



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

November 2, 2004

Mr. Glenn D. Parker  
Executive Director  
State Board of Barber Examiners  
5717 Balcones Drive, Suite 217  
Austin, Texas 78731

Opinion No. GA-0092A

Re: Use of the Barber School Tuition Protection  
Account administered by the State Board of  
Barber Examiners (RQ-0024-GA)

Dear Mr. Parker:

On behalf of the State Board of Barber Examiners (the "Board"), your predecessor asked two questions concerning the barber school tuition protection account (the "account") established by Occupations Code section 1601.3571.<sup>1</sup> *See* TEX. OCC. CODE ANN. § 1601.3571(d) (Vernon 2004). This office originally responded to your predecessor in Attorney General Opinion GA-0092, issued on August 20, 2003. In light of an oversight in our answer to the second question, however, we are withdrawing that opinion and substituting this modified opinion.

Section 1601.3571, added in 2001 by the Seventy-seventh Texas Legislature, creates the account and provides for its use and administration:

(a) If on January 1 of any year the amount in the barber school tuition protection account is less than \$25,000, the board shall collect a fee from each barber school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to \$25,000.

(b) The comptroller shall invest the account in the same manner as other state funds. Sufficient money from the account shall be appropriated to the board for the purpose of refunding unused tuition if a barber school ceases operation before its course of instruction is complete. The board shall administer claims made against the account.

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<sup>1</sup>*See* Letter from Douglas A. Beran, Ph.D., Executive Director, State Board of Barber Examiners, to the Opinion Committee, Office of the Attorney General (Mar. 7, 2003) (on file with the Opinion Committee, *also available at* <http://www.oag.state.tx.us>) [hereinafter Request Letter].

- (c) Attorney's fees, court costs, or damages may not be paid from the account.
- (d) The barber school tuition protection account is created as a trust fund with the comptroller, who is custodian of the fund.

TEX. OCC. CODE ANN. § 1601.3571 (Vernon 2004). The section was added, according to the legislative history, so that unused tuition could be refunded "if a barber school ceases operation before its course of instruction is complete." SEN. COMM. ON STATE AFFAIRS, BILL ANALYSIS, TEX. S.B. 660, 77th Leg., R.S., § 10 (2001) at 2.

Your predecessor first asked whether students who "receive federal money . . . for their barber school tuition (as opposed to students who pay their own tuition)" are eligible for tuition protection. Request Letter, *supra* note 1, at 1. We cannot determine in any particular instance who may be a proper claimant for such funds. See Tex. Att'y Gen. Op. No. GA-0156 (2004) at 10 (stating that fact questions cannot be answered in the opinion process). It may, for example, be the federal government itself that has the right to be reimbursed in some instances, rather than the student.

Nothing in the statutory language limits the kind or source of tuition funds that may be refunded. We cannot add a qualification not found in the statute. See *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 867 (Tex. 1999) (stating that courts may add words to a statute only to effectuate "clear legislative intent"). The only statutory requirement is that "unused tuition" must be refunded. See TEX. OCC. CODE ANN. § 1601.3571(b) (Vernon 2004).

The board is given the duty and authority to administer claims against the fund, and consequently, to determine the validity of any particular claim. See *id.* But, as an administrative agency, the board may not impose requirements or burdens not contemplated by the statute. See *State v. Exiga*, 71 S.W.3d 429, 433 (Tex. App.—Corpus Christi 2002, no pet.); *R.R. Comm'n v. Arco Oil & Gas Co.*, 876 S.W.2d 473, 481 (Tex. App.—Austin 1994, writ denied).

Your predecessor's second question was, "Under what circumstances may [the account] be used now to protect eligible students."<sup>2</sup> Request Letter, *supra* note 1, at 1. As he noted, "The Barber Board does not have appropriation authority to disburse funds from the account." *Id.* As we understand it, his concern was how these moneys may be disbursed for the purpose for which the account was created.

Ordinarily, moneys cannot be disbursed from the treasury without an appropriation. Article VIII, section 6 of the Texas Constitution provides that "[n]o money shall be drawn from the Treasury but in pursuance of specific appropriations made by law[.]" TEX. CONST. art. VIII, § 6. Nonetheless, trust funds held outside the treasury for the benefit of a particular group may be expended without legislative appropriation because such funds "do not belong to the state in its sovereign capacity."

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<sup>2</sup>Again, as noted above, others besides students may in certain instances have claims against the fund.

*Friedman v. Am. Sur. Co. of N.Y.*, 151 S.W.2d 570, 579 (Tex. 1941) (quoting *Tatum v. Wheelless*, 178 So. 95, 102 (Miss. 1938)); Tex. Att’y Gen. Op. Nos. GA-0075 (2003) at 7, JM-539 (1986) at 4, JM-427 (1986) at 4; Tex. Att’y Gen. LO-92-68, at 2. The general indicia of trust funds are

(1) that they are administered by a trust or trustees, (2) that the assets are neither granted to the state in its sovereign capacity nor collected for the general operation of state government, and (3) that they are to be spent and invested for specific, limited purposes and for the benefit of a specific group of individuals.

Tex. Att’y Gen. Op. No. JM-300 (1985) at 2.

Opinion GA-0092 determines that the barber school protection account is a trust fund for two reasons. First, the account is maintained solely for the purpose of making tuition refunds; and second, section 1601.3571(d) specifically denominates the account “a trust fund.” See Tex. Att’y Gen. Op. No. GA-0092 (2003) at 3; see also TEX. OCC. CODE ANN. § 1601.3571(b), (d) (Vernon 2004). As a trust fund, the opinion concludes, “the strictures of article VIII, section 6 do not apply to” the barber school protection account. Tex. Att’y Gen. Op. No. GA-0092 (2003) at 3.

Opinion GA-0092 fails to take into account, however, a relevant provision in House Bill 3088, enacted in 2001 by the Seventy-seventh Legislature. See Act of May 25, 2001, 77th Leg., R.S., ch. 1466, § 5(8), 2001 Tex. Gen. Laws 5216, 5218. Section 5 of that bill “re-created as accounts in the general revenue fund” a variety of funds, including specifically “the barber school tuition protection account.” *Id.* Thus, the account is not a trust fund but an account in the general revenue fund.


Accordingly, the account is subject, by virtue of House Bill 3088, to article VIII, section 6, and no expenditure may be made from the account without a specific appropriation. Further, section 1601.3571(b), which requires that “[s]ufficient money from the account shall be appropriated to the board,” is not itself a specific appropriation for the purposes of article VIII, section 6. TEX. OCC. CODE ANN. § 1601.3571(b) (Vernon 2004). Accordingly, moneys from the barber school tuition protection account may not be disbursed without a specific legislative appropriation.

**S U M M A R Y**

Attorney General Opinion GA-0092 is withdrawn.

Claims for unused tuition from a barber school that ceases operation may be paid from the barber school tuition protection account (the "account") regardless of the source of the unused tuition. The State Board of Barber Examiners administers claims against the account. Because House Bill 3088 of the Seventy-seventh Legislature recreated the account within the general revenue fund, the account is subject to article VIII, section 6 of the Texas Constitution. Consequently, moneys cannot be disbursed from the account without a specific legislative appropriation.

Very truly yours,

  
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