

Question and Answers
TSC Foundation Issue

Texas Southmost College Foundation, Inc. and Texas Southmost College

The Texas Southmost College Foundation, Inc., (“Foundation”) was formed in 1984 as a non-profit corporation to support and enhance the role and mission of Texas Southmost College. The Foundation was limited in its charitable, educational and exempt activities to exclusively supporting the activities of the College and the College’s educational mission. On April 26, 1990, the Texas Southmost College Board of Trustees passed, approved and adopted a resolution to transfer \$3,000,000 along with any income accrued or received, to the Foundation (\$1,000,000 from donated and undesignated funds and \$2,000,000 in matching funds received by the College from the U.S. Department of Education). The Foundation was to administer these funds for purposes of supporting Texas Southmost College.

What has happened?

The College has been forced to take unwanted, but necessary, legal action to enjoin a majority of the members of the Board of Directors of the Texas Southmost College Foundation, Inc. from taking improper and legally impermissible action. Currently, the Foundation’s mission and purpose is to support the College. No other use of the Foundation’s money, even another charitable purpose, is permitted. The Foundation intends to change its corporate documents so that the Foundation’s money does not have to be used for the College.

Why is this legal action necessary?

The legal action was necessary to preserve the assets of the Foundation for TSC and its students.

When will the legal action take effect?

The legal injunction should take effect as soon as it is issued by a court of competent jurisdiction and is served on the Foundation Board members.

Where will this action occur?

Venue for these actions is Cameron County, Texas.

What are the proposed changes contemplated by the TSC Foundation Board of Directors?

The TSC Foundation Board of Directors Meeting, which is scheduled for Friday, December 13, at 11:30 a.m., at the TSC Art Center, includes an action item that will completely change the structure and focus of the TSC Foundation. [See attached copies of Original and Amended Articles of Incorporation and current Bylaws.] The members of the Foundation Board of Directors will consider the recommendations as presented by their Bylaws Committee, which are as follows:

1. Name change. The TSC Foundation Board of Directors will be considering action to rename the Foundation as the Historic Fort Brown Foundation for Higher Education or another name.
2. Change of purpose. The original Foundation Articles of Incorporation clearly define the purpose of the TSC Foundation as to “support and enhance the role and mission of TSC.” The Foundation Articles of Amendment, Section 5.3, further provide that, “...no activities shall be carried on, or distributions or applications of funds or property made...which are not made for the benefit of Texas Southmost College, for the support of its educational and public activities and programs or otherwise for the

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purposes necessary in the conduct by Texas Southmost College of its function as a public school.” The TSC Foundation Board of Directors will be considering action to change this purpose by adding UTB (or the successor entity resulting from any consolidation or reorganization of UTB) as a beneficiary of the Foundation.

3. Change in the structure of the Foundation Board of Directors. The current Bylaws of the Foundation require that four (4) of the positions on the Board of Directors be reserved for representatives from the Texas Southmost College Board of Trustees and the Texas Southmost College Chief Executive Officer, with the same voting privileges as any other member of the board of directors. The TSC Foundation Board of Directors will be considering action to eliminate these four (4) current TSC representatives from the board of directors. In turn, the president of UTB (or the successor entity resulting from any consolidation or reorganization of UTB) and the president of TSC will be added; however, they will have no voting privileges.
4. The current Bylaws define the president of TSC as the executive officer of the Foundation. The TSC Foundation Board of Directors will be considering action to have the Foundation Chair gain control over all affairs of the Foundation.
5. Currently, the central purpose of the Foundation is to provide support to TSC and specifically to TSC students. The Foundation Board of Directors will be considering action to have full control as to the number of scholarship recipients and the dollar amount awarded to scholarship recipients for UTB (or the successor entity resulting from any consolidation or reorganization of UTB) as well as TSC.

Why is the TSC Foundation seeking to change its purpose at this time?

The Articles of Incorporation of the Foundation remained intact through the entire period of the contractual agreement forged between the University of Texas System and Texas Southmost College. It makes absolutely no sense to change it now. Especially, since Texas Southmost College is now independently operational and serving almost 3,700 students. The creation of a new foundation for the support of the university and its students would be a great thing. However, the use of the resources of the TSC Foundation to benefit any other organization would be improper, without justification and would inherently be a breach of the fiduciary duty the Board owes to the Foundation and to TSC as the Foundation’s intended beneficiary.

Is there an alternative viable solution?

Yes. First, the initial and current charter for the TSC Foundation should remain intact. Then, the members of the Foundation may elect to serve and uphold the TSC Foundation Articles of Incorporation. Alternatively, certain current members of the TSC Foundation Board may decide to resign their position on the TSC Foundation Board and create a separate Foundation, with its own Articles of Incorporation and purpose. In either case, the resources and funds of the TSC Foundation should remain intact and be used for the support of TSC only.