



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

December 4, 1953

Hon. C. H. Cavness  
State Auditor  
Capitol Station  
Austin, Texas

Opinion No. S-114

Re: Counting by State Auditor  
of semester hours of which  
approval is made by Texas  
Education Agency after  
November 1.

Dear Mr. Cavness:

Section 2 of Article IV of Chapter 81, Acts of the 53rd Legislature, 1953, page 126, 306 (the General Appropriations Act for the current biennium) provides in part:

"The Texas Central Education Agency shall determine whether each eligible Public Junior College has complied with all the provisions of this section; shall determine each College's list of courses on which participation herein is to be based; and shall certify its findings and such lists to the State Auditor not later than November 1st of each year."

You ask if you must count for apportionment purposes the semester hours in those courses approved by the Texas Education Agency later than November 1, 1953.

"Statutes that regulate and prescribe the time within which officers shall perform specified duties are ordinarily regarded as merely directory insofar as the time is concerned. Though the officer neglects to act within the time prescribed, if he acts afterwards the public will not be permitted to suffer by the delay." 34 Tex. Jur. 456, Public Officers, Sec. 77. See also Truehart v. Addicks, 2 Tex. 217 (1847); State v. Fox, 133 S.W.2d 987 (Tex.Civ.App. 1939, error ref.); Att'y Gen. Op. 0-6708 (1945).

Consequently, the State Auditor must count semester hours in courses approved by the Texas Education Agency after November 1st, 1953, since the Legislature did not intend to restrict the apportionment to any Public Junior College because its courses were not approved by the Texas Education Agency within the time directed. The date of November 1st, as used in the Appropriation Act, is merely directory, rather than mandatory.

SUMMARY

The State Auditor is authorized by the current Appropriation Act to count for Public Junior College apportionment purposes the semester hours in courses certified to him by the Texas Education Agency even though the certification is made after the date specified in the Act.

Yours very truly,

APPROVED:

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Reviewer

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