



Office of the Attorney General
State of Texas

October 19, 1993

DAN MORALES
ATTORNEY GENERAL

Honorable Robert T. Jarvis
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Grayson County Justice Center
Suite 116A
Sherman, Texas 75090

Letter Opinion No. 93-93

Re: Whether an independent school district may award scholarships out of its general fund to its top graduates based solely on academic ranking (RQ-601)

Dear Mr. Jarvis:

You have requested an opinion as to whether an independent school district may award scholarships out of its general fund to graduating students who have been selected solely on the basis of their academic ranking in the class.¹ You cite article III, section 52(a) of the Texas Constitution as well as section 20.48 of the Education Code as provisions that may prohibit such a scholarship program.

Article III, section 52(a) of the Texas Constitution prohibits the legislature from authorizing any political subdivision of the state to grant public money to an individual.² See also Tex. Const. art. III, §§ 50, 51; see Attorney General Opinion H-1010 (1977) at 2 (observing that language applicable to political subdivisions in article III, section 52 is same as that found in article III, sections 50 and 51). See generally 1 D. BRADEN, THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSIS 232-35, 257-59 (1977) (explaining article III, sections 51 and 52 of Texas Constitution). This office has interpreted article III, section 52(a) to prohibit any grant for private purposes only; article III, section 52(a) does not prohibit a grant of public money for public purposes--even a grant to an individual--if the political subdivision granting the money places sufficient controls on the transaction to ensure that the public purpose is

¹You ask specifically about the Sherman Independent School District. However, the constitutional and statutory provisions we consider in this opinion apply generally to all independent school districts in the state. See generally Attorney General Opinion JM-1265 (1990).

²A school district is a political subdivision of the state. See *Mitchell v. State*, 692 S.W.2d 909, 912 (Tex. App.--Beaumont 1985, pct. ref'd).

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carried out.³ See Attorney General Opinions JM-1229 (1990) at 3-5 (and sources cited therein); JM-1209 (1990) at 1 (and sources cited therein); JM-1199 (1990) at 1 (and sources cited therein); 1 D. BRADEN, *supra*, at 233. But see Attorney General Opinions JM-1204 (1990) at 2 (suggesting that article III, section 52 requires governmental body to receive adequate *quid pro quo* for expenditure of public money); H-1010 at 2 (same) (citing Letter Advisory No. 119 (1977)); 1 D. BRADEN, *supra*, at 234 (stating that, in essence, asking whether grant is for public purpose is equivalent to asking whether public benefit is too remote, indirect, or general to serve as *quid pro quo*).

No fixed rule delineates exactly what constitutes a "public purpose." See *Davis v. City of Taylor*, 67 S.W.2d 1033, 1034 (Tex. 1934) (quoting 6 MCQUILLEN ON MUNICIPAL CORPORATIONS § 2532, at 292 (2d ed. 1940)) (stating that, "What is a public purpose cannot be answered by any precise definition further than to state that if an object is beneficial to the inhabitants and directly connected with the local government it will be considered a public purpose"). Rather, the governing board of the relevant political subdivision must determine in the first instance whether a particular grant of public money serves a legitimate public purpose, and whether the political subdivision has placed sufficient controls on the transaction to ensure that the public purpose will be carried out. Accordingly, prior to instituting the program, the board of trustees of the independent school district must determine in the first instance whether awarding scholarships to graduates based on academic ranking serves a public purpose, and whether the independent school district has placed sufficient controls on the award to ensure that the public purpose is carried out.

In regard to whether the award of such a scholarship may serve a public purpose, we note that section 34.031(a) of the Texas Education Code authorizes the office of the governor to award to a student in a public high school who receives credit for a course in advanced physics, calculus, or another advanced science and mathematics course tuition credit that the recipient may apply toward tuition and fees at a public institution of higher

³The decision of the Texas Court of Appeals in *Mitchell v. State*, 692 S.W.2d 909, which you cite in your letter to this office, is not to the contrary. In *Mitchell* the court considered the case of a former employee of the Beaumont Independent School District who appropriated school monies for her personal use. *Id.* at 911. Convicted in the trial court, the appellant contended that the state failed to prove that the school district had disapproved her appropriation of the monies. *Id.* The court found that, in fact, the school district could not have given its consent to the appropriation. *Id.* at 912. As an initial matter, the court found that the school district had no knowledge of the appropriation at the time it occurred. *Id.* Moreover, the court pointed out that, pursuant to article III, section 52(a) of the Texas Constitution, a political subdivision and its officers "are totally without power or authority to consent to the payment of any of their funds which is not made in return for goods or services for the political subdivision, or to permit any appropriation of such funds for private or individual purposes." *Id.* (emphasis added). Thus, the court did not focus on the fact that an individual received the money; rather, the court focused on the fact that the former employoe appropriated the money for private, as opposed to public, purposes.

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education in this state.⁴ While the legislature did not enunciate in the bill the public purpose of the award program created in section 34.031(a) (see Acts 1989, 71st Leg., ch. 813, § 6.08, at 3716-17), the legislature apparently believed in its best judgment that such an award program would serve a public purpose. See also Educ. Code § 20.482 (providing that school district may award college scholarships for graduates using gifts, devises, or bequests made to district for that purpose).

You also ask whether the proposed scholarship program contravenes section 20.48 of the Education Code, which states in pertinent part:

(a) The public free school funds shall not be expended except as provided in this section.

