



**THE ATTORNEY GENERAL
OF TEXAS**

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

AUSTIN, TEXAS 78711

April 29, 1969

Honorable J. W. Edgar
Commissioner of Education
201 East 11th Street
Austin, Texas 78711

Opinion No. M-386

Re: Validity of State Board
of Education regulation
requiring that State in-
stitutions of higher learn-
ing reimburse the Central
Education Agency for
actual travel and per
diem expenses of members
of evaluation teams.

Dear Dr. Edgar:

In your recent letter to this office you have requested our opinion as to the validity of a regulation promulgated by the State Board of Education which requires that an institution of higher learning, which applies for approval of its program of teacher education, must reimburse the Central Education Agency for the travel and the per diem expenses of the evaluating committee which visits the institution for the purpose of reviewing and reporting upon the teacher education program offered by such institution.

The regulation in question is embodied in Policy Section 10.4, which reads, in part, as follows:

**"10.4. PROCEDURES FOR APPLYING TEACHER
EDUCATION STANDARDS**

**"All programs of teacher education in
Texas must be approved by the State Board
of Education.**

"1. Procedure for securing approval:

**"a. An institution desiring approval shall
file an application with the Texas Education
Agency, listing the teacher education programs
for which approval is desired.**

"b. The applying institutions will receive from the Agency ten sets of schedules pertaining to the programs for which approval is desired.

"c. An evaluating committee, appointed by the State Commissioner of Education, will review the schedules and visit the institution for the purpose of reviewing and reporting the teacher education program. The size and composition of the committee will be in keeping with the nature and scope of the program being evaluated.

"d. The commissioner of Education, with the advice of the State Board of Examiners for Teacher Education, will use all the information submitted about an institution as the basis for making his recommendation to the State Board of Education. If the recommendation is unfavorable, the applying institution may file a formal protest with the State Board of Education.

"2. The expenses of the evaluating committee, except for expenses incurred by representatives of the Texas Education Agency, shall be borne by the applying institution.

". . ."

You state in your letter of request that, under the authority of this regulation, the Central Education Agency has entered into inter-agency contracts with each institution seeking approval for its teacher education program and, pursuant to such contracts, obtained reimbursement for the travel and per diem expenses of the evaluating teams which visited the institutions for the purpose of evaluating and reporting upon their teacher education program.

The authority of the State Board of Education with regard to rules and regulations pertaining to the certification of teachers and approval of teacher education programs offered by institutions of higher education is embodied in Section 2 of Article 2891b, Vernon's Civil Statutes. This Section reads as follows:

"Sec. 2. The State Board of Education, with the advice and assistance of the State Commissioner of Education, is hereby authorized

to establish such rules and regulations as are not inconsistent with the provisions of this teacher certification law and which may be necessary to administer the responsibilities vested under the terms of this Act concerning the issuance of certificates and the standards and procedures for the approval of colleges and universities offering programs of teacher education.

"In order to secure professional advice in advising or making his recommendations to the State Board of Education, the Commissioner of Education shall consider recommendations of the State Board of Examiners for Teacher Education in all matters covered by this Act."

It should be noted that the authority given to the State Board of Education to promulgate rules and regulations under Section 2 of Article 2891b is specifically limited to "such rules and regulations as are not inconsistent with the provisions of this teacher certification law and which may be necessary to administer the responsibilities vested under the terms of this Act." This is in keeping with the well recognized principles of law applicable to administrative agencies. 1 Tex. Jur.2d 656-657, Administrative Law, §11. We hold that the regulation designated as Policy Section 10.4, Subdivision 2, conflicts with the intention of the Legislature as expressed in Section 3 of Article 2891b and the current and prior appropriations to the Central Education Agency.

The relevant portions of Section 3 of Article 2891b read as follows:

". . .No applicant shall receive a teacher certificate of any class or kind, except as otherwise hereinafter provided, without first depositing with the State Commissioner of Education the application fee prescribed to be paid under the provisions of this Act for the particular type or class of certificate requested.

"All application fees collected under the provisions of the teacher certification laws shall be used to cover the expenses of inspection and identification of approved college or

university teacher education programs and of recording and issuing certificates."

The plain language of this Section specifically dedicates a portion of the fees, which accompany applications for certification, for the purpose of defraying the expenses of inspection and identification of teacher education programs at colleges and universities. The current General Appropriation Act, and prior appropriations to the Central Education Agency, contain a specific appropriation for "travel of official committees appointed by the Commissioner of Education." This would certainly include the evaluating committee appointed under Regulation 10.4. Section 2 of Article 2654-7, Vernon's Civil Statutes, further provides that the expenses of official Commissioners appointed to advise the Commissioner of Education "shall be included within the regular operating budget of the State Department of Education Central Education Agency"

It is incumbent upon the State Board of Education to approve colleges and universities offering programs of teacher education, and the provisions of Section 2 of Article 2891b specifically authorize the Board, by rule and regulation, to establish the standards and procedures for such approval. While we recognize that the power of the Board in this regard is embodied in rather broad language, we are persuaded that the specific language of Section 3 of the same Article, together with that of Section 2 of Article 2654-7, and the consistent action of the Legislature in appropriating funds to cover the travel expense of the evaluating committees, necessarily precludes any implied authority on the part of the Board to require that a college or university, being considered for approval, bear the burden of the travel and per diem expense of the evaluating committee.

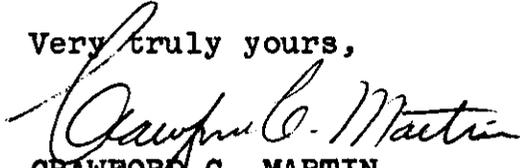
Therefore, you are hereby advised that it is our opinion that Subparagraph 2 of the rule or regulation designated by the Board of Education as Policy Section 10.4 exceeds the authority of the Board and is therefore invalid.

We are also of the opinion that the Interagency Cooperation Act, Article 4413(32) of Vernon's Civil Statutes, does not empower one agency to exact of another reimbursement for services which it is otherwise obligated to perform for that agency and the Legislature has appropriated funds to be used for that purpose.

S U M M A R Y

The rule or regulation of the State Board of Education which requires that a college or university seeking approval of its teacher education program reimburse the Central Education Agency for the travel and per diem expenses of the members of the evaluating committee which inspects such college or university exceeds the authority conferred upon the Board by Article 2891b, V.C.S., and is not authorized by Article 4413(32), V.C.S.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by W. O. Shultz
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Kerns Taylor, Chairman
George Kelton, Vice-Chairman
Sam Kelley
Bob Davis
Wardlow Lane
Ralph Rash

W. V. GEPPERT
Staff Legal Assistant

HAWTHORNE PHILLIPS
Executive Assistant