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OPINION COMMITTEE

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December 4, 2002

The Honorable Greg Abbott  
Attorney General  
State of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

FILE # ML-42926-02

I.D. # 042926

RQ-0007-GA

Dear General Abbott:

I would like to request an official opinion concerning the prohibition of a school district from paying transportation and limited medical expenses for a student injured during a scheduled school activity. My specific questions are listed below.

**Background:**

In the Spring semester of 2001-2002, an Iraan High School student was injured in an elective wood shop class. The student's hand was caught under a board on a sanding machine. Two fingers were badly mangled with the tissue stripped to the bone. The student was stabilized at the local emergency room and sent to Midland for further treatment.

In Midland, the attending physician recommended transfer to a specialist in Dallas. The student and her mother were flown to Dallas at district expense. Surgery was successful in restoring use of the injured fingers with a minimum of cosmetic damage. The surgery required the student to return for follow up examinations and physical therapy.

Because the family had no means of support, the school district paid transportation costs for the visits. In addition, the school nurse accompanied the student on some occasions since the parents had limited ability to speak English.

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While the Iraan-Sheffield Independent School District was under no legal obligation to pay these costs, school trustees felt a moral obligation to assist a student in their jurisdiction and under their care. It is also important to note that the district provides an accident insurance policy for all students. Thus, the district has not been billed for any medical expenses related to this incident.

In August, the Trustees voted (3-2) to discontinue paying further expenses related to transportation costs for the student. The majority of the trustees expressed legitimate concern about the legality of providing transportation and expenses to students for injuries suffered at school or school related activities. Further, the student handbook carries a disclaimer regarding the district's responsibility for future student accidents.

**Questions:**

Does state law prohibit an independent school district from voluntarily paying for medical expenses and travel costs related to an injury suffered by a student while the student is in school or involved in a school activity?

Does any such prohibition extend to a coach or trainer transporting a student to and from surgery, follow-up visits, and physical therapy related to an injury in an athletic activity?

Does any such prohibition extend to the provision of various related services provided by the school district through campus clinics, school nurses, and/or athletic trainers?

Do any of the acts described above constitute a "gift" of taxpayer funds prohibited by law?

**Argument:**

Under the Civil Practice and Remedies Code, an independent school district is exempt from liability related to student injury (except for those related to corporal punishment and motor vehicles). However, independent school districts routinely expend taxpayer funds in areas not required by law and in absence of any liability. Funding of extracurricular and co-curricular activities with taxpayer money might be termed a "gift" in the strict interpretation since the District is only obligated to ensure a "free and public education" for children in the district.

School districts routinely furnish transportation for athletes injured in extracurricular activity to and from medical attention and physical therapy. Many districts employ athletic trainers to furnish additional "treatment" in absence of legal requirement. However, any expenditure of taxpayer funds beyond any minimum legal requirement should not in and of itself constitute a gift of public funds.

The premise that furnishing transportation to and from medical treatment for an indigent student is a "gift" while expending thousands of dollars to feed and lodge children on extracurricular and co-

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curricular trips is not creates an interesting conundrum. Neither of these should be a prohibited activity on the part of a school district.

An independent school district should be permitted to voluntarily pay reasonable transportation costs (or furnish transportation) and medical expenses for students who are injured either at school or in a school activity. Payment should not endanger the District's immunity from tort claims under the Civil Practice and Remedies Code. Holding otherwise would have the effect of causing students (as in this case) to receive inadequate treatment and thus result in a permanent functional and disfiguring disability.

Thank you for your attention to this issue. Please feel free to contact Martin Lujan in my Capitol office at 463-0566 if you have any questions concerning this opinion request. Mr. Lujan can provide additional resource materials if they are needed.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete P. Gallego", written in a cursive style with a long horizontal flourish extending to the right.

Pete P. Gallego

PPG/ml