



**Office of the Attorney General  
State of Texas**

July 24, 1992

**DAN MORALES**  
ATTORNEY GENERAL

**Mr. Marvin J. Titzman**  
Executive Director  
Texas Surplus Property Agency  
P. O. Box 8120  
San Antonio, Texas 78208-0120

Letter Opinion No. 92-26

Re: Whether a tax-exempt, nonprofit corporation which is exempt from the Texas Proprietary School Act by section 32.12(a)(2) of the Texas Education Code is an "approved, accredited or licensed" "school" for purposes of the act  
(RQ-347)

Dear Mr. Titzman:

On behalf of the Texas Surplus Property Agency (the "agency"), you ask about the status under Texas law of a tax-exempt, nonprofit corporation that is exempt from the Texas Proprietary School Act, chapter 32 of the Education Code. By way of background, you explain that the agency's primary function is to acquire, store and distribute surplus federal personal property to entities and institutions that qualify under the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 484, and federal rules promulgated by the United States General Services Administration, 41 C.F.R. chapter 101. Pursuant to the federal regulations, the agency is responsible for determining whether entities in Texas are eligible to receive federal personal property. *See* 41 C.F.R. § 101-44.202(c)(9). The agency is required to make these determinations according to standards set forth in the federal regulations. *See id.*; *see also id.* § 101-44.207 (setting forth eligibility standards).

You further state that the agency interprets the federal regulations to require that tax-exempt, nonprofit organizations eligible to receive surplus property under the federal act have health or educational programs which are "approved, accredited or licensed" by a "recognized authority." You assert that the United States General

Services Administration supports this position.<sup>1</sup> The agency has received an application for eligibility from an educational organization, a tax-exempt, nonprofit corporation, which includes a letter from the Texas Education Agency which states that the organization is exempt under the Texas Proprietary School Act, section 32.12(a)(2) of the Texas Education Code. Accordingly, you ask whether a tax-exempt, nonprofit corporation which is exempt from the Texas Proprietary School Act is an "approved, accredited or licensed" "school" for purposes of the act.<sup>2</sup>

The purpose of the Texas Proprietary School Act, chapter 32 of the Education Code, is "to provide certification and regulation of proprietary schools in Texas." Educ. Code § 32.02. Pursuant to the act, the Central Education Agency is authorized to exercise jurisdiction and control over the system of proprietary schools. *Id.* § 32.21(a). It is the duty of the Commissioner of Education to carry out the provisions of the act, and to enforce minimum standards for approval of schools. *Id.* A school governed by the act may not operate without a certificate of approval. *Id.* § 32.31; *see also id.* § 32.33 (criteria for approval of application of proprietary school).

Section 32.12 of the act, which expressly exempts certain institutions from its provisions, states in pertinent part:

(a) The following schools or educational institutions are specifically exempt from the provisions of this chapter and are not within the definition of "proprietary school":

....

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<sup>1</sup>We note that the federal regulations require that an application for eligibility set forth "[e]vidence that the applicant is approved, accredited, or licensed, when it is a requirement of one or more of the applicant's programs . . . ." See 41 C.F.R. § 101-44.207(f)(1)(iv) (emphasis added). The regulation suggests that evidence of approval, accreditation or licensure is not required in every case. Because it is not generally within our province to interpret federal regulations, however, we express no opinion regarding whether the regulations require that an applicant be "approved, accredited or licensed" or what constitutes a "recognized authority." See also *infra* note 2.

<sup>2</sup>You also ask whether an exemption under the Texas statutes constitutes "approval, accreditation, or licensing" under the federal regulations, and whether the organization meets the federal requirements for eligibility. Because these questions would require this office to interpret federal regulations and would require factual determinations, we limit our analysis to your first question.

(2) nonprofit schools owned, controlled, operated, and conducted by bona fide religious, denominational, eleemosynary, or similar public institutions exempt from property taxation under the laws of this State, but such schools may choose to apply for a certificate of approval hereunder, and upon approval and issuance, shall be subject to the provisions of this chapter as determined by the administrator.<sup>3</sup>

Educ. Code § 32.12(a)(2) (emphasis added). As noted above, the tax-exempt, nonprofit corporation that is the subject of your request has received a letter from the Texas Education Agency stating that it is exempt under the foregoing provision.

We conclude that a tax-exempt, nonprofit corporation that has obtained an exemption pursuant to section 32.12(a)(2) is not a "school" "approved, accredited or licensed" under the Texas Proprietary School Act. Clearly, such nonprofit schools are completely exempt from the provisions of the act. They are not required to obtain certificates of approval in order to operate, and are therefore not "approved, accredited or licensed" under the act. *See id.* § 32.12(a). This is underscored by the fact that subsection (2) expressly allows such schools to choose to be subject to the provisions of the act by applying for a certificate of approval. *See id.* § 32.12(a)(2) ("but such schools *may choose to apply for a certificate of approval hereunder, and upon approval and issuance, shall be subject to the provisions of this chapter as determined by the administrator*").<sup>4</sup> Of course, a nonprofit school which chose to apply for a certificate of approval and was actually issued a certificate would be "approved, accredited or licensed" under the act.

## S U M M A R Y

A tax-exempt, nonprofit corporation that has obtained an exemption pursuant to section 32.12(a)(2) of the Education

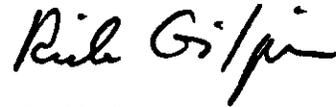
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<sup>3</sup>Subsection (1) exempts "a school or educational institution supported by taxation from either a local or State source."

<sup>4</sup>We express no opinion regarding whether the subject tax-exempt, nonprofit corporation is "approved, accredited or licensed" by another state agency or authority pursuant to some law other than the Texas Proprietary School Act or by some other nongovernmental entity. Again, as stated above, *see note 1 supra*, we also express no opinion regarding whether such approval, accreditation or licensure is required by the federal regulations.

Code is not a "school" "approved, accredited or licensed" under  
the Texas Proprietary School Act.

Yours very truly,

A handwritten signature in black ink that reads "Rick Gilpin". The signature is written in a cursive style with a prominent "R" and "G".

**Rick Gilpin**  
**Assistant Attorney General**  
**Opinion Committee**