

RECEIVED

OCT 18 2013

OPINION COMMITTEE

STATE OF TEXAS
HOUSE OF REPRESENTATIVES



LOIS W. KOLKHORST
DISTRICT 13

P.O. BOX 1867
BRENHAM, TEXAS 77834
(979) 251-7888
FAX: (979) 251-7968

P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
(512) 463-0600
Fax: (512) 463-5240
E-mail: lois.kolkhorst@house.state.tx.us

October 15, 2013

Honorable Greg Abbott
Attorney General of Texas
Attention: Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

RQ-1157-GA

FILE # ML-47418-13
I.D. # 47418

Re: Whether the governing board of a junior college district is lawfully permitted to consider factors beyond those listed under Texas Education Code 130.0032(d) to set tuition rates per credit hour for out of district students

Dear General Abbott:

Pursuant to Section 402.042 of the Texas Government Code, this is a letter requesting that the Attorney General of Texas issue an opinion addressing whether Section 130.0032(d) of the Texas Education Code allows the governing board of a junior college district to lawfully adopt a rate for out of district credit hours that is not derived solely by the formula described in Subsection 130.0032(d)(3).

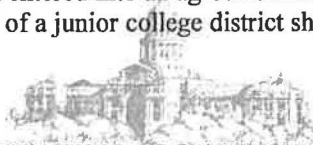
BACKGROUND LAW

Any person residing in a political subdivision outside of a junior college district without a local agreement to pay lower tuition must pay an out of district rate set in accordance with certain factors described by Section 130.0032(d) of the Texas Education Code.¹ This Section says:

(d) The governing board of a junior college district shall establish the rate of tuition and fees charged to a student who resides outside the district by considering factors *such as*:

- (1) the sufficiency of the rate to promote taxpayer equity by encouraging areas benefiting from the educational services of the district to participate in financing the education of students from that area;
- (2) the extent to which the rate will ensure that the cost to the district of providing educational services to a student who resides outside the district

¹ See TEX. EDUCATION CODE 130.00311(b) (2013): "If a political subdivision or part of a political subdivision is not located in a junior college district or has not entered into an agreement under Section 130.0081, a person who resides in that territory and who is a student of a junior college district shall be charged tuition and fees at the rate established under Section 130.0032(d)."



is not financed disproportionately by the taxpayers residing within the district; and

(3) the rate that would generate tuition and fees equal to the total amount of tuition and fees charged to a similarly situated student who resides in the district plus an amount per credit hour determined by dividing the total amount of ad valorem taxes imposed by the district in the tax year preceding the year in which the academic year begins by the total number of credit hours for which the students who were residents of the district enrolled in the district in the preceding academic year.

TEX. EDUCATION CODE 130.0032(d) (Emphasis added.).

This language currently in the Education Code was added by HB 2221 during the 79th Regular Legislative Session of the Texas Legislature in 2005.²

DISCUSSION

The legislative history of HB 2221 demonstrates a shift from imposing a mandatory formula on junior college boards of trustees calculating the out of district tuition rate to displaying a permissive list of factors that should be considered in that calculation; including a formula.

HB 2221 was filed amidst statewide concerns that State aid to junior college districts had been declining, and, as the burden further shifted to local taxpayers, the bill had to “balance the interests of taxpayers from within the current taxing districts with the taxpayers and students from communities in the service area that are not taxed.”³

Accompanied by a statement of legislative intent in the text of the bill, HB 2221 passed the House of Representatives with language specifically directing the governing board of a junior college district to calculate a premium on an out of district credit hour by dividing the district’s annual ad valorem tax collections by the total in-district credit hours of the preceding academic year:

a) The purpose of this section is to provide a method to promote taxpayer equity by ensuring that the costs of providing educational services to students who reside outside a public junior college district are not financed disproportionately by the taxpayers who reside in that district.

(b) Section 130.0032, Education Code, is amended by adding Subsection (d) to read as follows:

² See Act of June 28, 2005, 79th Leg., R.S., ch. 1100 (HB 2221), § 2.

³ See House Research Organization, Bill Analysis, Tex. H.B. 2221, 79th Leg., R.S. (2005).

(d) In each academic year beginning with the 2010-2011 academic year, the governing board of a junior college district shall charge a student who resides outside the district tuition and fees in a total amount that is at least equal to the amount of tuition and fees charged to a similarly situated student who resides in the district plus an amount per credit hour determined by dividing the amount of ad valorem taxes imposed by the district in the tax year preceding the year in which the academic year begins by the number of credit hours for which the students who were residents of the district enrolled in the district in the preceding academic year.

Act of June 28, 2005, 79th Leg., R.S., ch. 1100 (HB 2221). (Engrossed)

After the HB 2221 passed the Senate, this section of the bill was struck entirely⁴ amidst concerns that the bill would raise out of district tuition rates from approximately two times the rate of in-district credit hours to almost four times that rate.⁵ In the resulting conference committee, the current permissive language of Section 130.0032(d) of the Texas Education Code suggesting three factors for a junior college board's consideration was added to the bill without a statement of legislative intent like earlier versions.⁶ This legislative history shows a clear move from a statutorily mandated formula to an open list of factors for consideration by a governing board setting a junior college's out of district rate.

When reading the current language of Section 130.0032(d) of the Education Code, we are guided by the Code Construction Act found in the Government Code:

COMMON AND TECHNICAL USAGE OF WORDS. (a) Words and phrases shall be read in context and construed according to the rules of grammar and common usage.

TEXAS GOV'T. CODE 311.011(a)

Despite reappearing in the enrolled version of HB 2221 after being struck completely, the formula described in Subsection 130.0032(d)(3) no longer acts as the sole function to calculate out of district tuition. If Subsection (d)(3) were to be the sole method of calculation, then Subsections (d)(1) and (d)(2) become superfluous. In the context of all three factors listed under Section 130.0032(d), Subsection (d)(3) cannot logically be the only method to calculate out of district tuition for a junior college.

Furthermore, by including the phrase "such as" before listing the factors in Section 130.0032(d), the list is not meant to be exclusive by common meaning of the phrase. *Black's Law Dictionary* defines "such:"

⁴ See Act of June 28, 2005, 79th Leg., R.S., ch. 1100 (HB 2221). (Conference Committee Report)

⁵ See House Research Organization, Bill Analysis, Tex. H.B. 2221, 79th Leg., R.S. (2005).

⁶ See Act of June 28, 2005, 79th Leg., R.S., ch. 1100 (HB 2221). (Enrolled)

Such, adj. 1. Of this or that kind

Black's Law Dictionary 1473 (9th ed. 2009).

The phrase "such as" denotes that this list in statute shows a certain kind of factor to be considered. While a junior college district "shall" consider the factors listed in Section 130.0032(d), the phrasing of the statute gives the governing board of a community college the latitude to ensure taxpayer equity by considering other factors not listed if similar to the listed ones.

QUESTIONS PRESENTED

1. Is the governing board of a junior college limited to the formula listed in Subsection 130.0032(d)(3) of the Texas Education Code as being the only factors by which the college may calculate out of district tuition?
2. Is a governing board acting lawfully if, after considering the three required factors listed under Section 130.0032(d), the junior college charges out of district tuition rates that were not computed by the formula found in Subsection (d)(3)?

Respectfully submitted,

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

State Rep. Lois Kolkhorst
Chair, Texas House Committee on Public Health

LWK/ps