



Office of the Attorney General
State of Texas

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August 26, 1992

Honorable Ernestine V. Glossbrenner
Chair

Committee on Public Education
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 92-42

Re: Whether section 4.03(d) of the Education Code supersedes the rules the Structural Pest Control Board promulgated (22 T.A.C. chs. 593, 595) pursuant to House Bill 853, Acts 1991, 72d Leg., ch. 771, § 6, which amended the Texas Structural Pest Control Act, V.T.C.S. article 135b-6 (RQ-314)

Dear Representative Glossbrenner:

You have asked whether section 4.03(d) of the Education Code supersedes the requirements stated in House Bill 853, Acts 1991, 72d Leg., ch. 771. We conclude that it does not.

House Bill 853 amended several sections of the Texas Structural Pest Control Act (the act), V.T.C.S. art. 135b-6, and, in section 6, added sections 4A through 4J to the act. See Acts 1991, 72d Leg., ch. 771, § 6, at 2750. The act pertains to persons¹ who identify, control, and eliminate pests that infest buildings, and pests and diseases that infest trees, shrubs, and other plants. V.T.C.S. art. 135b-6, § 2(a). The act creates the Texas Structural Pest Control Board (the board) to, among other responsibilities, develop standards and criteria for licensing individuals engaged in the business of structural pest control and to promulgate rules and regulations governing the methods and practices of structural pest control when the board determines that such regulations are necessary to protect the public health and welfare, as well as the environment. *Id.* § 4(a), (d). Pursuant to the newly-added sections of the act, if an individual desires to apply pesticides in one of the

¹As used in the Structural Pest Control Act, "person" means "an individual, firm, partnership, corporation, association, or other organization, or any combination thereof, or any type of business entity." V.T.C.S. art. 135b-6, § 2(b)(1).

types of buildings listed in section 4B of the act, which list includes schools or educational institutions,² the individual must be licensed as either a certified commercial applicator or a certified noncommercial applicator. *Id.* § 4B(b); *see id.* § 4B(d). A "certified commercial applicator" is an individual whom the board has licensed and determined is competent to use or supervise the use of any restricted-use³ and state-limited-use⁴ pesticide that his or her currently valid certified commercial applicator license covers. *Id.* § 2(b)(4). A "certified noncommercial applicator" is a person not licensed as a certified commercial applicator and who

(1) is an employee of the state or a city or county and engages in the business of structural pest control; or

(2) is an employee of a person who owns, operates, or maintains a building, the individual engages in the business of structural pest control in the building, and the building is [a] . . . school or educational institution.

Id. § 4B(b).

The act authorizes the board to develop standards for licensing an individual as a certified noncommercial applicator. *Id.* § 4B(f). Under the board's standards, an applicant for a certified noncommercial applicator's license must score a grade of at least seventy percent on a written examination administered by the board, 22 T.A.C. § 593.5(c)(5), (c)(6), and

(A) be an applicant with a degree in the biological sciences from an accredited college or university;

²In the act, "school or educational institution" means a public primary or secondary school or a primary or secondary private or parochial school that the State Board of Education has accredited pursuant to section 11.26 of the Education Code. *Id.* § 2(b)(16). As the section of the Education Code you raise, section 4.03, applies only to public schools, this opinion will not consider the impact House Bill 853 will have on private or parochial schools.

³"Restricted-use pesticide" means a pesticide that the administrator of the federal Environmental Protection Agency has classified for restricted or limited use. *Id.* § 2(b)(2).

⁴"State-limited-use pesticide" means a pesticide that the state commissioner of agriculture has classified for restricted or limited use. *Id.* § 2(b)(3).

(B) be an applicant with a notarized statement showing technical field experience of at least 12 months out of the past 24 months from a previous occupation; or

(C) complete a board-approved certified noncommercial applicator training course.

Structural Pest Control Bd., 17 Tex. Reg. 46 (1992) (codified as 22 T.A.C. § 593.5(d)).

You state:

As of February 1, 1992, a school may obtain pest control services only through a contract with a business-licensed by the [board] or an employee licensed by the [board] as a certified noncommercial applicator. Currently, some school districts have contracts with licensed businesses. Other districts have their own employees provide pest control services.⁵

For all practical purposes, the rules adopted by the [board] force school districts to contract with a pest control company for even the simplest pest control services for the immediate future. . . . Since few of the district employees who would apply pesticides have [a college degree in biological sciences or technical field experience of at least one year acquired within the last two years], they would have to complete a training course. To date, no training course has been submitted to the [board] for approval. [Footnote added.]

