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June 19, 1991

VIA TELECOPY

The Honorable Dan Morales  
Attorney General of Texas  
P. O. Box 12548, Capitol Station  
Austin, Texas 78711

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Opinion Committee

Re: Opinion Request

Dear General Morales:

In my capacity as chairperson of the board of directors of the Texas Agricultural Finance Authority ("TAFE") and by my letter of June 11, 1991, I requested an opinion of the Attorney General's Office concerning the validity and scope of Rule 28.8 (d) and (e) of the TAFE Loan Guaranty Program. The Rule states:

(d) Credit review committee. The authority's staff will submit a report on each application to the Credit Review Committee, chaired by the commissioner or his designee and consisting of department staff and outside advisors as determined by the commissioner. The Credit Review Committee will recommend approval or disapproval to the commissioner.

(e) Action by Commissioner. The commissioner is delegated authority by the board to act on behalf of the authority to approve or disapprove each application.

It appears that a number of collateral issues have been raised by the Commissioner's office and I wish to make clear that my request for an opinion is limited to a determination of the validity and scope of Rule 28.8 (d) and (e). Specifically, I would like the following issues addressed:

Pursuant to the provisions of the Texas Agricultural Finance Act ("Act") as set forth in Chapter 58 of the Texas Agriculture Code, may the Commissioner of Agriculture (1) approve applications for financial assistance and (2) provide that financial assistance without the approval of the board of directors of TAFE?

My concern about the Commissioner exercising such authority is that it violates both the spirit and explicit provisions of

The Honorable Dan Morales

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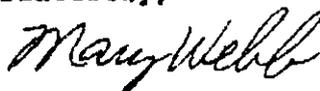
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the Act by removing the TAFE board from the process of approving financial assistance and by depriving the board of any control over the manner in which public funds are disbursed. TAFE was created as a "public authority" and the Act specifically provides that the exercise by the authority of the powers and duties conferred by the Act is an "essential public purpose of the state in promoting the general welfare of the state and all of its citizens." Tex. Agric. Code Ann. Sect.58.011 (Vernon Supp. 1991). The TAFE board conducts its meetings in an open forum in compliance with the Texas Open Meetings Act. The decisions of the Commissioner, on the other hand, are not made in an open forum. Since it is public funds that are being obligated, I believe that, at a minimum, the decision on disbursement of such funds should be made in an open forum and that the Act dictates such openness.

Last week, the Commissioner approved financial assistance to four businesses aggregating in excess of \$6 million. The TAFE board of directors was not afforded the opportunity to pass on the appropriateness of this financial assistance. The Commissioner's action was promulgated on the authority purportedly delegated to him by Rule 28.8 (d) and (e). I do not believe that the Act contemplates that such broad and sweeping authority could be delegated to the Commissioner.

The board will meet again on July 1, 1991. Therefore, I would greatly appreciate it if your office could expedite this request and provide me with a response prior to that date.

Sincerely,



Mary Webb  
Chairperson, Texas Agricultural  
Finance Authority Board of  
Directors

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cc: Commissioner of  
Agriculture