THE ATTORNEY GENERAL OF TEXAS

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September 12, 1973

The Honorable A. G. McNeese, Jr.
Chairman, Board of Regents
The University of Texas System
P. O. Box 2629
Houston, Texas 77001

Letter Advisory No. 59

Re: Attorney General
Opinion H-37 (1973)

Dear Mr. McNeese:

On May 9, 1973, we issued our opinion H-37 having to do with an interpretation of Articles 54.203 and 55.17 of the Texas Education Code.

Chapter 54 of the Code deals generally with fees to be charged by institutions of higher education. Section 54.203 provides, in part:

> "(a) The governing board of each institution of higher education shall exempt the following persons from the payment of all dues, fees and charges, including fees for correspondence courses but excluding property deposit fees, student service fees, and any fees or charges for lodging, board, or clothing, provided the person seeking the exemptions were citizens of Texas at the time they entered the services indicated and have resided in Texas for at least the period of twelve months before the date of registration:. . . ."

Section 54.203 then lists a number of categories of persons to which its provisions apply.

Chapter 55 of the Education Code deals generally with financing permanent improvements. Subchapter B is entitled "Revenue Bonds and Facilities". It contains as one of its provisions § 55.17 which authorizes the governing board of each institution of higher education to pledge its revenues from various sources to the payment of bonds. Subsection (c), quoted in opinion H-37 in its entirety, provides that fees may be pledged to the payment of the bonds "and shall be fixed and collected from all or any designated part of the students enrolled in the institution or institutions . . . ."

It was our conclusion that the provisions of § 55.17 were subject to those of § 54.203 and that those specified in the latter section as being exempt from the payment of fees and charges were exempt from the payment of the fees and charges created pursuant to § 55.17. We specifically did not answer any question concerning the validity of the exemptions where, prior to the creation of the exemptions, the fees had been pledged as security for bonds.

Your letter of July 25 asks that we reconsider the opinion. In your request you noted that Bond Counsel for the University of Texas System has pointed out "that a number of serious problems result from H-37". It appears that he has advised you of the possible impairment of contracts with bond holders of general building use fee bonds previously issued by the System.

To your letter you attached a brief submitted by Bond Counsel. We have read the brief very carefully and with considerable interest. It appears to be predicated upon the assumption that the language of the two sections of the Code and the statutes from which they were derived presents an irreconcilable conflict, that is, that at one and the same time you cannot exempt individuals from the payment of fees and issue bonds secured by a pledge of a fee to be "collected from all or any designated part of the students enrolled in the institution." We do not agree and, as stated in our Opinion H-37, it was then our opinion and is now that the two sections do not conflict.

We see no need to reiterate the argument we made in the opinion. To that, however, we would like to add reference to the case of McGrady v. Terrell, 84 S. W. 641 (Tex. 1905) which presents a rather analogous situation. McGrady sued Terrell, who was then Commissioner of the General Land Office, for a writ of mandamus to compel the Commissioner to accept McGrady's application to purchase a tract of land belonging to the free school land of the State. McGrady had not settled on the land and, for that reason, the Commissioner rejected the application.

The 27th Legislature passed two acts which were possibly pertinent to the case. One, approved on April 15, 1901, provided that "all tracts or parcels of unsurveyed school lands containing 640 acres or less and which are now or may hereafter become detached from other public lands, shall be sold at not less than $1.00 per acre, cash, without the condition of actual settlement, as now provided by law relating to the sale of other public school lands . . . " (Emphasis added)

The other statute, approved four days later on April 19, provided: "All lands which are now or which may hereafter become detached lands shall be sold to actual settlers only on such terms and conditions as are now or which may hereafter be provided by law." (Emphasis added)

This second act specifically provided that all laws in conflict with it were thereby repealed.

The Supreme Court held that the two statutes did not conflict. It said:

> ". . . This language, 'All lands which are now or which may hereafter become detached,' etc., is very broad, and would include the lands designated in the proviso, if there were nothing in the context to show a different intention on the part of the Legislature; but, when considered in the light of the existing conditions, the provisions can be harmonized. The two laws, having been passed at the same session of the Legislature, should be considered as if embraced in one act, and should be so construed that both may stand . . . If considered separately, it would not be presumed that the legislators had undergone such a radical change of mind within four days as to destroy absolutely the provision which had been made for the sale of the lands in the previous acts, unless the conflict is irreconcilable. . . . " (84 S. W. at 642)

The court held that even though "all" of the lands belonged to the free school fund, nevertheless, the legislation was to be construed as dealing with two different classes of school land, "and the word 'all' must be understood as meaning all of that class." (84 S. W. at 642)

Volume 53 of Tex. Jur. 2d, Statutes, § 186, starting at page 280, with ample authoritative support, sets out the rules which we feel we are obliged to follow under these circumstances.

> "It is a settled rule of statutory interpretation that statutes that deal with the same general subject, have the same general purpose, or relate to the same person or thing or class of persons or things, are considered as being in pari materia though they contain no reference to one another, and though they were passed at different times or at different sessions of the Legislature.

> "In order to arrive at a proper construction of the statute, and determine the exact legislative intent, all acts and parts of acts in pari materia will, therefore, be taken, read, and construed together, each enactment in reference to the other, as though they were parts of one and the same law. Any conflict between the provisions will be harmonized, if possible, and effect will be given to all the provisions of each act if they can be made to stand together and have concurrent efficacy.
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> "The purpose of the in pari materia rule of construction is to carry out the full legislative intent, by giving effect to all laws and provisions bearing on the same subject. The rule proceeds on the supposition that several statutes relating to one subject are governed by one spirit and policy, and are intended to be consistent and harmonious in their several parts and provisions. Thus, it applies where one statute deals with a subject in comprehensive terms and another deals with a portion of the same subject in a more definite way. But where a general statute and a more detailed enactment are in conflict, the latter will prevail, regardless of whether it was passed prior or subsequently to the general statute, unless it appears that the Legislature intended to make the general act controlling. And, the rule is not applicable to enactments that cover different situations and that were apparently not intended to be considered together."

Invoking these rules and making every reasonable effort to harmonize the two sections of the Code, and referring to the case law above mentioned and also collected in H-37, we hold that the Education Code creates two classes of students, so far as fees are concerned: those who are exempt and those from whom the fees may be collected. We believe the use of "all" in § 55.17 should, under the cases and rules of construction, be construed to refer to all students from whom fees may be collected. Our bond approval of February 20, 1973, # 12690, Book No. 53 should be so construed and we adhere to the conclusion we reached in Opinion H-37, that the provisions of § 55.17 are subject to those of § 54.203 exempting certain classes veterans and their dependents from the payment of all fees. Parenthetically, it would seem that whatever we decide here must also necessarily apply to exemptions given to citizens of Texas who are graduates of a State home (§ 54.202) to the orphans or children of disabled firemen, peace officers, etc., under § 54.204; to blind

and deaf students (§ 54.206); to the children of low income families (§ 54.206) and to children of prisoners of war or persons missing in action (§ 54.209).

Of course, as we stated in Opinion H-37, we were not requested to determine the validity of any exemption where, prior to its creation, the fee in question had been pledged as security for bonds, and obviously, we did not do so.

We appreciate very much the assistance you have given us in resolving this very troublesome question.

Very truly yours,

John L. Hill

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APPROVED:

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