



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

WAGGONER CARR
ATTORNEY GENERAL

May 16, 1966

*C-686 overruled
By C-686-a
in part*

Mr. Lester E. Harrell, Jr.
Acting Commissioner of
Higher Education
Sam Houston State Office
Building
Austin, Texas

Opinion No. C-686

Re: Responsibility of the Coordinating Board, Texas College and University System, relating to new construction projects and institutions of higher education under the provisions of Section 15 of House Bill 1, Acts of 59th Legislature, Regular Session, 1965, Chapter 12, page 27.

Dear Mr. Harrell:

Your request for an opinion asks the following questions:

- "1. Does the Coordinating Board have statutory responsibility to approve all new construction projects costing over \$100,000.00 regardless of how the new facilities will be used? For example, may an institution build a dormitory financed by revenue bonds without obtaining the Coordinating Board's approval.
- "2. Does the Coordinating Board have statutory responsibility to approve all new construction projects costing over \$100,000.00 financed in part with any amount of funds from sources other than Constitutional Funds which are authorized by Sections 11, 17, or 18 of Article VII of the Constitution of Texas and ad valorem tax receipts of the public junior colleges? May an institution of higher education avoid Coordinating Board approval by involving constitutionally-provided funds or ad valorem tax receipts (in any amount) in the financing of a construction project.
- "3. Can the Coordinating Board require approval by it of all new construction, as specified in the answers to the questions above, before an institution can submit an application for a matching grant under Public Law 88-204, the Higher Education Facilities Act of 1963?

- "4. Does the Coordinating Board have statutory responsibility to approve any repair, costing over \$25,000.00 of educational and general buildings regardless of the source of funds used to finance such repair projects?
- "5. Does the Coordinating Board have statutory responsibility to endorse all proposals to purchase real property, except those proposals of public junior colleges, regardless of sources of funds and regardless of how the property will be used? Must an institution obtain the approval of the Legislature after the Coordinating Board has endorsed the purchase of real property."

Section 15 of House Bill 1, Acts of the 59th Legislature, Regular Session, 1965, Chapter 12, Page 27, codified in Vernon's as Article 2919e-2, Vernon's Civil Statutes, reads as follows:

"To assure efficient use of construction funds and the orderly development of physical plants to accommodate projected college student enrollments, the Board shall:

"(1) Determine formulas for space utilization in all educational and general buildings and facilities at institutions of higher education;

"(2) Devise and promulgate methods to assure maximum daily and year-round use of educational and general buildings and facilities including but not limited to maximum scheduling of day and night classes and maximum summer school enrollment;

"(3) Consider plans for selective standards of admission when institutions of higher education approach capacity enrollment;

"(4) Require, and assist the public senior colleges and universities, medical and dental units and other agencies of higher education in developing, long-range plans for campus development;

"(5) Endorse or delay until the next succeeding session of the Legislature shall have opportunity to approve or disapprove the proposed purchase of any real property by an institution of higher education, except public junior colleges;

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"(6) Develop and publish standards, rules and regulations to guide the institutions and agencies of higher education in making application for the approval of new construction and major repair and rehabilitation of educational and general buildings and facilities; and

"(7) Approve or disapprove all new construction, and repair and rehabilitation of educational and general buildings and facilities at institutions of higher education financed from any source other than ad valorem tax receipts of the public junior colleges; provided (1) that the Board's consideration and determination shall be limited to the purpose for which such new or remodeled buildings shall be used and its gross dimensions to assure conformity with approved space utilization standards and the institution's approved programs and role and scope, (2) that such approval for new construction financed from other than appropriated funds shall be limited to projects the total cost of which is in excess of \$100,000.00, and (3) that such approval for major repair and rehabilitation of buildings and facilities shall be limited to projects the total cost of which is in excess of \$25,000.00; and provided further that such required approval or disapproval of the Board shall not apply to construction, repair or rehabilitation involving the use of Constitutional Funds which are authorized by Sections 11, 17, or 18 of Article VII of the Constitution of Texas."

In answer to your first question, Subdivision 7 of Section 15 of Article 2919e-2, Vernon's Civil Statutes, requires the approval or disapproval of the Coordinating Board on all new construction financed from any source other than ad valorem tax receipts of the public junior colleges provided (1) that the new construction total cost is in excess of \$100,000.00 and (2) that the new construction is financed from other than appropriated funds. You are, therefore, advised that the Coordinating Board has the statutory responsibility to approve all new construction projects costing over \$100,000.00 which are financed from other than appropriated funds regardless of how the new facilities will be used. The illustration described in your first question would require the approval of the Coordinating Board.

The concluding proviso of Subdivision 7 of Section 15 reads:

". . . provided further that such required approval or disapproval of the Board shall not apply to construction, repair or rehabilitation involving the use of Constitutional

Funds which are authorized by Sections 11, 17, or 18 of Article VII of the Constitution of Texas."

This proviso applies to all construction referred to in Section 15. Therefore, in answer to your second question, you are advised that if the new construction project involves the use of constitutional funds authorized by Sections 11, 17, or 18 of Article VII of the Constitution of Texas, the approval or disapproval of the Coordinating Board is not required on such construction projects, regardless of whether funds other than constitutional funds are also used in the construction project. Therefore, construction projects financed "from any source other than ad valorem tax receipts of the public junior colleges" must have the approval of the Coordinating Board unless such projects are financed exclusively from such ad valorem tax receipts or unless the construction project involves the use of constitutional funds authorized by Section 11, 17, or 18 of Article VII of the Constitution of Texas.

Since the provisions of Section 15 quoted above are mandatory, you are advised in answering your third question, that whenever a construction project required the approval of the Coordinating Board, the Coordinating Board may require approval by it before an institution can submit an application for a matching grant under Public Law 88-204, the Higher Education Facilities Act of 1963, when such application is for a construction project requiring the approval of the Coordinating Board as outlined in our answer to questions one and two.

In answer to your fourth question, the approval of any major repair and rehabilitation of buildings and facilities the total cost of which is in excess of \$25,000.00, applies only to (1) projects financed from any source other than ad valorem tax receipts of the public junior colleges, or (2) does not involve the use of constitutional funds authorized by Sections 11, 17, or 18 of Article VII of the Constitution of Texas. All such projects for major repair or rehabilitation of buildings and facilities costing in excess of \$25,000.00, requires the approval of the Coordinating Board.

In answer to your fifth question, the Coordinating Board has the statutory responsibility under Subdivision 5 of Section 15, Article 2919e-2, Vernon's Civil Statutes, to endorse the purchase of any real property by an institution of higher education other than public junior colleges in the event such institution of higher education has pre-existing statutory

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authority to purchase real property. In such event, no additional approval by the Legislature is necessary after the Coordinating Board has endorsed the purchase as provided in Subdivision 5 of Section 15 cited above.

SUMMARY

The Coordinating Board created by House Bill 1, Acts of the 59th Legislature, Regular Session, 1965, has the statutory responsibility to approve or disapprove all new construction, the total cost of which is in excess of \$100,000.00 which is financed from any source other than ad valorem tax receipts of public junior colleges unless such project involves the use of constitutional funds authorized by Sections 11, 17, or 18 of Article VII of the Constitution of Texas.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By: *John Reeves*
John Reeves
Assistant Attorney General

JR:sck

APPROVED:
OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL
BY: T. B. Wright