



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 6, 1994

Mr. Thomas R. Kowalski
Chair
Board of Regents
The Texas State University System
P.O. Box 3810
Austin, Texas 78701-3942

Letter Opinion No. 94-035

Re: Clarification of Attorney General Opinion
DM-249 (1993): tuition rate for nonresident
scholarship students (ID# 24128)

Dear Mr. Kowalski:

You have requested clarification of Attorney General Opinion DM-249 (1993), which considered whether, in certain circumstances, a nonresident scholarship recipient is eligible for resident tuition rates under section 54.064 of the Education Code. In particular, you ask us to address "whether requiring participation in certain extracurricular activities that are directly related to the academic program in which the student is enrolled may be construed as 'encouraging academic excellence' in accordance with" title 19 of the Texas Administrative Code, section 21.31. You also ask us to address "the validity of providing resident tuition status to the recipient of a scholarship requiring participation in an extracurricular activity that is not directly related to the recipient's academic program."

Under section 54.064(a) of the Education Code, a nonresident student recipient of a competitive academic scholarship worth at least \$200 is entitled to pay resident tuition fees. The student must have competed for the academic scholarship against other students, including Texas residents. Educ. Code § 54.064(a). A scholarship committee "officially recognized by the administration" must have awarded the scholarship, and the Texas Higher Education Coordinating Board (the "board"), "*under criteria developed by the board*" (emphasis added), must have approved the scholarship. *Id.* The board has provided, in title 19 of the Texas Administrative Code, section 21.31(1), that "[a] competitive academic scholarship that qualifies the holder for waiver of the difference between the tuition charged to resident and nonresident students shall be awarded for the purpose of encouraging academic excellence in the academic program in which the student is enrolled."

In Attorney General Opinion DM-249 (1993) at 4-5 we concluded that

section 54.064(a) of the Education Code authorizes the board, in the first instance, to determine whether a particular scholarship is a competitive academic scholarship that qualifies its recipient for

resident tuition rates. To that end, section 54.064(a) expressly authorizes the board to develop criteria for the board's use in determining whether a scholarship is a competitive academic scholarship for purposes of waiving the difference between the tuition charged to resident and nonresident students. The board has developed such criteria in title 19 Texas Administrative Code, section 21.31(1). In our opinion, by defining "competitive academic scholarship" in section 21.31(1) as a scholarship that is "awarded for the purpose of encouraging academic excellence in the academic program in which the student is enrolled," the board simply has developed a criterion in accordance with section 54.064(a) of the Education Code. We do not believe that the regulatory criterion exceeds or is inconsistent with section 54.064(a).

We here reaffirm our conclusion in Attorney General Opinion DM-249 that the board's criterion, articulated in title 19 of the Texas Administrative Code, section 21.31(1), for approving competitive academic scholarships is consistent with the board's authority under section 54.064(a) of the Education Code. We also reaffirm our conclusion that section 21.31(1) is valid. Furthermore, as we stated in Attorney General Opinion DM-249, section 54.064(a) of the Education Code authorizes the board, not the attorney general, to determine in the first instance whether a particular scholarship is a competitive academic scholarship for purposes of section 54.064(a).

Thus, unless the board's refusal to approve a particular scholarship as a competitive academic scholarship is contrary to section 54.064(a) of the Education Code or title 19 of the Texas Administrative Code, section 21.31(1), this office will not contradict the board's decision. Your predecessor informed us that the board refused to approve the scholarships about which you ask. We do not believe that the board's decision is inconsistent with either section 54.064(a) of the Education Code or title 19 of the Texas Administrative Code, section 21.31(1). We therefore defer to the board's decision.

If you have any further questions about these particular scholarships, we suggest that you contact the board.

S U M M A R Y

We reaffirm our conclusions in Attorney General Opinion DM-249 (1993). As Attorney General Opinion DM-249 stated, section 54.064(a) of the Education Code authorizes the Texas Higher Education Coordinating Board to determine in the first instance whether a particular scholarship is a competitive academic scholarship for purposes of section 54.064(a).

Yours very truly,

A handwritten signature in black ink, appearing to read "Kimberly K. Oltrogge", with a long horizontal flourish extending to the right.

Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee