



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 6, 1996

The Honorable Eddie Lucio, Jr.
Chair, Senate Committee on
Intergovernmental Relations
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 96-130

Re: Whether Education Code section 53.47(f)
authorizes a higher education authority to loan funds
and pledge unencumbered collateral (ID# 39124)

Dear Senator Lucio:

On behalf of the South Texas Higher Education Authority, you ask whether Education Code section 53.47(f) authorizes a higher education authority to loan funds and pledge unencumbered collateral. For the following reasons, we conclude it does not.

Chapter 53 of the Education Code, the Higher Education Authority Act,¹ authorizes the governing body of a city or cities to create a higher education authority,² a public entity that is authorized, among other things, to acquire, and operate or lease, educational facilities and housing facilities,³ issue revenue bonds,⁴ and invest bond proceeds.⁵ Section 53.47 authorizes an authority to issue revenue bonds or otherwise borrow money to obtain funds to purchase or to make student or parent loans guaranteed under either the federal Higher Education Act of 1965⁶ or by the Texas Guaranteed Student Loan Corporation.⁷

Subsection (e) of section 53.47 provides that “[i]n addition to establishing an authority under the provisions of this chapter, the governing body of a city or cities may request a nonprofit corporation organized to exercise the powers enumerated and provided in this section for and on its

¹See Educ. Code § 53.01.

²*Id.* §§ 53.11, .44.

³*Id.* § 53.33.

⁴*Id.* § 53.34.

⁵*Id.* § 53.42.

⁶20 U.S.C. §§ 1001 - 1146a.

⁷See Educ. Code § 53.47(a), (b).

behalf.” If the corporation agrees to exercise such powers, “the directors of such corporation shall thereafter be appointed by and be subject to removal by the governing body of the city or cities.”⁸ Although such a nonprofit corporation is subject to many of the statutory provisions applicable to an authority,⁹ it has separately delineated investment powers.¹⁰ Operated by its own board of directors, the members of which are accountable to the city, such a nonprofit corporation is clearly a separate entity legally distinct from an authority created by the city.

Subsection (f) of section 53.47, the provision about which you inquire, provides in pertinent part as follows:

A nonprofit corporation, whether acting at the request of a city or cities under Subsection (e) or on its own behalf, that issues securities to obtain funds to purchase or make student or parent loans may:

(1) exercise the powers granted by the Texas Non-Profit Corporation Act. [Citation omitted.]

The South Texas Higher Education Authority asks whether section 53.47(f)(1) permits “Authorities to loan available funds and/or pledge unencumbered collateral of Authorities to third parties,” pointing out that under the Texas Non-Profit Corporation Act, a nonprofit corporation is authorized “[t]o lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.”¹¹

The letter from the South Texas Higher Education Authority does not indicate whether the authority is a higher education authority or a nonprofit corporation. By its terms, subsection (f)(1) of section 53.47 applies only to a nonprofit corporation. Section 53.47(f) does not apply to a higher education authority and therefore does not in any way expand the powers of an authority. On the other hand, section 53.47(f) does generally authorize a nonprofit corporation that issues securities to obtain funds to purchase or make student or parent loans to exercise powers granted by the Texas Non-Profit Corporation Act, which include the authority “[t]o lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for

⁸*Id.* § 53.47(e).

⁹*See id.* (“Sections 53.14, 53.15, 53.31, 53.32, 53.38, and 53.41 through 53.43 of the Texas Education Code shall apply to and govern such corporation, its procedures, and bonds. Notwithstanding the provisions of Section 53.42, a nonprofit corporation which has been requested to exercise the powers enumerated and requested in this section may invest . . . in”); *see also* Attorney General Opinion MW-253 (1980) (discussing application of various provisions in chapter 53 to nonprofit corporation).

¹⁰*See* Educ. Code § 53.47(e)(1) - (6).

¹¹V.T.C.S. art. 1396-2.02A(9).

the payment of funds so loaned or invested.”¹² We have not been provided with any information about specific loans or pledges and therefore do not consider whether a specific loan or pledge by such a corporation is authorized by this provision or is otherwise permissible.

S U M M A R Y

Education Code section 53.47(f) applies only to a nonprofit corporation. This section does not apply to a higher education authority created under Education Code chapter 53 and therefore does not in any way expand the powers of an authority. Section 53.47(f) does generally authorize a nonprofit corporation that issues securities to obtain funds to purchase or make student or parent loans to exercise powers granted by the Texas Non-Profit Corporation Act, which include the authority “[t]o lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.” V.T.C.S. art. 1396-2.02A(9).

Yours very truly,



Mary R. Crouter
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Opinion Committee

¹²*See id.*