



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 19, 1996

Mr. Charles L. Dunlap  
Executive Director  
Teacher Retirement System of Texas  
1000 Red River Street  
Austin, Texas 78701-2698

Letter Opinion No. 96-142

Re: Whether a member of the board of trustees of the Teacher Retirement System of Texas, who was appointed in 1991 under Government Code section 825.002(b), becomes ineligible to serve when his spouse, a member of the system, retires, by virtue of Government Code section 825.0032(a)(3), and related questions (ID# 39032)

Dear Mr. Dunlap:

You ask whether a member of the board of trustees of the Teacher Retirement System of Texas (the "system"), who was appointed in 1991 under Government Code section 825.002(b), becomes ineligible to serve when his spouse, a member of the system, retires. For the reasons explained below, we conclude the member becomes ineligible when his spouse retires from the system and receives an annuity, by virtue of Government Code section 825.0032(a)(3).

Section 825.002(b), the provision under which the board member was appointed in 1991, requires the governor to appoint three members to the board

who have demonstrated financial expertise, who have worked in private business or industry, and who have broad investment expertise, preferably in investment of pension funds. None of the members appointed under this subsection may be a member or annuitant of the retirement system.

Section 825.0032 provides in pertinent part as follows:

(a) Except as provided by Subsection (b), a person is not eligible for appointment to the board if the person or *the person's spouse*:

...

(3) uses or receives a substantial amount of tangible goods, services, or funds from the retirement system, other than

compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(b) Subsection (a)(3) does not apply to a person who is nominated for appointment under Section 825.002(c), (d), or (e).

Subsections (c) and (e) of section 825.002 provide for the appointment to the board of members of the system. Section 825.002(d) provides for the appointment to the board of a former member of the system who has retired from the system and is receiving benefits. Because the board member at issue was appointed under section 825.002(b), which provides for the appointment of board members with certain financial expertise, he is not excepted from 825.0032 subsection (a)(3) by subsection (b).

You suggest that the board member will not become ineligible under section 825.0032(a)(3) because his wife's annuity will not represent a "substantial amount." We disagree. We believe that subsection (b) of section 825.0032, in providing an exception to subsection (a)(3) for former members receiving benefits appointed under section 825.002(d), indicates that the legislature determined that the receipt of retirement benefits would otherwise constitute a violation of subsection (a)(3).

We also note that we do not believe the board member is excepted from the section 825.0032(a)(3) prohibition because he was appointed in 1991 prior to its enactment. Section 825.0032(a)(3) was added in 1995 as part of chapter 555. *See* Act of May 24, 1995, 74th Leg., R.S., ch. 555, § 32, 1995 Tex. Gen. Laws 3332, 3352. Section 75 of chapter 555 provides as follows:

The terms of members of the Board of Trustees of the Teacher Retirement System of Texas appointed under Section 825.003, Government Code, as it existed before the effective date of this section, expire on the effective date of this section. The changes in the qualifications and methods of appointment of other members of the board of trustees made by this Act apply only to members appointed for terms that begin on or after the effective date of this section.

*Id.* § 75. The effective date of section 75 is August 31, 1995. *Id.* § 77. We believe that the eligibility requirement in section 825.0032(a)(3) is not a qualification for appointment. In chapter 555, the legislature also amended section 825.010 of the Government Code in pertinent part as follows:

(a) It is a ground for removal from the board if a trustee:

(1) *does not have at the time of appointment the qualifications required for the trustee's position;*

*(2) does not maintain during service on the board the qualifications required for the trustee's position;*

(3) violates a prohibition established by Section 825.002(b) or 825.0032.

....

*Id.* § 35 (italics indicate amendments). These provisions for removal indicate that the legislature distinguished between qualifications for service and the prohibitions listed in section 825.0032. For this reason, we do not believe that compliance with section 825.0032(a)(3) constitutes a "qualification" for appointment that is grandfathered by virtue of section 75 of chapter 555. Therefore, we conclude that section 825.0032(a)(3) applies to all board members, not just those board members appointed for terms that began on or after August 31, 1995.

Next you ask, "In the absence of a resignation, do the provisions of Texas Government Code, § 825.010 require the formal notifications specified and formal action by the attorney general or the appointing officer in order for the Trustee's position to be considered vacant . . . ? If disqualified . . . would the trustee continue to hold over in office until a duly appointed successor qualifies?" As noted above, section 825.010 provides that violation of a prohibition in section 825.0032(a)(3) constitutes a ground for removal from the board. Subsection (c) of section 825.010 provides in pertinent part as follows:

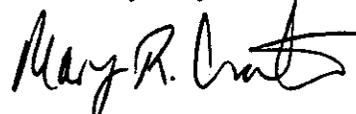
If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the appropriate appointing officer and the attorney general that a potential ground for removal exists.

Section 825.010 requires the presiding officer to notify the appropriate appointing officer and the attorney general that a potential ground for removal exists; it does not automatically disqualify or remove a board member from office. The attorney general or the appointing officer must take action in order to remove the board member from office, *see generally* Gov't Code ch. 665 (procedures for removal from office), and no vacancy would occur until the board member was actually removed.

**S U M M A R Y**

A Teacher Retirement System of Texas board of trustees member, appointed under Government Code section 825.002(b), whose spouse retires from the system and receives an annuity, would become ineligible to serve by virtue of Government Code section 825.0032(a)(3). Violation of the prohibition in section 825.0032(a)(3) constitutes a ground for removal from the board under Government Code section 825.010. This section requires the presiding officer of the board to notify the appropriate appointing officer and the attorney general that a potential ground for removal exists; it does not automatically disqualify or remove a board member from office. The attorney general or the appointing officer must take action in order to remove the board member from office, *see generally* Gov't Code ch. 665 (procedures for removal from office), and no vacancy would occur until the board member was actually removed.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee