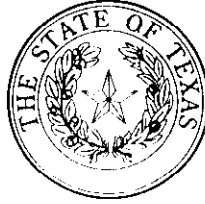


333 Guadalupe, Suite 2-350
Austin, TX 78701-3942
512•305•9000

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OPINION COMMITTEE



P.O. Box 12337
Austin, TX 78711-2337
512•305•8900 Fax)
www.tbae.state.tx.us (Web)

Texas Board of Architectural Examiners

Architecture / Interior Design / Landscape Architecture

March 24, 2000

The Honorable John Cornyn
Attorney General of Texas
Post Office Box 12548
Austin, Texas 78711-2548

FILE # ML-41334-00
I.D. # 41334

Re: Request for opinion regarding a scholarship fund for architectural examination applicants

Dear General Cornyn:

In light of Opinion No. JC-0146 issued by your office on November 16, 1999, questions have arisen regarding the proper implementation of a recent statutory amendment that created a scholarship fund. During the last legislative session, House Bill 1248 was enacted. It included the following directive:

Sec. 7A. (a) The [Texas Board of Architectural Examiners] shall deposit \$10 of each certificate of registration renewal fee collected under Section 12(c) of this Act to the credit of the scholarship fund for architectural examination applicants. The scholarship fund for architectural examination applicants is an account in the general revenue fund that may be appropriated only to the Board to:

(1) provide scholarships to persons applying under Section 6(b) of this Act for examination; and

(2) pay the Board's associated administrative costs.

(b) Interest earned on the scholarship fund for architectural examination applicants shall be credited to the fund.

(c) The Board may not use more than 15 percent of the amount appropriated to the Board under Subsection (a) of this section to pay the Board's administrative costs.

(d) The amount of each scholarship is the lesser of \$500 or the fee prescribed by the Board for the examination.

(e) The legislature finds that a public purpose of the state is served by the scholarships awarded under this section by:

(1) promoting the professional needs of the state;

(2) increasing the number of highly trained and educated registered architects available to serve the residents of the state;

(3) improving the state's business environment and encouraging economic development; and

(4) identifying, recognizing, and supporting outstanding applicants who plan to pursue careers in architecture.

(f) The Board shall establish and administer scholarships in a manner that the Board determines best serves the public purpose of the scholarships. In determining what best promotes the public purpose, the Board shall consider at a minimum the financial need of each person applying for a scholarship under this section.

(g) The Board shall adopt rules as necessary for the administration of this section.

In addition to the language of HB 1248, the General Appropriations Act also guides the implementation of the scholarship fund:

Sec. 9-11.21. Contingency Appropriation for House Bill 1248. Contingent upon the enactment of House Bill 1248, or similar legislation by the Seventy-sixth Legislature, Regular Session, relating to the practice of architecture, landscape architecture and interior design, such sums as are collected pursuant to that Act, not to exceed \$181,531 in fiscal year 2000 and \$163,520 in fiscal year 2001, are appropriated to the Texas Board of Architectural Examiners for implementation of the provisions of the Act, including continuing education programs and scholarships for architectural examination applicants.

The scholarship fund is not addressed elsewhere in the General Appropriations Act.

In JC-0146, your office described several prerequisites to the legislative appropriation of funds to a state agency for transfer to a private individual or entity. The requirements include (1) that the legislature has determined the expenditure serves a public purpose, (2) that the legislature requires the agency to implement sufficient contractual controls to ensure that the public purpose is carried out, and (3) that the agency is authorized by substantive law to transfer the funds and enter into a contract providing the requisite controls. It appears that most of these requirements have been satisfied by the terms of HB 1248 and the rider to the General Appropriations Act set out above. The remaining question is whether article III, section 44, of the Texas Constitution might affect the validity of the appropriation. Because HB 1248 and the General Appropriations Act were enacted during the same legislative session, the scholarship appropriation might not have been made at a time when it was authorized by pre-existing general law.

In order to implement Section 7A of HB 1248 in the most efficient manner, the Texas Board of Architectural Examiners ("the Board") wishes to contract with a private, nonprofit organization that will select scholarship recipients and disburse scholarship

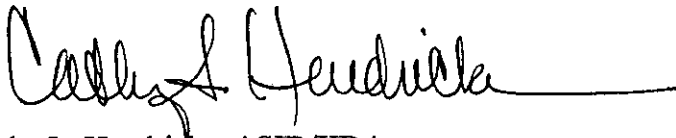
funds. The Board will promulgate specific rules to govern the application for and awarding of the scholarships and will enter into a contract designed to ensure that the nonprofit organization acts within the boundaries proscribed by Texas law. The rules will include all of the requirements stated in HB 1248. A copy of draft rules is enclosed. The contract will require the payment of an administrative fee to the organization for its services. The administrative fee will not exceed the 15% limitation established by the General Appropriations Act.

I would appreciate your providing answers to the following questions:

1. Is the appropriation of funds for the HB 1248 scholarships valid in light of article III, section 44, of the Texas Constitution?
2. May the Board contract with a private, nonprofit organization to select scholarship recipients and disburse scholarship funds?
3. May the Board transfer the scholarship funds appropriated by the General Appropriations Act to a private, nonprofit organization in an amount equal to the scholarships awarded plus an administrative fee that does not exceed the 15% limitation?
4. Do the draft rules enclosed herewith place sufficient controls on the awarding of scholarships to satisfy article III, sections 51 and 52, of the Texas Constitution?

Thank you for your consideration of this request for a formal opinion. I look forward to receiving your response, and I would greatly appreciate any efforts to expedite the consideration of this request so that we may take appropriate action as soon as possible. Time is of the essence in this matter.

Sincerely yours,



Cathy L. Hendricks, ASID/IIDA
Executive Director

Enclosures

cc: The Honorable Jessica Farrar, Texas State Representative, 148th District
Chairman John O. Greer and Members, Texas Board of Architectural Examiners