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June 28, 2010

FILE # ML-46495-10  
I.D. # 46495

The Honorable Greg Abbott  
Attorney General of Texas  
209 West 14th Street  
PO Box 12548  
Austin, Texas 78711

RQ-0896-GA

Re: Request for Opinion regarding the appointment of members to the Texas Higher Education Coordinating Board

Dear General Abbott:

As Chair of the Senate Committee on Education, I am requesting your opinion regarding the interpretation and application of the statutes relating to the appointment by the Governor of members of the Texas Higher Education Coordinating Board ("Coordinating Board"). Particularly, I request your guidance regarding a discrepancy between Article 16 §30a of the Texas Constitution, which states that if a board has staggered terms exceeding two years in duration, the board must have an odd number of members and Section 59 of Senate Bill 286, 78th Leg., R.S. (2003) which appears to provide for the appointment of eight Coordinating Board members between 2011 and 2013.

**Background**

Article 16 §30a of the Texas Constitution was amended in 1999 to state:

"...boards of trustees or managers of the educational, eleemosynary, and penal institutions of the State, and such boards as have been, or may hereafter be established by law, may be composed of an odd number of three or more members who serve for a term of six (6) years, with one-third, or as near as one-third as possible, of the members of such boards to be elected or appointed every two (2) years in such manner as the Legislature may determine..." TEX. CONST. art XVI, §30a

To comply with the new constitutional requirement, the 78th Legislature passed Senate Bill 286, which conformed the composition of the Coordinating Board to the new requirements of Section

30a. Specifically, Section 2 of S.B. 286 amended Section 61.022, Texas Education Code, to reduce the number of members of the Coordinating Board from 18 to nine. In addition, Section 59 of S.B. 286, a non-amendatory transition section, enacted a scheme for the appointment and expiration of terms for Coordinating Board members to gradually bring the number of members from 18 to nine between 2003 and 2013. (See also Sections 18.01 and 18.02 of S.B. 287, Acts of the 78th Legislature, Regular Session, 2003, which are substantively identical to Sections 2 and 59 of S.B. 286).

### Discussion

As a result of the passage of Senate Bill 286, there is now an apparent discrepancy between the number of Coordinating Board members required by Section 59 of S.B. 286 for the period from September 1, 2011, to August 31, 2013 and the number of Coordinating Board members required by amended Section 61.022, Texas Education Code, and the Texas Constitution.

The Texas Constitution states that the referenced boards, of which the Coordinating Board is included, may have odd numbers of members with staggered six-year terms. Texas Constitution Article 16 §30a. However, Senate Bill 286, Section 59, creates a timeline that, if followed, would create an eight member Coordinating Board from August 31, 2011 until August 31, 2013.

The paring down of the Board members under Section 59 of S.B. 286 began in 2003, with the transitional scheme accounting for 8 members from 2011 to 2013 and 9 members in 2013 and beyond:

**SECTION 59.** To achieve an orderly transition from 18 to 9 positions on the Texas Higher Education Coordinating Board, the governor on August 31, 2003, or September 1, 2003, shall appoint only three persons to the coordinating board for terms expiring on August 31, 2009. On, or as soon as possible after, August 31, 2005, the governor shall appoint only four members to the coordinating board for terms expiring on August 31, 2011. On, or as soon as possible after, August 31, 2007, the governor shall appoint only two members to the coordinating board for terms expiring on August 31, 2013. As terms on the coordinating board expire on and after August 31, 2009, the governor shall appoint three members to the coordinating board in accordance with Section 61.022 Education Code, as amended by this Act.

Senate Bill 286, 78th Leg, R.S. (2003).

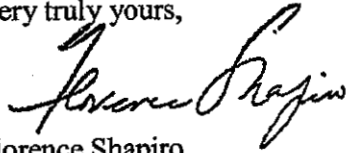
In light of the apparent failure of Section 59 of S.B. 286 to provide for an odd number of Coordinating Board members for the 2011-2013 period as required by the Texas Constitution, and in light of the 2003 amendment to Section 61.022, Texas Education Code, providing for nine Coordinating Board members, my specific question to you is as follows:

*At the expiration of terms on August 31, 2011, as set out by the transition section of Senate Bill 286, should the Coordinating Board operate with only eight members until August 31, 2013, or, in order to have nine members of the board, should the Governor appoint an additional*

Hon. Greg Abbott  
June 28, 2010  
Page 3

Coordinating Board member to fill a vacancy on September 1, 2011 to expire on August 31, 2013?

Very truly yours,

A handwritten signature in cursive script, appearing to read "Florence Shapiro". The signature is written in black ink and is positioned above the printed name.

Florence Shapiro