You contend that the requirement that, after February 1, 1992, a school district's board of trustees (the school board) contract with a pest control company for all pest control services further strains already-tight budgets. You note that February 1 falls within the second half of the budgetary year, when little is available in the way

⁵During its hearing on House Bill 853, the House Committee on Government Organization heard testimony that half of the entities that the bill proposed to add to the provisions of the act (including schools) already employed the services of commercial applicators. Hearings on H.B. 853 Before the House Comm. on Gov't Org., 72d Leg. (Mar. 12, 1991) (statement of Benny Mathis, representing Structural Pest Control Board) (tape on file with House Committee Coordinator).

of auxiliary funds. Consequently, you ask whether the constraints section 4.03(d) places on school board spending supersede the requirements House Bill 853 places on school boards.

Pursuant to section 4.03(d) of the Education Code, any trustee who votes to approve an "expenditure of school funds in excess of the item or items appropriated in the adopted budget . . . shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$25 nor more than \$100." *See also* Educ. Code § 23.50 (requiring Texas Education Agency to drop from list of accredited schools any district that fails to comply with Educ. Code § 23.47). Section 23.47(a) of the Education Code prohibits, as a matter of law, an independent school district from expending any of its public funds in any manner other than as provided in the budget that the board adopted. *See also* Attorney General Opinion JM-1000 (1988) at 3. Significantly, however, the legislature has authorized the board to amend its budget or to adopt a supplementary emergency budget to cover necessary unforeseen expenses. *Id.* § 23.47(a).

We must presume that at the time the legislature enacted a statute, it knew of the existence of previously enacted statutes. *See Garner v. Lumberton Indep. School Dist.*, 430 S.W.2d 418, 423 (Tex. Civ. App.—Austin 1968, no writ); *City of Irving v. Dallas County Flood Control Dist.*, 377 S.W.2d 215, 219 (Tex. Civ. App.—Tyler, writ granted), *rev'd on other grounds*, 383 S.W.2d 571 (1964); *Canode v. Sewell*, 172 S.W. 142, 146 (Tex. Civ. App.—Amarillo 1914, no writ); Attorney General Opinion V-1215 (1951) at 2. Furthermore, we will avoid construing a statute in any manner that renders any part of it inoperative, nugatory, or superfluous. Attorney General Opinion MW-106 (1979) at 2 (citing *Spence v. Fenchler*, 180 S.W. 597, 601 (Tex. 1915); *Dupree v. State*, 275 S.W.2d 556 (Tex. Civ. App.—San Antonio 1955, writ *ref'd n.r.e.*)). In our opinion, House Bill 853, the rules the board promulgated pursuant to the House Bill, and section 4.03(d) of the Education Code can be harmonized; we need not determine that section 4.03(d) supersedes House Bill 853 or the board's rules.⁶

⁶The legislative history of House Bill 853 sheds little light on the issue you raise. We note that the Legislative Budget Board (the LBB) did not consider the unexpected costs a public school would incur as a result of the bill's requirement that the school hire a certified commercial applicator during the period before the board had approved certified noncommercial applicator training course or before one of the school's employees had qualified as a certified noncommercial applicator. The LBB recognized that a public school would bear some increased costs as a result of the adoption of H.B. 853, but in its fiscal note the LBB only mentions the costs associated with licensing personnel to be certified noncommercial applicators and the costs associated with designing and developing an

House Bill 853 and the board rules require a school board to ensure that licensed applicators, either commercial or noncommercial, control pests in the school buildings and on school grounds. If, as you claim, school employees do not have sufficient academic qualifications to satisfy the board's standards for licensed noncommercial applicators, and if the board has not yet implemented a training course whereby applicants lacking a college degree in biological sciences or sufficient technical field services can become licensed noncommercial applicators, section 4B(b) of the act requires a school board to hire a licensed commercial applicator. If the school budget presently cannot handle such an unplanned expenditure, the school board must amend or supplement the budget in accordance with section 23.47 of the Education Code. Any school board trustee who is convicted of voting to approve an expenditure of school funds in excess of the item appropriated or in excess of the adopted budget or a supplementary amended budget shall be fined in accordance with section 4.03(d) of the Education Code.

S U M M A R Y

Section 4.03 of the Education Code does not supersede House Bill 853, which added sections 4A through 4J to the Structural Pest Control Act, V.T.C.S. art. 135b-6. Accordingly, school boards must comply with both statutes by utilizing properly licensed commercial or noncommercial applicators for pest control, and by either staying within, amending, or supplementing the school board's budget.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

(footnote continued)

integrated pest control management program by 1995. Fiscal Note, H.B. 853, 72d Leg. (1991); see V.T.C.S. art. 135b-6, § 4J(b).