



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 25, 1994

Mr. Ray Farabee
Vice Chancellor and General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2981

Letter Opinion No. 94-025

Re: Whether section 51.929 of the Education Code, as enacted by Acts 1993, 73d Leg., ch. 15, prohibits The University of Texas at Dallas from supplying scholarship students with books from the university bookstore free-of-charge (ID# 23060)

Dear Mr. Farabee:

You ask whether section 51.929 of the Education Code, as enacted by Acts 1993, 73d Leg., ch. 15,¹ prohibits The University of Texas at Dallas ("UTD") from supplying scholarship students with books from the UTD bookstore free-of-charge. Section 51.929 provides as follows:

(a) Except as provided by Subsection (b) of this section, a retail store that is owned or operated by an institution of higher education may not enter into a transaction for the sale or lease of goods or services in which the institution extends the credit of the state to the obligor.

(b) This section does not apply to an extension of credit to a student for the purchase of books or other educational supplies if the credit may be offset against undistributed grant or loan funds that are held by the institution for the student or that the institution is entitled to receive on behalf of the student. The institution may not withhold grant or loan funds to require the student to purchase books or educational supplies from a store that it owns or operates.

(c) In this section, "institution of higher education" has the meaning assigned by Section 61.003 of this code.

Acts 1993, 73d Leg., ch. 15, § 1. You confirm that UTD is an "institution of higher education" as that term is defined by section 61.003(8) of the Education Code.

¹The 73rd Legislature passed two other versions of section 51.929, neither of which is relevant here. See Acts 1993, 73d Leg., ch. 228, § 1; *id.* ch. 724, § 1.

You explain that "UTD absorbs the expense of tuition and fees, required books and supplies obtained from the UTD Bookstore, and on-campus housing" for certain scholarship recipients. You further state that no funds are issued to these scholarship recipients to pay these expenses. Rather, scholarship students are "instructed to present tuition and fee bills to the UTD Bursar's Office and bills for books and supplies to the UTD Bookstore. . . . Scholarship recipients must pay for books and supplies not obtained at the UTD Bookstore and for off-campus housing." You state that the operator of an off-campus bookstore contends that because UTD "provide[s] books and supplies only when obtained by a scholarship recipient at the UTD Bookstore, UTD is violating the provisions of Section 51.929." UTD disagrees.

Upon review of the language of section 51.929 and its legislative history, we conclude that the legislature in enacting section 51.929 did not intend to prohibit an arrangement in which there is no extension of the credit of the state by the institution of higher education at issue. Subsection (a) of section 51.929 on its face prohibits a "transaction for the sale or lease of goods or services in which the institution of higher education extends the credit of the state to the obligor." The arrangement whereby UTD supplies books and educational supplies to scholarship students free-of-charge, with no provision for repayment, does not appear on its face to constitute a sale or lease in which UTD extends the credit of the state.

Nor do we believe that the second sentence of subsection (b), which precludes an institution of higher education from "withhold[ing] grant or loan funds to require the student to purchase books or educational supplies from a store that it owns or operates," prohibits an arrangement where the institution of higher education does not extend the credit of the state. The first sentence of subsection (b) sets forth an exception to the general prohibition against extensions of the credit of the state in subsection (a), specifically an extension of state credit where "the credit may be offset against undistributed grant or loan funds that are held by the institution for the student." We construe the second sentence in subsection (b) merely to impose a limitation upon this exception. If the arrangement you describe does not involve any extension of the credit of the state, we believe that subsection (b), in its entirety, is inapplicable.

The legislative history of section 51.929 is consistent with this construction. A bill analysis explains that its purpose is to "prohibit[] certain extensions of credit by retail stores owned or operated by public institutions of higher education." House Comm. on Higher Education, Bill Analysis, S.B. 336, 73d Leg. (1993). It also explains as background that in 1992 an institution of higher education in this state began offering free credit at its bookstore, resulting in over \$330,000.00 in uncollected accounts and the significant reduction in sales of nearby privately-owned bookstores catering to students:

Privately-owned stores offer competition, student jobs and

advantages enjoyed by the institutionally owned stores, is likely to result in significantly reduced student job opportunities, higher prices to students due to reduced competition, and reduced availability of less expensive textbooks.

Id. This legislative history suggests that the legislature, in enacting section 51.929, merely intended to prohibit the extension of state credit by institutions of higher education, and did not intend to address other arrangements which might adversely affect privately-owned businesses.

A brief we received from an attorney for the off-campus bookstore states that the UTD bookstore is operated and managed by a private company, and faults UTD for omitting this fact. The brief also disputes the UTD contention that the arrangement at issue does not involve a "purchase" of books and supplies. Neither point is dispositive, however. Although section 51.929 is limited in application to transactions "for the sale or lease of goods or services," the crucial threshold question is whether the transaction at issue involves the extension of the credit of the state by UTD.² Assuming that the brief is correct in asserting that the UTD bookstore is operated and managed by a private company, we presume that UTD reimburses the private company for books and supplies received by scholarship students. Although it may be the case the private company extends credit to UTD, such an arrangement does not appear on its face to involve the extension of the credit of the state by UTD. We note, however, that the determination whether a particular arrangement constitutes "a transaction for the sale or lease of goods or services" in which an institution of higher education like UTD "extends the credit of the state to the obligor," as prohibited by section 51.929(a), would require the resolution of factual issues and is therefore beyond the purview of the opinion process.³

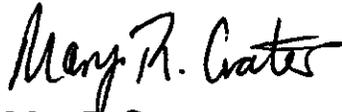
²In other words, one need not determine whether an arrangement constitutes "the sale or lease of goods or services" or "purchase of books or educational supplies" if no extension of the credit of the state is involved.

³You do not ask, and we do not address, whether the arrangement you describe runs afoul of any other state or federal provision.

S U M M A R Y

Section 51.929 of the Education Code, as enacted by Acts 1993, 73d Leg., ch. 15, does not prohibit The University of Texas at Dallas from supplying scholarship students with books from the university bookstore free-of-charge if the university does not extend the credit of the state in doing so. The determination whether a particular arrangement constitutes "a transaction for the sale or lease of goods or services" in which an institution of higher education "extends the credit of the state to the obligor," as prohibited by section 51.929(a), would require the resolution of factual issues and is therefore beyond the purview of the opinion process.

Yours very truly,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee