



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 14, 1997

The Honorable J. Michael Criswell
Swisher County Attorney
County Courthouse
Tulia, Texas 79088

Letter Opinion No. 97-024

Re: Whether Education Code section 45.105 authorizes an independent school district to give monetary awards to graduating seniors who have participated in a drug-testing program and who meet certain other criteria (ID# 39422)

Dear Mr. Criswell:

On behalf of the Tulia Independent School District, you ask whether an independent school district is authorized to give monetary awards to graduating seniors who have participated in a drug-testing program.¹ You state that awards will be given to graduating seniors who are randomly selected from a pool of eligible students. To be eligible, a graduating senior must have participated in the school district's drug-testing program for at least one year, have tested drug-free on all tests, have a cumulative attendance rate of at least ninety-seven percent during the period of participation, and meet certain minimum conduct requirements. Each randomly selected recipient will receive \$250.00 for each year of eligibility. You state that the school district "will fund the program out of interest income received on its general funds." We assume based on the authorities cited in your letter that these funds constitute local school funds governed by Education Code section 45.105(c).²

You argue that the school district is authorized to give these monetary awards, citing Attorney General Opinion JM-1265 and Letter Opinion 93-93.³ Those opinions addressed the permissibility of school district scholarship programs -- which were established to award academic excellence -- under now-repealed Education Code section 20.48.⁴ Former section 20.48 provided in pertinent part:

(a) The public free school funds shall not be expended except as provided in this section.

¹You do not ask us to review the legality of the drug-testing program.

²The use of state and county available school funds, including the interest earned thereon, is governed by Education Code section 45.105(b). These funds may be used for section 45.105(c) purposes only in certain very limited circumstances.

³Attorney General Opinion JM-1265 (1990); Letter Opinion 93-93 (1993).

⁴As codified by Act of June 2, 1969, 61st Leg., R.S., ch. 889, 1969 Tex. Gen. Laws 2735, 2904-05 (amended 1979, 1983, 1991), repealed by Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 58(a), 1995 Tex. Gen. Laws 2207, 2498.

(b) The state and county available funds shall be used exclusively for the payment of teachers' and superintendents' salaries, fees for taking the scholastic census, and interest on money borrowed on short time to pay salaries of teachers and superintendents

(c) Local school funds from district taxes, tuition fees of pupils not entitled to free tuition and other local sources may be used for the purposes enumerated for state and county funds and for purchasing appliances and supplies, for the payment of insurance premiums, janitors and other employees, for buying school sites, buying, building and repairing and renting school houses, including acquisition of school houses and alter by leasing same through annual payments with an ultimate option to purchase, *and for other purposes necessary in the conduct of the public schools to be determined by the board of trustees.*⁵ [Emphasis added.]

Courts construed the language emphasized above to give school districts wide latitude to spend local school funds, holding that the trustees of a school district must determine, in the first instance, whether any proposed expenditure of local school funds that is not specifically enumerated in section 45.105 is "necessary in the conduct of the public schools." *City of Garland v. Garland Indep. Sch. Dist.*, 468 S.W.2d 110, 111-12 (Tex. Civ. App.—Dallas 1971, writ ref'd n.r.e.) (stating that former Educ. Code § 20.48 authorized trustees to determine whether expenditure for paving streets abutting school property is "necessary in the conduct of the public schools").

Similarly, this office construed this language broadly:

[T]he word necessary as used in section 20.48 and its predecessor statute, article 2827, V.T.C.S., has been construed as permitting such expenditures as medical inspection, cafeterias, crossing guards, and the reimbursement of certain expenses incurred by school board members. *See Moseley v. City of Dallas*, 17 S.W.2d 36 (Tex. Comm'n App. 1929, judgm't adopted); *Bozeman v. Morrow*, 34 S.W.2d 654 (Tex. Civ. App.—El Paso 1931, no writ); Attorney General Opinions JM-490 (1986); H-133 (1973). Other examples could be cited. None of the expenditures in these examples is, strictly speaking, indispensable to the conduct of a public school. In the context of section 20.48, "necessary" appears to mean appropriate or conducive to the conduct of a public school rather than indispensable thereto. *Accord* BLACK'S LAW DICTIONARY 928 (6th ed. 1990) (definition of "necessary").

Attorney General Opinion JM-1265 (1990) at 3. In Attorney General Opinion JM-1265, this office opined that "[t]he encouragement and motivation of students in academic achievement would seem to be an appropriate function of the public free schools." *Id.* at 4. Thus, that opinion found that a

⁵*Id.*

school board might find the use of local school funds to provide college scholarships to be “necessary in the conduct of the public schools” for purposes of former section 20.48 of the Education Code. *Id.*; see also Attorney General Opinions DM-48 (1991) (former section 20.48 “gives trustees of a school district broad discretion to expend local school funds”), C-601 (1966) at 3-4 (concluding that school board has discretion to determine whether expending surplus money from operation of school cafeteria to provide lunches to needy pupils is “necessary cost in the efficient conduct of its public schools”); Letter Opinion 93-93 (1993) at 4 (concluding that school district board of trustees might find use of local school funds to provide college scholarships to be “necessary in the conduct of the public schools” under former Education Code section 20.48) (relying on Attorney General Opinion JM-1265 (1990)).

In 1995, the legislature reenacted and revised titles 1 and 2 of the Education Code.⁶ Former section 20.48 was repealed⁷ and reenacted as section 45.105.⁸ We believe that subsection (c) of section 45.105 contains a significant, substantive change. Subsection (c) now provides in pertinent part as follows:

Local school funds from district taxes, tuition fees of students not entitled to a free education, and other local sources may be used for the purposes listed for state and county funds and for purchasing appliances and supplies, paying insurance premiums, paying janitors and other employees, buying school sites, buying, building, repairing, and renting school buildings . . . and paying for other goods and services necessary in the conduct of the public schools determined by the board of trustees.

Educ. Code § 45.105(c) (emphasis added). Whereas former section 20.48(c) provided that local school funds could be used for those items listed and “*other purposes necessary in the conduct of the public schools to be determined by the board of trustees,*”⁹ section 45.105(c) now provides that local school funds may be used for those items listed and for “*paying for other goods and services necessary in the conduct of the public schools determined by the board of trustees.*”¹⁰ Thus, whereas former section 20.48(c) could be construed to authorize school districts to use local school funds for items that did not constitute goods and services, such as scholarship programs, section 45.105(c) is more limited. We believe it must be construed to authorize school districts to use local school funds to purchase only those items specifically listed and “*goods and services necessary in the conduct of the public schools determined by the board of trustees.*” Student participation in a school district

⁶See Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 1, 1995 Tex. Gen. Laws 2207, 2207.

⁷See *id.* § 58(1) at 2498 (repealing former Educ. Code ch. 20).

⁸See *id.* § 1 at 2439-40.

⁹As codified by Act of June 2, 1969, 61st Leg., R.S., ch. 889, 1969 Tex. Gen. Laws 2735, 2904-05 (emphasis added), repealed by Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 58(1), 1995 Tex. Gen. Laws 2207, 2498.

¹⁰Educ. Code § 45.105(c) (emphasis added).

drug-testing program is not specifically listed in section 45.105(c) and constitutes neither a good nor a service. For this reason, we do not believe that section 45.105(c) authorizes a school district to expend local school funds on the monetary award program you describe.¹¹

S U M M A R Y

Education Code section 45.105(c) does not authorize a school district to use local school funds to give monetary awards to students who participate in a drug-testing program because participation in a drug-testing program is not specifically listed in section 45.105(c) and does not constitute a good or service.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

¹¹Given our conclusion, we do not address whether the monetary award program would run afoul of the limitation on grants of public monies in article III, section 52(a) of the Texas Constitution.