



September 3, 1999

The Honorable Bill Ratliff
Chair, Finance Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711-2068

Opinion No. JC-0107

Re: Effect of *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), on the use of race or ethnicity as a factor in matters of student financial assistance; reconsideration of Attorney General Letter Opinion 97-001 (RQ-0044)

Dear Senator Ratliff:

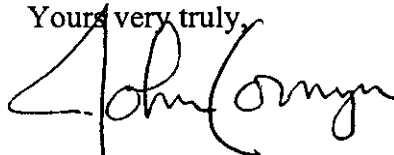
You ask whether public institutions of higher education in the State of Texas are precluded under the court's decision in *Hopwood v. Texas*, 78 F.3d 932 (5th Cir.), *cert. denied*, 518 U.S. 1033 (1996), from considering race or ethnicity in decisions regarding student financial assistance. This office considered a similar question and rendered an opinion in early 1997 concluding that *Hopwood* precluded state universities from considering race as a factor in any aspect of measuring or awarding higher education benefits, including admissions, financial aid, recruiting, and retention. *See* Tex. Att'y Gen. LO-97-001.

We caution that the law concerning the consideration of race in higher education programs is in flux and is likely to remain so in the near future. As you know, the question of the State's higher education institutions' authority to consider race as a factor in their admissions programs currently is pending before the United States Court of Appeals for the Fifth Circuit in *Hopwood v. Texas*, No. 98-50506 (5th Cir. filed June 1, 1998). We hope that the Fifth Circuit will take the current round of *Hopwood* litigation en banc and give some additional guidance and clarification in this area of the law, but only the United States Supreme Court can resolve these sensitive issues with any degree of certainty. Absent clear guidance from the High Court, we think it inadvisable to reach broad conclusions on what may or may not be permitted under *Hopwood* on matters other than admissions. Because this office's prior opinion on the subject, Letter Opinion 97-001, does just that, we withdraw it. We advise state universities in Texas to await a resolution of *Hopwood* in the Fifth Circuit or the United States Supreme Court before restructuring or adopting new procedures for their financial aid programs.

S U M M A R Y

Attorney General Letter Opinion 97-001 is withdrawn. We advise state universities in Texas to await a resolution of *Hopwood* in the United States Court of Appeals for the Fifth Circuit or the United States Supreme Court before restructuring or adopting new procedures for their financial aid programs.

Yours very truly,

A handwritten signature in black ink, appearing to read "John Cornyn", written over a vertical line that serves as a separator between the signature and the typed name below.

JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

CLARK KENT ERVIN
Deputy Attorney General - General Counsel

ELIZABETH ROBINSON
Chair, Opinion Committee

Rick Gilpin
Assistant Attorney General - Opinion Committee