Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 4, 1994

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

Letter Opinion No. 94-027

Re: Application of section 21.9205, Education Code (ID# 23490)

Dear Representative Linebarger:

You have asked this office a series of questions concerning the application of section 21.9205 of the Education Code, enacted by the 73rd Legislature. Section 21.9205 was added to the Education Code to address the problem of minority student athletes being forbidden to use certain private sports facilities, particularly golf courses, used by school districts for sanctioned extracurricular activities. House Comm. on Public Education, Bill Analysis, H.B. 800 73d Leg. (1993).

The section reads as follows:

> (a) An extracurricular activity sponsored or sanctioned by a school district, including an athletic event or an athletic team practice, may not take place at an athletic club located in the United States that denies any person full and equal enjoyment of equipment or facilities provided by the athletic club because of the race, color, religion, creed, national origin, or sex of the person.
>
> (b) In this section, "athletic club" means an entity that provides sports or exercise equipment or facilities to its customers or members or to the guests of its customers or members.

You ask first who has the responsibility to determine whether an athletic club has impermissibly discriminated against some person. In our view, such a determination must be made in the first instance by the board of trustees of the independent school district involved. The general powers of governance granted to the trustees by section 23.26(b) of the Education Code clearly include managerial authority over extracurricular athletic activities. It is the board which sponsors or sanctions student activities; it is therefore the board which must determine whether a particular activity may be sanctioned.

You ask what standard the board of trustees should use to make the determination required by the statute. In our view, the board may consult the well-developed body of federal anti-discrimination law to determine what constitutes impermissible

discrimination.[1] Such determinations themselves, of course, will concern factual matters upon which we cannot opine.

Finally, you ask what steps a school district must take if it becomes aware of an allegation that a particular club has engaged in discriminatory practices. If, upon investigation, the board finds that such allegations are substantially true, it may not continue to use such facilities for any sponsored or sanctioned extracurricular activities. The statute makes plain that this includes, but is not limited to, athletic events and athletic team practices.

SUMMARY

Pursuant to sections 21.9205 and 23.26(b) of the Education Code, the board of trustees of an independent school district must determine in the first instance whether an athletic club at which sanctioned or sponsored extracurricular activities occur is discriminating against any person because of the person's race, color, creed, religion, national origin, or sex. The board may look to the well-developed body of federal anti-discrimination law to determine what constitutes such discrimination. If the board discovers that such a facility is so discriminating, it may not permit any sanctioned or sponsored extracurricular activity to take place at such a club.

Yours very truly,

James Tourtelott

James Tourtelott
Assistant Attorney General
Opinion Committee

[1]We caution, however, that while it may be appropriate to look to federal law for the question of what constitutes such discrimination, section 21.9205 may sweep more broadly in some instances than federal law. Thus, for example, even if a particular establishment were a private club which was not subject to the Civil Rights Act of 1964, *see, e.g., Durham v. Red Lake Fishing and Hunting Club, Inc.*, 666 F. Supp. 954, 959 (W.D. Tex. 1987), the mere fact that such a club escaped liability under the Civil Rights Act would not make it a permissible place for extracurricular activities under section 21.9205.