

BOARD OF LAW EXAMINERS

Staff Report
to the
Sunset Advisory Commission
July 28, 1978

Legislative Budget Board
Program Evaluation
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INTRODUCTION

This report is submitted pursuant to Section 1.06, Subsection 3 of the Texas Sunset Act and contains a review of the operations of the Board of Law Examiners. Termination of the Board of Law Examiners has been scheduled for September 1, 1979 unless it is continued by law.

The material contained in the report is divided into three major sections: Background, Review of Operations and Conclusions. The Background section contains a brief history of legislative intent and a discussion of the original need for the Board of Law Examiners. The Review of Operations section contains a review of the operation of the agency, and uses the self-evaluation report submitted by the agency as the basis of review unless noted. The information contained in the self-evaluation report was verified, and additional data were obtained through interviews and review of agency files and other data sources. The Conclusions section summarizes the import of material developed in the individual criteria from the standpoint of whether or not Sunset criteria are being met, and develops approaches relative to these findings.

This report is designed to provide an objective view of agency operations based on the evaluation techniques utilized to date. Together with pertinent information obtained from public hearings, a factual base for the final recommendations to the legislature will be provided.

BACKGROUND

HISTORICAL DEVELOPMENT

Admission to the practice of law has been regulated since the time of the Roman Empire. At various times, admission to the Bar in Europe was regulated by the church, the inns of the court or the courts themselves. In the American colonies, admission to practice was regulated from the beginning either by the legislative body, governor or the courts. After the early colonial period, when governments legislated against the professional lawyer, systems of admission were generally decentralized. Ten of the states admitted to the Union before the close of the 18th Century permitted each court to examine individuals desiring to practice before its Bar. In New England, the county Bars united in 1788 and standardized rules governing admission. By 1800, six states required examination prior to admission to legal practice.

Admission to the Bar in Texas

Admission to the Bar in Texas has been regulated since 1846. The Texas Board of Law Examiners has summarized the history of the board in a document from which much of the following material is excerpted.

On May 12, 1846, the First Legislature of Texas provided for the licensing of attorneys by the district courts and the Supreme Court of the state. The Act of 1846 provided that a permanent license to practice law could be granted during any term of court upon written application, accompanied by a certificate of good character and honorable deportment from the county commissioner's court of the applicant's home county. The applicant was required to be a resident of this state for six months and at least 21 years of age. An oral examination in open court was given by a committee of three practicing attorneys appointed by the district judge, and the license was issued if both the committee and the district judge were

satisfied with the applicant's legal qualifications. The legislature also made provision for a temporary license to be granted by the district court which was only valid until the next term of court, but even here an oral examination was required. An immigrant attorney was entitled to a license to practice in Texas upon presentation of his license from another jurisdiction. This Act further provided that no one convicted of a felony should be licensed to practice law in this state, and if convicted of a felony after being licensed, the attorney's name was to be stricken from the rolls of the court. This portion of the Act of 1846 is the only one that remains intact in the present statutes.

A license issued by the district court did not entitle the attorney to practice in the appellate court. Only if the applicant was examined and admitted by the Supreme Court was he entitled to practice in the appellate courts. However, in 1873, the legislature passed an act which provided for admission to practice before the appellate courts by presenting a license from the district court, and thus the district courts became in effect the sole licensing agent of the state and remained so until 1903.

In 1903, the first significant changes in the rules for admission to the Bar were made. At this time, provision was made for the appointment of a board of legal examiners every two years by each of the courts of civil appeals. The board was to be composed of three members, all of whom were to have those qualifications required of district judges. The duty of these boards was to examine the applicants in writing upon those subjects which were prescribed by the Supreme Court. All examinations were required to be in writing, and the applicant was required to make no grade of less than 50 on any subject and an overall average of at least 75. Immigrant attorneys were to be licensed after being examined in the

same manner as resident applicants, but by filing their license from another jurisdiction within three months after coming to Texas, the six months residency requirement was satisfied.

In 1919, the legislature turned the admission of applicants to the Bar almost completely over to the Supreme Court of the state. Since the Act of 1919, the Supreme Court has been the sole licensing agent, and that act expressly provides that no license shall be issued by any other court or authority. The Act of 1919 provides for a Board of Law Examiners composed of five members all of whom are to have those qualifications required of Supreme Court judges. The members are appointed by the Supreme Court for two-year terms and are subject to removal by the Court. The board passes on the eligibility of all candidates for examination and has the responsibility of determining if the applicant is of good moral character.

The Supreme Court has been given the broad discretionary power to promulgate rules for admission to the Bar. The Act of 1919 empowers the Supreme Court to make such rules as it deems proper to govern the eligibility of applicants for examination covering, among other things, proper guarantees to insure good moral character, adequate pre-legal study, adequate study of law for at least two years, designation of the legal topics to be covered by the study and the examination, time, place and manner of examination, and "any other such matters as shall be desirable in order to make the issuance of a license to practice law evidence of good character, and fair capacity and real attainment in the knowledge of the law."

The Texas Supreme Court has, since 1919, controlled admission to the Bar. The development of present admission requirements may be traced through a review of the evolution of the rules of the Supreme Court.

Pursuant to the Act of 1919, and in the same year, the Supreme Court promulgated its first rules governing admission to the Bar. These first rules

required the applicant to be a resident of this state, at least 21 years old, and to present a certificate from three practicing attorneys of the county of his residence attesting his honorable character, and recommending him for the examination. The examination was to be in writing and the applicant was required to make a grade of 65 on each of the subjects prescribed in the rules. As required by the Act of 1919, the Supreme Court listed in its rules those law schools whose graduates were exempt from the examination. These first rules relaxed considerably the requirements for licensing of attorneys from other jurisdictions. A graduate of any of the schools listed in the rules could avail himself of the diploma privilege and, if he were not a graduate of an approved school, a licensed attorney who had practiced in another state for five years could, at the discretion of the Board of Law Examiners, be granted a license without examination.

In 1922, the Court made the first changes in its rules for admission. A system of partial credit on the examination was inaugurated at this time. The applicant was required to make at least 75 percent on all the subjects considered together, with no grade of less than 65 percent to obtain his license. However, the applicant was given credit for those subjects in which he had made a grade of 75 percent or better, and was reexamined, if he appeared within the next 12 months, only on those subjects not passed before.

The Supreme Court, in 1932, made several significant changes in the rules for admission to the Bar. A high school education was required and the applicant was required to file a declaration of intent to study law two years prior to examination. The new rules required that the good moral character and general capacity of the applicant be certified by the president and secretary of his county bar association. In 1934, the rules were changed in order to make it more difficult for immigrant

attorneys to come to Texas and join a profession already overcrowded by lawyers attracted to the large oil fields of the state. Five years of practice, residence in the state for six months and six months of study of Texas statutes were required of immigrant attorneys seeking licensure.

In 1935, the legislature repealed the statute granting the diploma privilege. In 1936, the court changed the pre-legal education requirements. Those declaring their intention to begin the study of law between July 1, 1937 and July 1, 1938, were required to have completed prior to beginning their legal studies at least 30 semester hours of work in a recognized college, and after July 1, 1938, the requirement became 60 semester hours. Except for the increase from five to seven years of the practice requirement for the admission of immigrant attorneys, and a strengthening of the rules pertaining to the moral character of the applicant so as to require a character examination before taking the Bar examination, no other changes were made in the rules in 1936.

The state legislature in 1939 passed an act which exempted from examination an immigrant attorney if he was licensed to practice in another state and in the Supreme Court of the United States, provided he had resided in Texas for 24 months immediately prior to issuance of the license. The act further provided that membership in the Texas legislature for 12 consecutive years prior to application to take the Bar examination would satisfy the pre-legal and legal study requirements of the Supreme Court.

On February 1, 1943, the Supreme Court, with the cooperation of the Board of Law Examiners, representatives of the law faculties of the three leading law schools of the state, and the Committee on Bar Admissions of the State Bar, prepared and published a new set of rules. The rules of 1943 required the

applicant's declaration of intent to study law to be accompanied by a certificate from the Bar Association of the applicant's home county, showing that he was of good moral character and was a suitable candidate for admission to the profession. An amendment effective in 1946 further strengthened this character requirement by requiring the character certificate to be signed by the Committee on Bar Candidates of the local Bar Association stating that they had investigated the applicant, his history and reputation, and found him a suitable candidate for admission to the Bar. Also supplemental proof of good moral character was required to be filed 30 days prior to taking the Bar examination.

The old method of giving separate examinations on the required subjects and allowing partial credit for those subjects passed was abandoned with the examination in February 1944. Partial credit is not given and the examination is passed or failed as a whole.

The rules, as revised in 1956, provide that the board shall have the power, at the cost of the declarant, to make its own investigation of good moral character should the local Bar Association, district judge or committee fail to function. Under the 1956 rules, an applicant may combine law school study and study in a law office in order to meet law study requirements.

The rules were once again revised in 1974. These rules are the current rules under which the Board of Law Examiners now operates. In the 1974 rules, the Court describes what constitutes good moral character in order to better define the requirement and states that all files containing information received in the investigation of moral character and fitness shall be regarded as confidential.

The 1974 rules state that the State Bar shall conduct a proper investigation of the declarant and may charge a uniform investigation fee. For the purposes of

aiding the board in determining the good moral character and fitness of each declarant, a district committee on admissions was created in each of the State Bar districts. The district committees are to investigate qualifications for admission to the Bar and report as to whether, in its opinion, the declarant possesses good moral character and emotional fitness. The rules provide for a de novo hearing in the event of a negative report by the local committee. The district committees on admissions are also required to conduct investigations as they deem necessary, of all applicants for examination.

Pursuant to the current rules of the Supreme Court, the Standards of Admissions Office of the State Bar has been assigned the responsibility of reviewing applications and declarations of intent to study law and coordinating the work of the district committees.

Texas does not have any full reciprocity rule allowing the admission of attorneys without examination who have practiced for a certain length of time in another state. The present rules allow an attorney who has practiced for seven years in another jurisdiction and who satisfies the Board of Law Examiners as to his good moral character to be granted a temporary certificate to practice for one year. It is within the discretion of the Supreme Court and the board to require the applicant to take the regular examination or to impose such other tests as they deem proper. After the one-year period, the attorney may receive a permanent license to practice upon recommendation of the board. Three months residence and the required education may be sufficient to qualify an attorney from another jurisdiction without the required years of practice to take the regular Bar examination.

At present, a \$75 fee must accompany the filing of a declaration of intent to

study law. An examination fee of \$75 is collected by the board. The members of the board were increased from five to nine by the Sixty-fifth Legislature in 1977.

COMPARATIVE ANALYSIS

In order to determine the pattern of regulation of lawyers within the United States, a survey of 50 states was conducted. All states surveyed regulate admission to the practice of law, as does Texas through its Board of Law Examiners. In 11 of the states surveyed admission to the practice of law is regulated by officers or committees of the State Bar. The remaining 39 states regulate admission to legal practice through committees appointed by their respective state Supreme Courts. The national multi-state exam is used by 34 states including Texas.

The majority of the agencies which regulate admission to legal practice possess policy making authority, however policies must often be approved by the State Supreme Court or Bar. In three states board members who regulate the practice of law are appointed by the governor. No state requires that appointees be confirmed by the legislature. Only three states allow public members to sit on the boards.

All of the states surveyed except four indicate that they operate off of the fees collected from persons seeking admission. These fees are supplemented by additional revenue in 16 states. The administrative services, including data processing and personnel, of 21 of the states which regulate admission to the practice of law are shared to some degree with other state agencies.

The regulation of the practice of law requires the performance of the basic regulatory functions of administration, testing, license issuance and enforcement. The regulatory functions performed by the Texas Board of Law Examiners are reviewed in light of the criteria specified in the Texas Sunset Act in the following material.

REVIEW OF OPERATIONS

Criterion 1

The efficiency with which the agency or advisory committee operates.

The review under this criterion centered on financial data and other records of the agency. This information was analyzed to determine if funds available to the agency had been utilized in a reasonable manner to achieve the purposes for which the agency was created and to determine if areas existed in which greater efficiency of operations could be achieved.

Administration

The Board of Law Examiners derives its authority from Articles 304-311, V.A.C.S. and from rules promulgated by the Supreme Court of Texas as provided in the statutory articles cited. The board is responsible for passing upon the eligibility of all candidates for examination for license to practice law in Texas, and for the preparation and conducting of examinations of eligible candidates as to their qualifications to practice law.

The Board of Law Examiners is assisted by a staff of five employees of the Supreme Court, one of which is titled Secretary Board of Law Examiners. In addition, a staff of six employees of the State Bar of Texas assists the board in certain aspects of its work. Exhibit I-3 shows the revenues and expenses of the Board of Law Examiners, the assisting staff members of the Supreme Court, and the assisting staff members of the State Bar of Texas.

Article 310 provides that fees for the bar examination (\$75 in 1978) shall be paid to the clerk of the Supreme Court and used as follows:

1. To pay all legitimate expenses incurred in holding examinations.
2. To compensate the members of the board.

Compensation to board members, for the three-year period under review, is shown as follows:

| <u>Fiscal Years</u> | <u>Number of Members</u> | <u>Amounts</u> | |
|---------------------|--------------------------|-------------------|--------------|
| | | <u>Per Member</u> | <u>Total</u> |
| 1975 | 5 | \$12,519.50 | \$ 62,597.50 |
| 1976 | 5 | 15,268.77 | 76,343.85 |
| 1977 | 5 | 20,209.55 | 101,048.00 |

In addition to the compensation listed, the board members received reimbursement for travel expenses as follows:

| <u>Board Members</u> | <u>1975</u> | <u>1976</u> | <u>1977</u> |
|----------------------|-------------|-------------|-------------|
| Ira Butler | \$ 1,356.42 | \$ - | \$ - |
| W. R. Smith | 307.61 | - | - |
| G. T. Barrow | 473.27 | 1,771.05 | 3,027.11 |
| G. R. Randle | 189.30 | 98.01 | 146.22 |
| W. E. Collins | 537.86 | 798.84 | 886.71 |
| M. T. McDonald | | 654.99 | 518.26 |
| B. Tarpley | | 976.40 | 1,061.37 |

Funding

In the discharge of its duties to: 1) pass upon the eligibility of candidates for the examination to practice law and 2) examination of eligible candidates, the Board of Law Examiners receives funding and/or assistance from several sources.

The funds and their sources are as follows:

1. Examination fees paid to the board by candidates for the bar examination.
2. State appropriations to the Supreme Court for personnel and office expenses of the board's staff.
3. Declarant's fee (\$75 in 1978) paid to the State Bar of Texas for its conducting "a proper investigation of the moral character and fitness of the declarant". Rules promulgated by the Supreme Court places this responsibility upon the State Bar which may "charge a uniform fee of declarants to defray the reasonable expenses thereof."

Additional details of the fees collected by the board and other participants in the processing of Declarations of Intention to Study Law, late filings, examinations and re-examinations of candidates, applications from immigrant and alien attorneys, and issuance of licenses to practice law are shown in Exhibit I-2.

Unlike most state boards, the Board of Law Examiners has no statutory or delegated regulatory authority over licensed attorneys in Texas nor does this board have any powers to approve law schools or courses of study for those who desire to take the bar examination. The duties of the board, previously noted herein, are performed under instructions and rules promulgated by the Supreme Court of Texas.

It is of interest to note that two investigations of "good moral character and fitness" are required by the board (under rules of the Supreme Court) before an applicant may be approved to sit for the bar examination. The first such "investigation" occurs with the filing of the Declaration of Intent to Study Law when a person enters law school and the second or follow-up "investigation" occurs approximately three years later upon the filing of an Application for Admission to the Bar of Texas. Both investigations are delegated to the State Bar of Texas by rules of the Supreme Court. While the State Bar receives \$75 for the initial investigation of the declarants good moral character and fitness, it should be noted that the Supreme Court by Rule III, paragraphs H through M, places the primary responsibility for conducting both investigations in District Committees on Admissions in each of the State Bar Districts. The work of the District Committees on Admissions is done on a "volunteer" basis with the Bar required to pay the "reasonable expenses incurred in the investigations" to each such Admissions Committee. Each District Committee on Admissions is to "satisfy

themselves of the good moral character and fitness of a declarant or applicant to practice law and may require proof of his or her mental or emotional capacity, which proof shall negate the existence of mental, nervous, or emotional conditions or disorders which would materially impair the fitness of the declarant to practice law."

Revenues and Expenditures

Financial data of the Board of Law Examiners, the board's staff financed by appropriations to the Supreme Court, and the Standards of Admission staff function of the State Bar of Texas for the Fiscal Year 1977 are shown separately and in total in Exhibit I-3. The \$138,839 expended by the Board of Law Examiners was primarily devoted to conducting the bar examination and costs directly associated with such examinations.

The \$63,361 expended by the board's staff (and provided by legislative appropriations to the Supreme Court) was expended for customary clerical-secretarial services which supported both statutory activities of the board; 1) passing upon the eligibility of candidates for the examination to practice law and 2) conducting the examinations for those candidates found to be eligible. The \$191,053 expended by the Standards of Admission Office of the State Bar of Texas was to pay the costs associated with background investigations of the moral character and fitness of declarants and applicants to practice law. The grand total of \$393,253 represents money expended in 1977 for all cost elements associated with the board's duties of determining the eligibility of candidates and conducting bar examinations. Total costs (\$393,253) divided by the number of candidates (2,388) who sat for the examination in fiscal year 1977 gives an average cost per examinee of \$165 which is in excess of the \$150 collected for the investigation (\$75) and the examination (\$75).

Revenues and Expenditures, for the board only, are shown in Exhibit I-4 for ten years - 1968 through 1977. Projections of Revenues and Expenditures are also shown in Exhibit I-4 for the years 1978 through 1983 based upon a five-year history of the board's operations. Projections include consideration of the increase in examination fees from \$40 to \$75 effective August 1, 1977.

Summary

The Board of Law Examiners has operated within the limits imposed by the statutes and the rules promulgated by the Supreme Court. Fees collected have been used for the specified purposes with more than 70 percent of all fees collected being paid to the board members as compensation for their services during the three-year period of 1975 through 1977. Data supplied by the Secretary to the Board of Law Examiners provided estimated hours spent by each board member in the discharge of his duties to average 750 hours per year. Payments made to the members of the board (\$25.98 per hour in 1977) exceeded the average hourly rate of pay to judges on the Supreme Court of Texas which averaged \$22.79 per hour based upon 1977 fiscal year data.

Funds of the board are maintained in an Austin bank and no excessive balances will accumulate because all remaining funds, after payments of expenses, will be used to compensate Board members.

EXHIBIT I-1

Board Members Attendance
Fiscal Years 1975-1977
Board of Law Examiners

| Current Board Members (1978) | Term of Office | Attendance at Meetings | | |
|---------------------------------|---------------------------------|------------------------|-------------|-------------|
| | | 1975 *(5) | 1976 (5) | 1977 (5) |
| George T. Barrow* | October 1977 to October 1979 | 5 | 5 | 5 |
| Gibson R. Randle* | October 1977 to October 1979 | 5 | 5 | 5 |
| William E. Collins* | October 1977 to October 1979 | 5 | 5 | 5 |
| Mark T. McDonald* | October 1977 to October 1979 | 5 | 5 | 5 |
| Beverly Tarpley* | October 1977 to October 1979 | 5 | 5 | 5 |
| Warlick Carr | October 1977 to October 1979 | | New Member | |
| Sloan B. Blair | October 1977 to October 1979 | | New Member | |
| Margaret H. Amsler | October 1977 to October 1979 | | New Member | |
| James DeAnda | October 1977 to October 1979 | | New Member | |

The Board of Law Examiners was expanded from five to nine members on October 1, 1977.

*Indicates members at August 31, 1977, who were reappointed on October 1, 1977 to terms expiring October 1, 1979 all of whom served during fiscal years 1975, 1976, and 1977.

Past Members

| | | |
|-------------|---------------------------------------|---|
| Ira Butler | October 1973 to September 30, 1975 | 4 |
| W. R. Smith | October 1973 to September 30, 1975 | 4 |

EXHIBIT I

A Summary of Revenues and Expenditures
(Historical and Anticipatory) of
State Board of Law Examiners

| Fiscal Year | Revenue | | | | Expenditures | | | | | Excess of Revenue over Expenditures |
|-------------|--------------------------|-------------------------------------|-------|-----------|---------------------------|--------|-------------------------|---------|----------|-------------------------------------|
| | Regular Examination Fees | Immigrant Attorney Application Fees | Other | Total | Board Member Compensation | Travel | Multi-state Examination | Other | Total | |
| 1968 | \$ 41,260 | \$ 4,545 | \$ 40 | \$ 45,845 | \$ 45,112 | \$ 798 | \$ - | \$1,092 | \$47,002 | \$1,157* |
| 1969 | 44,980 | 7,510 | -0- | 52,490 | 49,633 | 867 | - | 788 | 51,288 | 1,202 |
| 1970 | 43,520 | 8,900 | -0- | 52,420 | 49,194 | 1,163 | - | 912 | 51,269 | 1,151 |
| 1971 | 49,040 | 11,075 | 2 | 60,117 | 57,617 | 1,723 | - | 788 | 60,128 | 11* |
| 1972 | 60,080 | 11,335 | -0- | 71,415 | 68,490 | 1,685 | - | 949 | 71,124 | 291 |
| 1973 | 80,460 | 11,215 | 25 | 91,700 | 85,760 | 2,172 | - | 1,935 | 89,867 | 1,833 |
| 1974 | 80,520 | 15,955 | 447 | 96,922 | 76,913 | 2,782 | 15,499 | 1,586 | 96,780 | 142 |
| 1975 | 73,782 | 16,160 | 10 | 89,952 | 62,598 | 3,203 | 22,824 | 1,329 | 89,954 | 2* |
| 1976 | 81,580 | 24,995 | -0- | 106,575 | 76,344 | 4,948 | 21,535 | 3,134 | 105,961 | 614 |
| 1977 | 92,600 | 46,070 | 350 | 139,020 | 101,048 | 7,062 | 23,577 | 7,150 | 138,837 | 183 |
| | | | | | Projections | | | | | |
| 1978 | 171,450 | 42,666 | - | 214,116 | 173,700 | 11,575 | 24,638 | 4,000 | 213,913 | 203 |
| 1979 | 178,125 | 46,702 | - | 224,827 | 180,000 | 13,725 | 25,747 | 5,000 | 224,472 | 355 |
| 1980 | 184,875 | 50,738 | - | 235,613 | 185,400 | 15,874 | 26,906 | 6,000 | 234,180 | 1,433 |
| 1981 | 191,500 | 54,774 | - | 246,274 | 190,800 | 18,023 | 28,117 | 7,000 | 243,940 | 2,334 |
| 1982 | 198,300 | 58,810 | - | 257,110 | 196,200 | 20,173 | 29,382 | 8,000 | 253,755 | 3,355 |
| 1983 | 204,975 | 62,846 | - | 267,821 | 201,600 | 22,322 | 30,704 | 9,000 | 263,626 | 4,195 |

*Denotes excess of expenses over revenues

EXHIBIT I-2

State Board of Law Examiners
Schedule of Fees

| <u>Type of Fee</u> | <u>Maximum</u> | <u>Actual 1978</u> |
|---|----------------|------------------------|
| Declaration of Intent to Study Law* | \$ -0- | \$ 75 |
| Late Filing Fee (Penalty) | | |
| Within one year after original filing deadline. | 25 | 25 |
| Within two years after original filing deadline. | 50 | 50 |
| Filing in more than two years after original deadline | 75 | 75 |
| Bar Examination | 75 | 75 |
| Reexamination | - | 75 |
| Immigrant (Out-of-State) Attorneys | | |
| Licensed less than 12 months | 100 | 100 |
| Reexamination | -0- | 100 |
| Licensed 12 months or more | 200 | 200 |
| Reexamination | - | 100 |
| Full-time Law School Teacher | 25 | 25 |
| Reexamination | - | 25 |
| Resident (Alien) Attorneys | | |
| Character and Background Report (Collected by Secretary to Board and transferred to National Conference of Bar Examiners in payments for the report). | -0- | 125 |
| Bar Examination | 200 | 200 |
| Reexamination | - | 100 |
| Attorney's License** | 5 | 5 |

*The original and late filing fees for Declarations of Intent to Study Law are collected and retained by the State Bar of Texas under rules promulgated by the Supreme Court of Texas. Such retention of fees by the State Bar of Texas is to compensate the Bar for conducting "a proper investigation of the moral character and fitness of each declarant ..."

**Collected by Clerk of the Supreme Court and shared with the State Bar of Texas.

EXHIBIT I-3

State Board of Law Examiners
Revenues and Expenses, Fiscal Year Ended August 31, 1977

| | Board of Law Examiners | Appropriations to Supreme Court | State Bar of Texas | Total |
|---|------------------------------|---------------------------------------|--------------------------|-------------------|
| Revenues: | \$ | \$ | \$ | \$ |
| Regular Examination Fees | 92,600 | - | - | 92,600 |
| Immigrant Attorney Fees | 46,020 | - | - | 46,020 |
| Full-time Law School Teachers Fees | 50 | - | - | 50 |
| National Conference of Bar Examiners, Expense Reim- bursement | 328 | - | - | 328 |
| State Appropriations - Supreme Court | - | 63,361 | - | 63,361 |
| Admission Registration Fees (Declarations of Intent to Study Law) | - | - | 165,899 | 165,899 |
| Other | 22 | - | - | 22 |
| Total Revenues | <u>\$ 139,020</u> | <u>\$ 63,361</u> | <u>\$ 165,899</u> | <u>\$ 368,280</u> |
| Expenses: | | | | |
| Board Members Compensation | 101,048 | - | - | 101,048 |
| Salaries and Related Benefits | - | 55,944 | 100,994 | 156,938 |
| Travel Expenses - | - | - | 2,732 | 2,732 |
| Board Members | 5,640 | - | - | 5,640 |
| Staff | 1,423 | - | - | 1,423 |
| Printing | 1,800 | - | - | 1,800 |
| Examination Room Rentals, etc. | 1,506 | - | - | 1,506 |
| Audit Fee | 908 | - | - | 908 |
| Multi-state Examination | 23,577 | - | - | 23,577 |
| Board Meetings Room Rentals | 402 | - | - | 402 |
| Seasonal Help | 2,015 | - | - | 2,015 |
| Supplies | 280 | 1,660* | 9,259 | 11,199 |
| Equipment Rentals and Maintenance | - | - | 602 | 602 |
| Occupancy Costs | - | - | 12,216 | 12,216 |
| Contractual Services | - | - | - | - |
| Depreciation | - | - | 3,669 | 3,669 |

EXHIBIT I-3
cont.

| | Board of Law Examiners | Appropriations to Supreme Court | State Bar of Texas | Total |
|--|------------------------------|---------------------------------------|--------------------------|--------------------|
| Management and Accounting Fees | - | - | 9,021 | 9,021 |
| Postage | - | 1,500* | 16,861 | 18,361 |
| Xerox | - | 1,600* | 9,571 | 11,171 |
| Telephone | - | 672* | 3,213 | 3,885 |
| Office Equipment & Furniture | - | 1,985* | - | 1,985 |
| Other Expenses | <u>240</u> | <u>-</u> | <u>22,915</u> | <u>23,155</u> |
| Total Expenses | <u>\$ 138,839</u> | <u>\$ 63,361</u> | <u>\$ 191,053</u> | <u>\$ 393,253</u> |
| Excess (Deficit) Revenues over Expenses | <u>\$ 181</u> | <u>-0-</u> | <u>\$ (25,154)</u> | <u>\$ (24,973)</u> |

*Estimates from Supreme Court accounting office.

Criterion 2

An identification of the objectives intended for the agency or advisory committee and the problem or need which the agency or advisory committee was intended to address, the extent to which the objectives have been achieved and any activities of the agency in addition to those granted by statute and the authority for these activities.

The review under this criterion centered on an identification of the agency's statutory objectives as they related to the perceived need and the extent to which agency methods used can reasonably be expected to achieve those objectives. Statutes were reviewed to determine if objectives described in the self-evaluation report presented an accurate reflection of statutory duties. Agency viewpoints were sought to provide additional clarification; and appropriate files were reviewed to collect and verify selected data presented under this criterion.

The problem or need addressed by the State Board of Law Examiners is defined in Article 305, V.A.C.S. which describes the duties of the board as follows:

Article 305. Duties of Board.--Such Board, acting under instructions of the Supreme Court as hereinafter provided, shall pass upon the eligibility of all candidates for examination for license to practice law within this State, and examine such of these as may show themselves eligible therefor, as to their qualifications to practice law. Such Board shall not recommend any person for license to practice law unless such person shall show to the Board in the manner to be prescribed by the Supreme Court, that he is of such moral character and of such capacity and attainment that it would be proper for him to be licensed.

The objectives of the Board of Law Examiners, as stated in Article 305, is to:

- 1) pass upon the eligibility of all candidates for examination for license to practice law in Texas; and
- 2) examine such of the candidates as show themselves eligible for the examination.

It should be noted that, in the performance of its duties, the board is "acting under instructions of the Supreme Court. . ."

The Supreme Court of Texas, as authorized by Article 306, promulgated "Rules of The Supreme Court Governing Admission, Definitions and General Provisions" which prescribe the procedures to be followed by the State Board of Law Examiners in the conduct of its work.

The regulation of the practice of law in Texas is fragmented between three separate state agencies---the Board of Law Examiners, the State Bar of Texas and the Supreme Court. Both the Board of Law Examiners and the State Bar operate under rules and regulations promulgated by the Supreme Court. In an effort to display the division of duties among the three state agencies, the following chart was prepared.

| Customary Duties and Functions of a Regulatory Agency | Board of Law Examiners | State Bar | Supreme Court |
|--|---------------------------|--------------|------------------|
| 1. Eligibility for Examination | | | |
| Moral character & fitness | | X | |
| Fees paid to and retained by | | X | |
| Education | X | | |
| Personal attributes | X | | |
| 2. Examination | | | |
| Prepared by | X | | |
| Graded by | X | | |
| Examination fees paid to | X | | |
| Fees used by | X | | |
| 3. License or Certificate | | | |
| Issued by | | | X |
| Fees paid to | | | X |
| Fees used by | | | X |
| 4. Renewal of Licenses | | | |
| Dues statements mailed by | | X | |
| Fees paid to | | | X |
| Fees used by | | X | |
| 5. Enforcement | | | |
| Grievances | | X | |
| Unauthorized practice of law | | X | |

Eligibility for Examination

Article 305 states that the Board of Law Examiners "shall not recommend any person for license to practice law unless such person shall show to the board in the manner to be prescribed by the Supreme Court, that he is of such moral character and of such capacity and attainment that it would be proper for him to be licensed." This wording would make one believe the determination of "moral character and fitness" is a duty of the board, but such is not the case. The Supreme Court by its rules, has split this item of eligibility into two parts: 1) Preliminary proof of good moral character; and 2) supplementary investigation of good moral character and assigned this responsibility to the State Bar. By another rule the Supreme Court then provides for the establishment of a District Committee on Admissions in each of the 17 Bar districts and transfers the responsibility for determination of "good moral character and fitness" to such committees. A high degree of autonomy is granted such committees in the conduct of its work. Rule II of the Court defines "good moral character" and "fitness" as follows:

B. Good moral character is a functional assessment of character fitness of a prospective lawyer. The purpose of requiring an applicant to possess present good moral character is to exclude from the practice of law those persons possessing character traits that are likely to result in injury to future clients, in the obstruction of the administration of justice, or in a violation of the Code of Professional Responsibility. These character traits usually involve either dishonesty or lack of trustworthiness in carrying out responsibilities. There may be other character traits that are relevant in the admission process, but such traits must have a rational connection with the applicant's present fitness or capacity to practice law and accordingly must relate to the State's legitimate interests in protecting prospective clients and the system of justice.

C. Fitness, as used in these rules, is the assessment of mental and emotional health as it affects the competence of an applicant. The purpose of requiring an applicant to

possess this fitness is to exclude from the practice of law any person having a mental or emotional illness or condition which would prevent his carrying out duties to clients, courts or the profession. A person may be of good moral character, but may be incapacitated from proper discharge of his duties as a lawyer by such illness or condition. The fitness required is a present fitness, and prior mental or emotional illnesses or conditions are relevant only so far as they indicate the existence of a present lack of fitness.

Another rule permits the State Bar to charge a \$75 fee for the work performed principally by the Admissions Committees in each Bar District. The local Admissions Committees transmit their findings regarding the good moral character and fitness of candidates to the State Bar which then transmits the reports to the Board of Law Examiners for review and final approval. The preliminary investigation and report are made at the time a student enters law school and the supplementary investigation and report are made two and one-half to three years later when the candidate applies for the Bar examination. Although there are two investigations of "good moral character and fitness", only one fee of \$75 is charged; this fee being collected when the candidate declares his intent to study law and enters law school.

The staff of the Board of Law Examiners determines the candidates' eligibility as to age, residence, citizenship and education which, when combined with the reports on good moral character and fitness, completes the file for board review and approval. The eligible candidate for the Bar examination must pay a fee of \$75 for each examination. Fees from Bar examinations are deposited in a local Austin bank and used to defray the expenses of the board and to compensate the board for its work in preparing eight parts of the 14-part examination and for grading the papers.

It is interesting to note that those taking the Bar examination have no access to the board for a review of his or her papers until they have failed two

examinations. This review disqualifies the candidate from sitting for the examination during the examination session at which such review is given. It was stated that the board thought review immediately before an examination might unduly assist the reviewed in making a passing grade.

Examinations

Presently the Bar examinations are given twice each year, once in February and once in July. Each examination is a two-day session consisting of a six-hour multistate (multiple choice-type) examination of 200 questions on the first day, and a seven-hour essay-type examination on the second day. The multistate questions, prepared by national committees coordinated by the National Conference of Bar Examiners and machine-graded, constitute six-fourteenths of the examination. The essay questions count as eight-fourteenths of the examination and are prepared by and graded by the Board of Law Examiners. A passing grade is a composite score of 75. Examinations are conducted in three to six Texas cities in which law schools are located and for the convenience of the candidates. One law school is located in each of five cities (Lubbock, Dallas, Waco, Austin, San Antonio) and three are in Houston. Exhibit II-1 herein shows an increase in the number taking the Bar examination for the three-year period under review.

Rules issued by the Supreme Court, which govern the Board of Law Examiners, provide that "the Deans of the Law Schools in the State of Texas shall be promptly furnished by mail a list of the examinees from their respective schools and the grades made by each on the examination." A compilation of number of examinees taking Bar examinations, number passing, number failing with percentages, is shown by schools in Exhibit II-2 herein. Exhibit II-2A provides additional detailed data concerning the pass/fail rates by school and by examination dates.

EXHIBIT II-1

State Board of Law Examiners
Texas Bar Examination Data

| | <u>Number Taking</u> | <u>Number Passing</u> | <u>Number Failing</u> | <u>Percent Passing</u> | <u>Percent Failing</u> |
|----------------------------|--------------------------|---------------------------|---------------------------|----------------------------|----------------------------|
| <u>1974-75 Fiscal Year</u> | | | | | |
| October 1974 | 350 | 300 | 50 | 85.7 | 14.3 |
| February 1975 | 505 | 450 | 55 | 89.1 | 10.9 |
| July 1975 | <u>1,042</u> | <u>948</u> | <u>94</u> | 91.0 | 9.0 |
| Total 1975 | <u>1,897</u> | <u>1,698</u> | <u>199</u> | 89.5 | 10.5 |
| <u>1975-76 Fiscal Year</u> | | | | | |
| October 1975 | 345 | 311 | 34 | 90.1 | 9.9 |
| February 1976 | 588 | 527 | 61 | 89.6 | 10.4 |
| July 1976 | <u>1,176</u> | <u>1,079</u> | <u>97</u> | 91.7 | 8.3 |
| Total 1976 | <u>2,109</u> | <u>1,917</u> | <u>192</u> | 90.9 | 9.1 |
| <u>1976-77 Fiscal Year</u> | | | | | |
| November 1976 | 378 | 325 | 53 | 86.0 | 14.0 |
| February 1977 | 711 | 616 | 95 | 86.6 | 13.4 |
| July 1977 | <u>1,300</u> | <u>1,121</u> | <u>179</u> | 86.2 | 13.8 |
| Total 1977 | <u>2,389</u> | <u>2,062</u> | <u>327</u> | 86.3 | 13.7 |
| Three-year Totals | <u>6,395</u> | <u>5,677</u> | <u>718</u> | 88.8 | 11.2 |
| <u>Summary:</u> | | | | | |
| Law School Examinees | 5,322 | 4,784 | 538 | 89.9 | 10.1 |
| Other Categories | <u>1,073</u> | <u>893</u> | <u>180</u> | 83.2 | 16.8 |
| Total | <u>6,395</u> | <u>5,677</u> | <u>718</u> | 88.8 | 11.2 |

EXHIBIT II-2

Board of Law Examiners
 Law School Data - Summary
 September 1, 1974 through August 31, 1977

| <u>Law School</u> | <u>Location</u> | <u>Number of Examinees</u> | | | <u>Percentages</u> | |
|-------------------------------|-----------------|----------------------------|----------------|----------------|--------------------|----------------|
| | | <u>Taking</u> | <u>Passing</u> | <u>Failing</u> | <u>Passing</u> | <u>Failing</u> |
| Baylor | Waco | 434 | 421 | 13 | 97.0 | 3.0 |
| St. Mary's | San Antonio | 561 | 508 | 53 | 90.6 | 9.4 |
| South Texas College of Law | Houston | 632 | 573 | 59 | 90.7 | 9.3 |
| Southern Methodist | Dallas | 655 | 637 | 18 | 97.3 | 2.7 |
| Texas Tech | Lubbock | 396 | 380 | 16 | 96.0 | 4.0 |
| Texas Southern | Houston | 423 | 129 | 294 | 30.5 | 69.5 |
| University of Houston | Houston | 728 | 688 | 40 | 94.5 | 5.5 |
| University of Texas | Austin | <u>1,493</u> | <u>1,448</u> | <u>45</u> | 97.0 | 3.0 |
| Total | | <u>5,322</u> | <u>4,784</u> | <u>538</u> | 89.9 | 10.1 |

NOTE:

| | | | | | |
|----------------|--------------|--------------|------------|------|------|
| Texas Southern | 423 | 129 | 294 | 30.5 | 69.5 |
| All Others | <u>4,899</u> | <u>4,655</u> | <u>244</u> | 95.0 | 5.0 |
| Total | <u>5,322</u> | <u>4,784</u> | <u>538</u> | 89.9 | 10.1 |

The impact of Texas Southern's high failure rate is to reduce the average percentage pass rate for all other schools by more than five percentage points. Texas Southern provided only eight percent of the examinees but had more failing the Bar examination than all other law schools combined.

EXHIBIT II-2A

Board of Law Examiners
 Law School Data - Detail
 September 1, 1974 through August 31, 1977

| <u>Law School</u> | <u>Location</u> | <u>Number of Examinees</u> | | | <u>Percentages</u> | |
|-------------------------------|-----------------|----------------------------|----------------|----------------|--------------------|----------------|
| | | <u>Taking</u> | <u>Passing</u> | <u>Failing</u> | <u>Passing</u> | <u>Failing</u> |
| Baylor | Waco | | | | | |
| October 1974 | | 46 | 45 | 1 | | |
| February 1975 | | 38 | 38 | 0 | | |
| July 1975 | | 49 | 47 | 2 | | |
| October 1975 | | 42 | 42 | 0 | | |
| February 1976 | | 53 | 53 | 0 | | |
| July 1976 | | 42 | 41 | 1 | | |
| November 1976 | | 46 | 45 | 1 | | |
| February 1977 | | 69 | 67 | 2 | | |
| July 1977 | | 49 | 43 | 6 | | |
| Total | | <u>434</u> | <u>421</u> | <u>13</u> | 97 | 3 |
| St. Mary's | San Antonio | | | | | |
| October 1974 | | 26 | 23 | 3 | | |
| February 1975 | | 64 | 57 | 7 | | |
| July 1975 | | 90 | 77 | 13 | | |
| October 1975 | | 27 | 26 | 1 | | |
| February 1976 | | 57 | 53 | 4 | | |
| July 1976 | | 93 | 90 | 3 | | |
| November 1976 | | 18 | 18 | 0 | | |
| February 1977 | | 49 | 47 | 2 | | |
| July 1977 | | 137 | 117 | 20 | | |
| Total | | <u>561</u> | <u>508</u> | <u>53</u> | 91 | 9 |
| South Texas College of Law | Houston | | | | | |
| October 1974 | | 66 | 62 | 4 | | |
| February 1975 | | 59 | 56 | 3 | | |
| July 1975 | | 73 | 61 | 12 | | |
| October 1975 | | 66 | 65 | 1 | | |
| February 1976 | | 63 | 61 | 2 | | |
| July 1976 | | 66 | 62 | 4 | | |
| November 1976 | | 54 | 51 | 3 | | |
| February 1977 | | 87 | 76 | 11 | | |
| July 1977 | | 98 | 79 | 19 | | |
| Total | | <u>632</u> | <u>573</u> | <u>59</u> | 91 | 9 |

EXHIBIT II-2A
cont'd.

| <u>Law School</u> | <u>Location</u> | <u>Number of Examinees</u> | | | <u>Percentages</u> | |
|--------------------|-----------------|----------------------------|----------------|----------------|--------------------|----------------|
| | | <u>Taking</u> | <u>Passing</u> | <u>Failing</u> | <u>Passing</u> | <u>Failing</u> |
| Southern Methodist | Dallas | | | | | |
| October 1974 | | 6 | 6 | 0 | | |
| February 1975 | | 35 | 33 | 2 | | |
| July 1975 | | 165 | 161 | 4 | | |
| October 1975 | | 6 | 6 | 0 | | |
| February 1976 | | 50 | 50 | 0 | | |
| July 1976 | | 156 | 152 | 4 | | |
| November 1976 | | 6 | 5 | 1 | | |
| February 1977 | | 64 | 64 | 0 | | |
| July 1977 | | 167 | 160 | 7 | | |
| Total | | <u>655</u> | <u>637</u> | <u>18</u> | 97 | 3 |
| Texas Tech | Lubbock | | | | | |
| October 1974 | | 2 | 1 | 1 | | |
| February 1975 | | 37 | 37 | 0 | | |
| July 1975 | | 84 | 81 | 3 | | |
| October 1975 | | 2 | 2 | 0 | | |
| February 1976 | | 43 | 43 | 0 | | |
| July 1976 | | 88 | 87 | 1 | | |
| November 1976 | | 2 | 2 | 0 | | |
| February 1977 | | 39 | 38 | 1 | | |
| July 1977 | | 99 | 89 | 10 | | |
| Total | | <u>396</u> | <u>380</u> | <u>16</u> | 96 | 4 |
| Texas Southern | Houston | | | | | |
| October 1974 | | 26 | 6 | 20 | | |
| February 1975 | | 55 | 25 | 30 | | |
| July 1975 | | 63 | 23 | 40 | | |
| October 1975 | | 24 | 9 | 15 | | |
| February 1976 | | 43 | 13 | 30 | | |
| July 1976 | | 61 | 18 | 43 | | |
| November 1976 | | 35 | 13 | 22 | | |
| February 1977 | | 60 | 13 | 47 | | |
| July 1977 | | 56 | 9 | 47 | | |
| Total | | <u>423</u> | <u>129</u> | <u>294</u> | 30 | 70 |

EXHIBIT II-2A
cont'd.

| <u>Law School</u> | <u>Location</u> | <u>Number of Examinees</u> | | | <u>Percentages</u> | |
|--------------------------|-----------------|----------------------------|----------------|----------------|--------------------|----------------|
| | | <u>Taking</u> | <u>Passing</u> | <u>Failing</u> | <u>Passing</u> | <u>Failing</u> |
| University of Houston | Houston | | | | | |
| October 1974 | | 37 | 35 | 2 | | |
| February 1975 | | 56 | 54 | 2 | | |
| July 1975 | | 59 | 58 | 1 | | |
| October 1975 | | 40 | 37 | 3 | | |
| February 1976 | | 77 | 73 | 4 | | |
| July 1976 | | 121 | 114 | 7 | | |
| November 1976 | | 47 | 46 | 1 | | |
| February 1977 | | 129 | 119 | 10 | | |
| July 1977 | | 162 | 152 | 10 | | |
| Total | | <u>728</u> | <u>688</u> | <u>40</u> | 95 | 5 |
| University of Texas | Austin | | | | | |
| October 1974 | | 48 | 45 | 3 | | |
| February 1975 | | 94 | 94 | 0 | | |
| July 1975 | | 313 | 309 | 4 | | |
| October 1975 | | 55 | 54 | 1 | | |
| February 1976 | | 132 | 126 | 6 | | |
| July 1976 | | 369 | 362 | 7 | | |
| November 1976 | | 36 | 34 | 2 | | |
| February 1977 | | 115 | 109 | 6 | | |
| July 1977 | | 331 | 315 | 16 | | |
| Total | | <u>1,493</u> | <u>1,448</u> | <u>45</u> | 97 | 3 |

The Board of Law Examiners met with the Dean and faculty members of the Thurgood B. Marshall Law School of Texas Southern University on June 15, 1977 to discuss grading of papers and other matters pertinent to the low pass rate of TSU students. Minutes of the meeting reveal that it was generally agreed that the entrance requirements of Thurgood B. Marshall Law School should be upgraded to effect a higher pass rate for examinees from this school.

Summary

Review of the stated objectives of the Board of Law Examiners and its operations in: 1) determining the eligibility of applicants for the Bar examination; and 2) in the examination of such applicants, indicates accord with the intent of the statutes.

An acceptable degree of effectiveness is achieved by the board in that it offers the examination more than once each year and in its decision to offer the examination at least once each year in each city which has a law school. Both of these operational decisions benefit the person who desires to take the Bar examination. There is one area of the board's operations which is extremely time consuming and costly and differs substantially from most other state agencies which administer examinations for licenses to practice a profession or occupation. This area concerns the necessity for conducting two investigations of "good moral character and fitness" of each candidate for entry into the profession of law. The conducting of only one such investigation, at the time of applying for the Bar examination, would improve the effectiveness of the board's staff functions and eliminate the backlog and delays that are now occurring in the processing of declarations of intent to study law.

Criterion 3

An assessment of less restrictive or other alternative methods of performing any regulation that the agency performs which could adequately protect the public.

