Letter Opinion No. 93-7

Re: Whether the Texas Water Development Board may accept monetary and in-kind donations from private businesses to offset the cost of issuing an agency newsletter, and related question (RQ-350)

Dear Mr. Pedersen:

You have asked whether the Texas Water Development Board ("the board") is authorized to receive donations, either monetary or in-kind, from private businesses to offset the expenses incurred in producing a newsletter for agency employees. You also have asked whether the board may include in the employee newsletter an advertising insert promoting the donor or a discount coupon that the employee may redeem at the donor's place of business. We conclude that the board may accept such donations, but that the board may not print advertisements or discount coupons promoting private businesses.

An administrative agency has only those powers that the Texas Constitution and the relevant statutes expressly delegate to the agency, as well as those powers that necessarily may be implied from constitutional or statutory conferral of authority or imposition of duties upon the agency. Stauffer v. City of San Antonio, 344 S.W.2d 158, 160 (Tex. 1961); Attorney General Opinion M-828 (1971) at 3. Article BJ, section 49-c of the Texas Constitution creates the board to exercise powers necessary to carry out the provisions of that section, as well as to exercise the duties the legislature provides statutorily. As the constitutional provision concerns itself primarily with the board's authority to sell general obligation bonds, we look to the applicable statute, chapter 6 of the Water Code, to delineate the board's scope of authority.

Section 6.103 of the Water Code requires the board to appoint an executive administrator; pursuant to section 6.183, the executive administrator is to hire all other necessary employees for the board. In our opinion, the board's authority to employ necessary personnel implicitly encompasses the authority to communicate with its employees about activities in which the board is involved, job-related opportunities available to the employees, and various other job- and personnel-related matters. See Water Code § 6.106; cf. Attorney General Opinions M-828 at 4 (concluding that Texas Fine Arts Commission is authorized to publish newsletter for interested individuals describing pending legislation); M-439 (1969) at 1 (concluding that no statute prohibits...
the secretary of state from publishing and mailing at state expense newsletter for purpose of informing interested persons of changes in law). Additionally, we note that section 6.192 of the Water Code authorizes the executive administrator to "apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out the powers and duties" the code authorizes. Consequently, we believe that section 6.192 authorizes the executive administrator to solicit and accept monetary and in-kind donations from private businesses for the purpose of offsetting the costs of producing an employee newsletter.1

We caution that the executive administrator should consider V.T.C.S. article 6252-9b in determining which private businesses he or she will approach for donations. Section 8(a) of that article prohibits a state officer or employee from accepting or soliciting any gift, favor, or service that reasonably might tend to influence the officer or employee in discharging his or her official duties. See id. § 2(5)(A)(xviii) (defining "appointed officer of a major state agency" to include member of Texas Water Development Board); § 2(7) (defining "state employee").

We next consider whether the board may include in its newsletter advertising inserts promoting the various donors. We find nothing in the constitutional or statutory provisions creating the board that expressly authorizes the board to compete with private businesses for advertisements, nor do we believe that such authority may be implied. See Attorney General Opinions C-75 (1963) at 2 (county clerk cannot prepare copies of films solely for profit-making purposes); WW-192 (1957) at 3 (county cannot engage in asphalt business); cf. Open Records Decision No. 593 (1991) at 4 (if governmental body expressly authorized by law to compete in marketplace, it may claim "competitive advantage" aspect of V.T.C.S. art. 6252-17a, § 3(a)(4)). Without such authority, the board may not solicit or accept advertising from private businesses, nor, in our opinion, may the board print advertisements or discount coupons promoting private businesses that have made donations to the board.2 But see Attorney General Opinion C-133 (1963) at 3.

Our conclusions are limited to Texas Water Development Board; we do not decide whether any other administrative agency may receive donations from private businesses or may solicit and print advertising from private businesses in an agency publication.

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1We note that the 1991 Appropriations Act requires the board to "establish a fee for the production and distribution of publications." Acts 1991, 72d Leg., 1st C.S., ch. 19, at 666. We understand that the board publishes various documents, such as technical reports and water conservation brochures, that it makes available, for a fee, to members of the public. In our opinion, this provision applies to such documents, not to documents that the board publishes solely for the use of its employees.

2We believe the board may note in its newsletter that a particular private business contributed toward the production of the newsletter.
Summary

Section 6.192 of the Water Code authorizes the executive administrator of the Water Development Board to solicit and accept donations from a private business, either monetary or in-kind, for the purpose of offsetting the costs of producing an employee newsletter. The Water Development Board is not authorized to print in its newsletter advertisements or discount coupons promoting the donor business.

Very truly yours,

Kymberly K. Ottrogge
Assistant Attorney General
Opinion Committee