

The TEXAS BOARD of ARCHITECTURAL EXAMINERS



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May 3, 1991

The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548, Capitol Station
Austin, TX 78711-2548

CERTIFIED MAIL-RETURN
RECEIPT REQUESTED

REQUEST FOR ATTORNEY GENERAL OPINION

Dear General Morales:

It has come to the attention of the Texas Board of Architectural Examiners that it has been "subsidizing" architect and landscape architect candidates' examination costs. The Board has been appropriated a Line Item amount of money for purchasing and grading examinations. The Board, however, must use part of its Line Item for general administration to administer the examination. The Board would like your opinion regarding the possibility of legal problems arising from this state of affairs.

The Board's primary concern is with Article III, Section 51, of the Texas Constitution, which limits the state's power, acting through the legislature, to dispense money. In Housing Authority v. Higginbotham, 135 Tex. 158, 143 S.W. 2d 79 (1940), the Texas Supreme Court held that subsidized housing for the poor did not violate Article III, Section 51, because it served a valuable public purpose. It is not clear, however, whether there is a valuable public purpose in subsidizing architect and/or landscape architect candidates' examination administration. The Board presumes that administration of an examination to verify the competency of registered architects and landscape architects to practice in the state protects the public health, safety and general welfare thereby also serving a valuable public purpose.

Moreover, even if the Board constitutionally may subsidize candidates' examinations, the Board is concerned with two appropriation Line Items, one for "Administration" and one for "Purchasing and Grading National Examinations". The Board interprets "Purchasing and Grading of National Examinations" to include only purchasing and grading and not administration. In other words, may the Board use the first Line Item to administer the examination? Please advise whether this constitutes the "transfer" of money from one Line Item to another? See, e.g., Tex. Atty. Gen. Op. Nos. H-679 (1976); H-575 (1975).

Continued.....

The Honorable Dan Morales
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Please feel free to call me if you need additional information.

A handwritten signature in black ink, appearing to read "R.H. Norris". The signature is stylized and somewhat cursive, with a large initial "R" and "H" and a distinct "N".

ROBERT H. NORRIS, AIA, EXECUTIVE DIRECTOR

jf

cc: Mr. Thomas W. Parker
Mr. Earl P. Broussard
Ms. Jennifer Riggs