The review under this criterion centered on analyses of the agency's regulatory functions in terms of: 1) changes over time in the restrictive nature of agency functions, as seen in the agency's statutory history; 2) significant effects of this regulation on the public and the industry; and 3) alternative methods of performing the agency's regulatory tasks. These analyses were obtained through the agency's self-evaluation report, literature concerning occupational licensing, and surveys of similar licensing functions in other states.

The statutes pertaining to both the State Bar and the Board of Law Examiners are considered in this section, as both agencies are directly involved in the regulation of the legal profession. In addition, the statutory functions of the Texas Supreme Court which relate to the Board of Law Examiners or the State Bar are covered by this section, as are several other statutes which relate to the functions of the board or the Bar. Exhibit III-1 summarizes these statutory provisions as of 1939, the date of passage of the State Bar Act, and summarizes amendments since that time. The Board of Law Examiners' statutes were enacted in 1919, but had not been amended as of 1939.

Statutory Changes

The statutory duties of the Board of Law Examiners have not been changed since its creation in 1919. The composition of the board was not changed from 1919 until 1977, when the membership was increased from five to nine. The maximum allowable fee for the examination has been increased twice, from \$20 to \$40 in 1967, and from \$40 to \$75 in 1977, by amendment of Article 310.

The State Bar Act has been amended only four times since 1939, and then in relatively minor aspects. The 1965 amendment placed in the statute the provisions making the Board of Directors the general executive agency of the State Bar and providing for composition of the board. Prior to these amendments, similar provisions had appeared in the State Bar Rules, adopted in 1940.

In 1969, the Act was amended to provide for suspension or disbarment upon conviction for felonies involving moral turpitude and certain misdemeanors. (Disbarment was required after available appeals were taken unless the attorney was given probation.)

The 1971 amendment permitted a student who had completed at least two-thirds of his law studies to assist a licensed attorney in the trial of cases. The student's participation was to be governed by rules and regulations promulgated by the State Bar. This exception to the licensing requirement was expanded in 1975 to include law graduates who had not yet taken the bar exam or who had taken the exam and not yet received the results. Also included in the exception were law students who had completed at least half of their law studies and were enrolled in a clinical legal education course.

Amendments to related statutes include the 1955 amendment to Article 306 which provided that completion of the prescribed course of study in an approved law school satisfied the law study requirements for taking the examination, and that no license to practice law could be issued by any court or authority other than the Supreme Court.

In summary, the statutory function of the Board of Law Examiners has not changed over time, nor has the function of the Supreme Court in this area changed significantly over time. The restrictive aspects of regulation of entry into the

legal profession are not necessarily apparent from the statutory provisions of the Bar Examiners' statutes or the State Bar Act, though a number of restrictions do exist. These restrictions are mostly found in the rules of the Supreme Court and State Bar rules, discussed below.

Entry Requirements to the Profession

Requirements for admission to the Bar in Texas are established both by statute and by rules of the Supreme Court. Statutes require applicants to take an oath stating that they will uphold the Constitution of the United States and the state and honestly demean themselves in the practice of law. An examination fee of \$75 is fixed by statute and an additional \$5 fee is paid to the clerk of the Supreme Court when a license is issued. Recent figures indicate that approximately 25 states charge higher examination fees than those charged by the Texas Board of Law Examiners.

Article 311 (V.C.S.) states that no person convicted of a felony shall receive a license as an attorney and that the court shall revoke the license of any attorney convicted of a felony. Texas is the only state which has a legislative enactment prohibiting the licensing of felons, although Florida has a constitutional prohibition against the licensing of felons. The provisions of Article 311 establish a major restriction to the practice of law for a large class of individuals. In the admissions process, many bar applicants are found by the Board of Law Examiners to be of present good moral character but their application must, nevertheless, be denied because of prior felony convictions.

The Supreme Court is authorized "to make such rules as may be proper to govern eligibility" for the Bar exam and to insure the applicant's good moral character, adequate pre-legal study and study of the law (Article 306, V.C.S.).

Personal Requirements Established by Rule

An applicant for examination must be a resident of the state for three continuous months, a citizen of the United States and possess good moral character and fitness. Presently, seven states do not have residency requirements. To establish the good moral character and fitness of applicants, every person intending to apply for admission to the Bar must file a Declaration of Intention to Study Law showing the history, experience and educational qualifications of the declarant. The declarant is then investigated by the Standards of Admission Office of the State Bar and the District Committee on Admissions. The late filing of a declaration may result in a fine of as much as \$75. Only 11 states require that law students register and declare their intent to study law. No state charges a higher fee for the filing of a declaration than the \$75 fee charged by the Board of Law Examiners. In order to sit for the Bar exam, a declarant must be certified as possessing good moral character and fitness by the Board of Law Examiners.

Upon application to take the examination, the good moral character of the applicant is again investigated by the District Committee on Admissions and the Standard of Admissions Office of the State Bar. The district committee may conduct such investigation as it deems necessary and require an applicant to appear for a personal interview. Texas is the only state identified in the agency review which utilizes local committees to investigate the good moral character and fitness of both applicants and declarants, and the only state to conduct two extensive investigations.

Education Requirements

At the time of filing a Declaration of Intention to Study Law, individuals must also file proof of having attained the required educational qualifications to

begin the study of law. Credit for 90 semester hours of pre-law study with an average of "C" is required. In 29 states, 90 to 96 hours of pre-law study is required. Five states require two years of pre-law study and six states have no pre-law study requirements.

Law study requirements necessary to take the Bar exam are: 1) graduation from a law school approved by the Supreme Court; 2) the completion of 80 semester hours toward the L.L.B. degree; or 3) the completion of all requirements for graduation except for not more than four semester hours. The board may at its discretion authorize the study of law in the office of a practicing lawyer provided that an individual has completed at least 52 semester hours toward a law degree.

Examination

Examinations are given in six locations throughout the state twice a year by the Board of Law Examiners. A passing score on the examination is 75. Applicants who have failed three examinations must study for a year before taking a fourth examination and an additional year before taking a fifth exam. A sixth examination may be taken only with the board's approval. In 13 states, no limit similar to the limit imposed by the Texas board is placed on the number of times an individual can take an exam. The Texas exam consists of a national multi-state section and a section written by the Board of Law Examiners. Thirty-four states use the national multi-state exam. Although examinees were, at one time, given credit for passing a part or parts of the exam which they subsequently didn't have to retake, at present the exam is passed or failed as a whole. The percentage of applicants passing the Bar exam in recent years is indicated below.

Percentage of Applicants Passing Exam

| | <u>1977</u> | <u>1976</u> | <u>1975</u> | <u>1974</u> |
|--------|-------------|-------------|-------------|-------------|
| Winter | 86 | 90 | 89 | 87 |
| Summer | 86 | 92 | 91 | 90 |
| Fall | 85 | 91 | 90 | 86 |

The relatively high pass rate on the examination, when compared with the pass rate of other large states, appears to indicate that the Texas exam is not overly restrictive.

Percentage of Applicants Passing Exam: Selected States

| <u>State</u> | <u>Exam Date</u> | <u>Percent Passing</u> |
|--------------|------------------|------------------------|
| Mississippi | July 1976 | 22 |
| New York | March 1976 | 65 |
| Pennsylvania | February 1976 | 73 |
| California | February 1976 | 54 |
| Michigan | July 1976 | 95 |
| Texas | February 1978 | 85 |

Five states grant a diploma privilege to graduates of specific law schools. Graduates of these law schools are not required to sit for an exam. No graduates of Texas law schools are granted a diploma privilege.

Immigrant Attorneys

Supreme Court rules require that to be licensed in Texas an immigrant attorney must have practiced law in another state for a period of seven years, have been licensed to practice law before the highest court in his state and must have

resided in the State of Texas for a period of 3 months. The lawyer must also show that he has never been disbarred or suspended. Historical documents indicate that the requirement that a lawyer have seven years experience prior to his immigration served to restrict the influx of lawyers which resulted from the discovery of oil in Texas. At the board's discretion, any immigrant attorney may be required to take the examination; and all attorneys immigrating from states which do not have reciprocal relations with Texas are required to pass an examination. Immigrant attorneys may take the examination at any time, but must furnish proof of good moral character at the time of the exam. The good moral character of an immigrant attorney may be ascertained through his submission to the board of a character report prepared by the National Conference of Bar Examiners.

