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District 40: (part) McAllen, Elsa, Edcouch, Edinburg & San Carlos

Juan J. Hinojosa

March 7, 2000

RQ-0222-1456 JC

Honorable John Cornyn  
Texas Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

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OFFICE OF THE ATTORNEY GENERAL  
EXECUTIVE ADMINISTRATION

Re: Whether revisions to appropriations made from *The Excellence in Higher Education Fund* that cause an institution's bond obligations to exceed 50 percent of an institution's allocation are prohibited

Dear Attorney General Cornyn:

I am requesting an opinion related to Chapter 62 of the Texas Education Code and Article 7, section 17 of the Texas Constitution.

Beginning with fiscal year 1986, appropriations from *The Excellence in Higher Education Fund* have been made to selected institutions of higher education. The law provides for a determination of annual allocations every 10 years. The law also provides for a review at the end of the fifth year of the 10-year period. Although not obligated by law to make them, adjustments to the allocations may be made by the legislature at this 5-year point. In the 1<sup>st</sup> 10-year cycle, which began with fiscal year 1986, the legislature chose not to make modifications to the allocations at the 5-year point. The 76<sup>th</sup> legislature in 1999, however, chose to adjust the allocations at the 5-year point of the current 10-year allocation period. Further, the legislature chose not to fund a hold-harmless provision, instead choosing to simply redistribute the existing allocations. Consequently, appropriations to certain institutions, which had been allocated at the start of the 10-year allocation period, were drastically reduced.

Referring to bond obligations from *The Excellence in Higher Education Fund*, Vernon's Ann. Tex. Const. Art. 7, § 17 reads in part that a governing board "may pledge up to 50 percent of the money allocated." The 76<sup>th</sup> legislature in 1999 revised Section 62.021 of the Education Code and by so doing reduced the appropriated amount to certain institutions of higher education. This reduction has caused the bond obligations for The University of Texas - Pan American, an institution of higher education within my district, to exceed 50 percent of its respective allocation. The 50 percent provision in The Constitution does not differentiate between allocations made at the beginning of the 10-year period and those made

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at the 5-year point. It therefore appears that the law intended that any revisions that may cause an institution's bond obligations to exceed 50 percent of their allocation be prohibited.

Addressing possible revisions at the 5-year point of the allocation period, the State Auditor's Office (SAO) concluded that revisions that would cause an institution's bond obligations to exceed 50 percent of their appropriation are prohibited. In their Report of Proposition 2 Usage by Participating Universities (SAO, October 1987, report number 8-020), the SAO states that

"Since a future reduction in a university's allocation would cause the total bond debt service to exceed 50 percent, it would be prohibited by law."

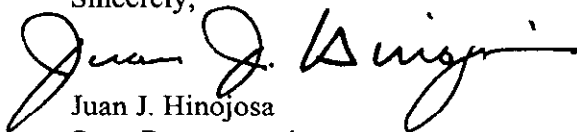
Further, this prohibition seems to be supported by Section 62.002 of the Texas Education Code relating to the purpose of *The Excellence in Education Fund*, which reads in part that the purpose of the fund is to provide "the means to create and maintain [emphasis added] a degree of excellence at the respective institutions". Article 7, § 17 of the Texas Constitution, in turn, specifies that the purpose of the fund is "for the purpose of acquiring land either with or without permanent improvements, constructing and equipping buildings or other permanent improvements, major repair or rehabilitation of buildings or other permanent improvements, and acquisition of capital equipment, library books and library materials".

First, it would appear that the revisions made to § 62.021 of The Education Code are prohibited by the 50 percent provision of Article 7, § 17 of the Texas Constitution. Also, it would appear that allowing an institution's bond obligations to exceed the 50 percent provision of the constitution would conflict with the stated purpose of the fund. Forcing an institution to cover needed repair, renovation, library books & materials, and equipment acquisitions from the reduced portion of their unobligated part of their allocation seems to go counter to the stated purpose of the fund.

Given the foregoing, I am requesting your opinion on the following question:

Are revisions to institutions' appropriations from *The Excellence in Higher Education Fund* that cause an institution's bond obligations to exceed 50 percent of an institution's allocation prohibited?

Sincerely,



Juan J. Hinojosa  
State Representative