



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

October 31, 1990

Honorable Alvin Roy Granoff
Chairman
State, Federal & International
Relations Committee
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78768-2910

LO-90-83

Dear Representative Granoff:

You have requested our opinion regarding the proper interpretation of section 54.208 of the Education Code, which provides:

The governing boards of the state institutions of collegiate rank supported in whole or in part by public funds shall exempt from the payment of tuition and laboratory fees any person who is employed as a fireman by any political subdivision of the state and who enrolls in a course or courses offered as part of a fire science curriculum. The exemption provided does not apply to deposits which may be required in the nature of security for the return or proper care of property loaned for the use of students.

You ask whether this provision exempts an eligible student from payment of "out of district fees."

We found no reference to the term "out of district fees" in the Education Code. The Texas Higher Education Coordinating Board, in a letter dated October 18, 1990, stated that although the term out-of-district fees is commonly used, it actually refers a different rate of tuition, not an additional fee.

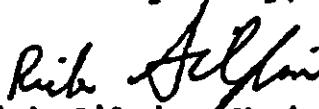
Attorney General Opinion H-61 (Amended), issued on November 21, 1973, affirmed the proposition that "junior colleges might legitimately distinguish between in-district and out-of-district residents in the matter of tuition." The opinion found that depending upon the situation, differences in tuition rates for in-district and


out-of-district students may be constitutionally defended. Reasonable classifications are permitted. Biorgo v. Biorgo, 402 S.W.2d 143 (Tex. 1966).

Attorney General Opinion H-61 (Amended) at 4. The opinion also held, however, that, absent a "reasonable factual basis," a junior college district was not permitted to discriminate in its tuition charges between out-of-district students who reside in another junior college district and those who do not reside in any junior college district.

We thus assume, for purposes of this opinion, that a particular junior college district is validly charging students who reside outside the district a tuition rate higher than it charges to those residing within its boundaries. With that caveat in mind, it becomes clear that section 54.208 itself provides the answer to your question. Because the higher rates in question are "tuition," the exemption from tuition provided by that statute is applicable. It is therefore our opinion that section 54.208 of the Education Code acts to prohibit a junior college district from assessing any charge for tuition to firemen eligible thereunder, regardless of whether they reside within or without the junior college district.¹

Yours very truly,


Rick Gilpin, Chairman
Opinion Committee


Sarah Woelk, Chief
Letter Opinion Section
Opinion Committee

RG/SW/lcd
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1. "Non-resident" rates do not apply to persons other than those who reside entirely outside the state of Texas. Attorney General Opinion H-61 (Amended) at 5.