(b) The state and county available funds shall be used exclusively for the payment of teachers' and superintendents' salaries, fees for taking the scholastic census, and interest on money borrowed on short time to pay salaries of teachers and superintendents,

(c) Local school funds from district taxes, tuition fees of pupils not entitled to free tuition and other local sources may be used for the purposes enumerated for state and county funds and for purchasing appliances and supplies, for the payment of insurance premiums, janitors and other employees, for buying school sites, buying, building and repairing and renting school houses, including acquisition of school houses and sites by leasing same through annual payments with an ultimate option to purchase, and for other purposes necessary in the conduct of the public schools to be determined by the board of trustees. [Emphasis added.]

See also Tex. Const. art. VII, § 3 (dedicating specific tax revenues to support "public free schools"). We assume, for purposes of this opinion, that the board will fund the scholarships from local school funds from district taxes, tuition fees of pupils not entitled to free tuition, and other local sources.

Pursuant to section 20.48 of the Education Code, the trustees of the school district must determine, in the first instance, whether any proposed expenditure of school funds that is not specifically enumerated in section 20.48 is "necessary in the conduct of the public schools." *City of Garland v. Garland Indep. Sch. Dist.*, 468 S.W.2d 110, 111-12 (Tex. Civ. App.--Dallas 1971, writ ref'd n.r.e.); see *City of El Paso v. El Paso County*

⁴Pursuant to Acts 1993, 73d Leg., chapter 347, section 8.33, at 1558, section 34.031 of the Education Code is repealed effective September 1, 1993.

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Community College Dist., 729 S.W.2d 296, 299 (Tex. 1987) (stating that statute that allows municipality to use school district's *ad valorem* tax revenues without consent of school board is not unconstitutional because article VIII, section 1-g(b) of Texas Constitution authorizes it). Hence, the board of trustees of the independent school district proposing the scholarship program must determine in the first instance whether such a use of school funds is "necessary in the conduct of the public schools." When making its determination, the board of trustees should consider that the school district holds the property and funds of the public schools in trust for the benefit of the school children in the district. See *Love v. City of Dallas*, 40 S.W.2d 20, 26 (Tex. 1931); *El Paso Community College Dist. v. City of El Paso*, 698 S.W.2d 248, 251 (Tex. App.--Austin 1985), *rev'd on other grounds*, 729 S.W.2d 296 (Tex. 1987). Furthermore, the funds are to be used for educational purposes only. See *Love*, 40 S.W.2d at 27 (quoting 24 Ruling Case Law § 47, at 593).

This office considered the proper connotation of the word "necessary," as used in section 20.48 of the Education Code, in Attorney General Opinion JM-1265 (1990) at 3:

[T]he word ["necessary"] as used in section 20.48 and its predecessor statute, article 2827, V.T.C.S., has been construed as permitting such expenditures as medical inspection, cafeterias, crossing guards, and the reimbursement of certain expenses incurred by school board members. See *Moseley v. City of Dallas*, 17 S.W.2d 36 (Tex. Comm'n App. 1929, judgment adopted); *Bozeman v. Morrow*, 34 S.W.2d 654 (Tex. Civ. App.--El Paso 1931, no writ); Attorney General Opinions JM-490 (1986); H-133 (1973). Other examples could be cited. None of the expenditures in these examples is, strictly speaking, indispensable to the conduct of a public school. In the context of section 20.48, "necessary" appears to mean appropriate or conducive to the conduct of a public school rather than indispensable thereto. Accord BLACK'S LAW DICTIONARY 928 (6th ed. 1990) (definition of "necessary").

See also *City of Garland*, 468 S.W.2d at 112 (stating that Education Code section 20.48 authorizes trustees to determine whether expenditure for paving streets abutting school property is "necessary in the conduct of the public schools"); Attorney General Opinion C-601 (1966) at 3-4 (concluding that school board has discretion to determine whether expending surplus money from operation of school cafeteria to provide lunches to needy pupils is "necessary cost in the efficient conduct of its public schools"). This office also stated in Attorney General Opinion JM-1265 that "[t]he encouragement and motivation of students in academic achievement would seem to be an appropriate function of the public free schools." Attorney General Opinion JM-1265 at 4. Thus, that opinion found that a school board might find the use of local school funds to provide college scholarships to be "necessary in the conduct of the public schools" for purposes of section 20.48 of the

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Education Code. *Id.* Furthermore, the opinion stated that such a scholarship program might be structured to further the achievement of a legitimate public purpose. *Id.*

S U M M A R Y

Prior to instituting a program to award scholarships from the general fund to graduates based on academic ranking, the board of trustees of an independent school district must determine in the first instance whether, under article III, section 52(a) of the Texas Constitution, such a program serves a public purpose, and whether the independent school district has placed sufficient controls on program to ensure that the public purpose is carried out. Likewise, pursuant to section 20.48 of the Education Code, the board of trustees must determine, in the first instance, whether the awarding of such scholarships is "necessary in the conduct of the public schools."

As this office stated in Attorney General Opinion JM-1265 (1990) at 4, "[t]he encouragement and motivation of students in academic achievement would seem to be an appropriate function of the public free schools." Thus, a school board might find the use of local school funds to provide college scholarships to be "necessary in the conduct of the public schools" for purposes of section 20.48 of the Education Code as well as structured to further the achievement of a legitimate public purpose.

Yours very truly,



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Opinion Committee