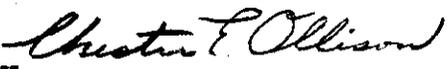
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Yours very truly,

PRICE DANIEL
Attorney General


By
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