



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL  
ATTORNEY GENERAL

This Opinion  
Overrules Opinion

H-299

*where conflicts*

April 14, 1975

The Honorable Bevington Reed  
Commissioner, Coordinating Board  
Texas College and University System  
P. O. Box 12788, Capitol Station  
Austin, Texas 78711

Opinion No. H- 580

Re: Authority of the  
Coordinating Board  
and the State Board of  
Vocational Education  
to revoke approval of  
out-of-district voca-  
tional course offerings  
of a public junior college.

Dear Commissioner Reed:

You have requested our opinion concerning the authority of the Coordinating Board and the State Board of Vocational Education to refuse to renew approval of out-of-district vocational courses or programs of a public junior college.

Section 130.086(d) of the Education Code provides:

Before any course may be offered by a junior college within the district of an operating public junior college it must be established that the public junior college is not capable of or is unable to offer the course. After the need is established and the course is not locally available, then the junior college may offer the course when approval is granted by the appropriate state educational agency.

The appropriate state agency in this instance is actually two agencies. Pursuant to the Coordinating Board's general control of public junior colleges as provided in section 130.001 of the Education Code, that body undertakes an annual examination of the out-of-district programs offered by junior colleges. See also Education Code, sec. 61.051. In addition, the State Board of Vocational Education has responsibility for the approval of technical-vocational programs and courses. Education Code, secs. 31.33, 31.39, 31.71(d). Consequently, the two boards confer over the approval of out-of-district technical-vocational programs. "Regulations for Out-of-District Course Offerings by Community Junior Colleges," Coordinating Board, April 21, 1972.

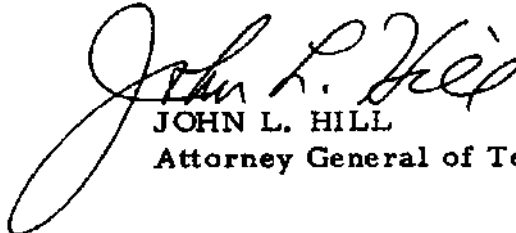
Section 130.086 provides no indication concerning the authority of either of these boards to refuse to renew or to revoke approval of an out-of-district offering. In Attorney General Opinion H-299 (1974) we held the two boards to lack the power to revoke approval of out-of-district offerings by Texas State Technical Institute, noting the use of the term "prior and continuing approval" in another section. Education Code, sec. 135.03(b). It is now our understanding that in some instances the administrative practice has been to make such out-of-district approvals on a yearly basis, as in essence is required for the distribution of federal funds. Sec. 3.21, Texas State Plan for Vocational Education; see 20 U.S.C. 1243; 35 Fed. Reg. No. 91, sec. 102.31(a), May 9, 1970. In this distribution, the State Board for Vocational Education is required to consider various factors which may change from year to year. 20 U.S.C. 1135(a)(5); 20 U.S.C. 1263(a)(6)(C)(D); 35 Fed. Reg. No. 91, secs. 102.34(d), 102.59, May 9, 1970. The Board has included these considerations in its State Plan, section 3.26, and is empowered to do so by sections 31.33(3) and 31.39 of the Education Code.

The administrative construction of section 130.086(d) is to be upheld unless clearly erroneous. Koy v. Schneider, 221 S.W. 880 (Tex. Sup. 1920); Thompson v. Calvert, 301 S.W.2d 496 (Tex. Civ. App. --Austin 1957, no writ). Since section 130.086(d) is ambiguous in its silence and since the board's construction is reasonable, that construction is to be adopted. It is therefore our opinion that the Coordinating Board and the State Board for Vocational Education may give yearly approvals of out-of-district offerings under section 130.086(d), and may refuse to renew such approval. Attorney General Opinion H-299 (1974) is overruled insofar as it conflicts with this opinion.

#### S U M M A R Y

Pursuant to section 130.086(d) of the Education Code, the Coordinating Board and the State Board for Vocational Education may give yearly approval to out-of-district offerings of junior colleges, and may later refuse to renew such approval.

Very truly yours,



JOHN L. HILL  
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman  
Opinion Committee