**Legal Opinion regarding Use of Funds Derived from Vending Machines Operations**

Section 2203.005(c), *Texas Government Code*, requires that all rentals, commissions, or other net revenue received by an agency from vending machines will be accounted for as state money and deposited to the credit of the general revenue fund unless the disposition of the revenue is governed by other law. Section 2203.005 also requires each agency to account for its vending machine revenue in the agency's annual report.

However, the 1999 bill enacting Section 2203stated that "This Act does not affect the authority of an institution of higher education to collect, account for, and control local funds and institutional funds in the manner authorized by Subchapter A, Chapter 51, *Education Code*." Certain statutes in Chapter 51, *Education Code,* provide for the disposition of vending machine revenue received by institutions of higher education. The list set forth in Section 51.002, *Texas Education Code*, identifying those monies to be retained by institutions does not specifically include either "revenue from vending machines" or the larger category of funds to which those revenues are typically considered to belong, "revenue from auxiliary enterprises." However, Section 51.008, *Texas Education Code*, states that it prevails over Section 51.002, and Section 51.008 does specify that institutions of higher education will deposit into the State Treasury all receipts "derived from all sources except auxiliary enterprises, noninstructional services,..." and several other excepted sources.

Therefore, based on the cited provisions in the *Texas Education Code*, and in accordance with long-standing practice, all revenue earned from auxiliary enterprises at institutions of higher education should be retained and deposited (or invested) by each institution under Sections 51.003 and 51.0031, *Texas Education Code*.

Further, revenues from vending machines are within the category of "institutional funds," as defined in Section 51.009, *Texas Education Code*, and therefore are among the funds referred to in the bill that enacted Section 2203.005(c), *Texas Government Code*, which says the bill does not affect an institution's authority to collect and control local funds and institutional funds in the manner authorized by Subchapter A, Chapter 51, *Texas Education Code*.

It is the opinion of OGC that the 1999 enactment of Section 2203.005(c), *Texas Government Code*, did not affect the preexisting law concerning disposition of revenue from vending machines at institutions of higher education.