



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

September 9, 1975

The Honorable Oscar H. Mauzy
Chairman, Senate Education Committee
State Capitol
Austin, Texas 78711

Opinion No. H-686

Re: Legal status of Texas Student
Publications Board.

Dear Senator Mauzy:

You have requested our opinion regarding the legal status of the Texas Student Publications Board, and specifically whether the Board is a legal entity and may employ an attorney.

In 1971, the officers and directors of Texas Student Publications, Inc., entered into a "Declaration of Trust" with the Board of Regents of the University of Texas System, whereby all assets of Texas Student Publications, Inc., were transferred in trust to the Board of Regents. The Declaration of Trust recited that the operation of student publications at the University of Texas at Austin would thereafter be under the control and jurisdiction of a Board of Operating Trustees, which would in turn be subject to the ultimate control of the Board of Regents. Texas Student Publications, Inc., filed Articles of Dissolution with the Secretary of State, who granted a certificate of dissolution, effective October 1, 1971.

Article 1396-7.12, V. T. C. S., provides that the dissolution of a non-profit corporation by the issuance of a certificate of dissolution by the Secretary of State:

shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within three (3) years after the date of such dissolution.

Thus, for the limited purposes set forth in article 1396-7.12, Texas Student Publications, Inc., ceased to exist on October 1, 1974. For all other purposes, it ceased to exist on October 1, 1971. We therefore conclude that Texas Student Publications, Inc., does not presently exist as a legal entity. It has been succeeded by the Board of Operating Trustees.

You also ask whether the Operating Trustees may employ an attorney. The Declaration of Trust provides, inter alia:

No action of the Operating Trustees shall have any force or effect unless included in the minutes and until it has been approved by the President of the University of Texas at Austin Article 19.

No budget or budget amendment adopted by the Operating Trustees shall have any force or effect until such budget or budget amendment has been approved by the Board of Regents. Article 20.

No expenditure shall be made by the Operating Trustees unless it is made in accordance with and pursuant to a budget item that has been previously adopted by the Operating Trustees and approved by the Board of Regents. Article 21.

. . . .

. . . all funds utilized in the operations of student publications are under the direct control of an agency of the University, the Operating Trustees Article 25.

According to the Declaration of Trust, the Operating Trustees may act only with the approval of the President of the University of Texas at Austin, and may make no expenditure except in accordance with a budget item approved by the Board of Regents. Furthermore, the Board of Operating Trustees is specifically declared to be "an agency of the University." The clear language of the Declaration of Trust leaves no doubt as to its meaning, and we are obliged to construe it as written.

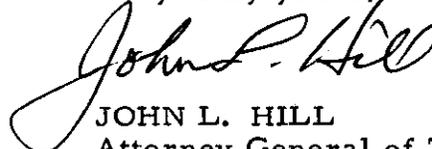
The cardinal rule in construing written instruments is to ascertain and give effect to the intention of the parties, as expressed in the language used by them. The instrument will be enforced as written, no matter what the actual intention of the parties may have been, in the absence of a showing of fraud, accident or mistake. Cutrer v. Cutrer, 334 S.W.2d 599, 606-07 (Tex. Civ. App. --San Antonio 1960), aff'd, 345 S.W.2d 513 (Tex. Sup. 1961).

Accordingly, it is our opinion that the Board of Operating Trustees may employ an attorney only with the approval of the Board of Regents and the President of the University of Texas at Austin, as required by the Declaration of Trust.

SUMMARY

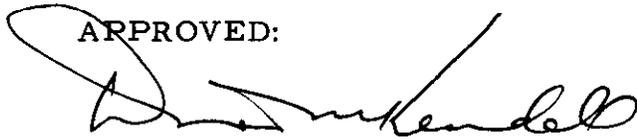
Texas Student Publications, Inc., is no longer a legal entity. The Board of Operating Trustees may not employ an attorney without the approval of the Board of Regents and the President of the University of Texas at Austin.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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