After its investigation, the board may require that the applicant take the regular bar examination or a short-form examination covering the Texas Constitution, statutes and Rules of Civil Procedure. An applicant who has not practiced law for at least ten years must demonstrate to the board's satisfaction that his qualifications when licensed were sufficient to meet present licensing requirements in Texas. After complying with the provisions of the rules listed above, an immigrant attorney may apply for a one-year temporary permit to practice law in Texas. If the applicant attorney has been licensed for less than 12 months in a sister state, he must pay a fee of \$100. All other immigrant applicants must pay a fee of \$200 with the exception of applicants who are full-time teachers in an approved Texas law school who must pay \$25.

Following expiration of the temporary certificate, the board may recommend that the applicant be granted a license to practice law in Texas. During 1977, approximately 72 immigrant lawyers received their license to practice law in Texas.

Rules Affecting Agency Operation

In order to perform their statutory duties, members of the Board of Law Examiners must review the qualifications of examination applicants, write parts of the examination and grade the exam. No written procedures for the grading of examinations were identified in the agency review. Notes of board meetings maintained by agency staff indicate that in September 1975, the board voted to raise the scores of examinees from 74 to 75, thereby increasing the percentage of examinees passing. However, the official minutes of the board do not reflect this action. In the absence of written grading procedures, such board actions may appear to be unjustified or arbitrary.

Rules providing for a de novo hearing in the event that a District Committee on Admissions reports that a declarant or applicant does not possess the necessary good moral character and fitness appear to adequately insure that applicants and declarants are afforded due process and not unfairly restricted from the examination.

Under the present rules, each board member was paid approximately \$22,500 for his services in 1977. The compensation paid board members in states comparable to Texas is listed below.

Compensation Paid Board Members of Selected States - 1977

| <u>State</u> | <u>Applicants Taking Exam (1976)*</u> | <u>Annual Compensation</u> |
|--------------|---------------------------------------|---|
| California | 10,389 | Expenses Only |
| Florida | N.A. | Expenses oOnly |
| Michigan | 1,314 | \$3,000 |
| Ohio | 1,641 | \$3,000 - Examiners \$3,400 - Chairman |
| Pennsylvania | 2,260 | Expenses Only |
| Texas | 2,140 | \$22,500 |

*1977 Figures Unavailable

Summary

The statutory prohibition against the admission of a convicted felon to the Bar in Texas poses a significant restriction on entry into the profession. All other states, except Florida, allow the practice of law by felons considered to be rehabilitated. The requirement that immigrant attorneys must have practiced law for seven years prior to coming to Texas acts to restrict immigration of lawyers who often have qualifications equal to or superior to lawyers already practicing in Texas. Such restrictions would not appear to benefit the public. In addition, by requiring that all lawyers from states which do not have a reciprocal agreement with Texas take the exam, the rules create varying requirements for admission to the practice of law in Texas. A policy of endorsement providing for the case-by-case determination of whether an examination should be required would appear to be a less restrictive alternative.

Summary of Legislative Changes

State Bar of Texas
Board of Law Examiners

| Year | Licensing | Enforcement | Administration |
|------|---|--|--|
| 1939 | <ul style="list-style-type: none"> - Board of Law Examiners, under instructions and rules of the Texas Supreme Court, passes on the eligibility of candidates to take the examination for license to practice law - Board of Law Examiners administers examination to qualified candidates - Supreme Court makes rules governing eligibility for the examination, insuring among other points: (Art. 306) <ul style="list-style-type: none"> - Good moral character - Adequate pre-legal study and attainment - Adequate study of law for at least two years - The legal topics to be covered by such study, and by the examination - The time and place of the examination, and the grade required for passage - Fees <ul style="list-style-type: none"> - Fee for examination to be set by the Supreme Court, not to exceed \$20 for each candidate (Art. 310) - Per annum fee of not less than \$4 for members of the State Bar, to be set by the Supreme Court | <ul style="list-style-type: none"> - Supreme Court to prepare and propose rules and regulations for disciplining, suspending, and disbarring attorneys - Supreme Court to prepare and propose rules and regulations prescribing a code of ethics governing the professional conduct of attorneys <ul style="list-style-type: none"> - Such rules and regulations to be effective upon approval of a majority of State Bar members returning ballots, provided at least 51 percent of the membership returns ballots - Limitation <ul style="list-style-type: none"> - Supreme Court not to adopt any rule abrogating the right to trial by jury in disbarment proceedings, in the county of residence of the defendant - Disbarment proceedings to be instituted against any attorney only in the district court located in the county of the attorney's residence - No attorney to be suspended until convicted of the charge pending against him. | <ul style="list-style-type: none"> - Board of Law Examiners <ul style="list-style-type: none"> - Membership of five lawyers appointed by the Supreme Court for two-year terms - State Bar <ul style="list-style-type: none"> - The general executive agency is the Board of Directors composed of the officers of the State Bar and one director elected from each of the bar districts (State Bar Rules) - The Supreme Court to prepare and propose rules and regulations for the operation, maintenance and conduct of the State Bar <ul style="list-style-type: none"> - Such rules and regulations to be effective upon approval of a majority of State Bar members returning ballots, provided at least 51 percent of the membership returns ballots |

| Year | Licensing | Enforcement | Administration |
|------|---|---|--|
| 1949 | <ul style="list-style-type: none">- Requirements<ul style="list-style-type: none">- All persons licensed to practice law in the state are members of the State Bar and are subject to the provisions of the State Bar Act and rules adopted by the Supreme Court- All persons not members of the State Bar are prohibited from practicing law in the state- Fees<ul style="list-style-type: none">- Added requirement that the Supreme Court, prior to prescribing any fee to be assessed on members of the State Bar in excess of \$4 per annum, submit the professed fee assessment to an election by the members | <ul style="list-style-type: none">- No license to practice law to be issued by any court or authority other than the Supreme Court (Art. 306) | <ul style="list-style-type: none">- Statutory provision making the board directors the general executive agency of the State Bar- Board to be composed of the officer of the State Bar, and not more than 30 additional members elected from geographical bar districts |
| 1955 | <ul style="list-style-type: none">- Completion of prescribed study in an approved law school (approved by the Supreme Court) satisfies law study requirements for taking examination (Art. 306) | | |
| 1965 | | | |
| 1967 | <ul style="list-style-type: none">- Fees<ul style="list-style-type: none">- Maximum fee for examination increased to \$40 (Art. 310) | | |

| Year | Licensing | Enforcement | Administration |
|------|---|---|----------------|
| 1969 | | <ul style="list-style-type: none"> - Suspension <ul style="list-style-type: none"> - Provided that on proof of conviction of an attorney of any felony involving moral turpitude or of any misdemeanor involving the theft, embezzlement, or fraudulent appropriation of money or other property, the district court of the county of residence of the convicted attorney shall enter an order suspending the attorney from the practice of law during the pendency of any appeal - Provided that an attorney given probation after such conviction shall be suspended from the practice of law during the period of his suspension - Disbarment <ul style="list-style-type: none"> - Provided that upon final conviction of such charges where probation not given that the district court shall enter a judgment disbarring the attorney | |
| 1971 | <ul style="list-style-type: none"> - Provided that bona fide law students who have completed at least two-thirds of the required curriculum may assist licensed attorneys in the trial of cases, participation to be governed by rules and regulations of the State Bar | | |
| 1975 | <ul style="list-style-type: none"> - Included in the above exception to State Bar membership requirements graduates of approved law schools before the first offering of the bar examination after their graduation, and graduates of approved law schools who have taken the bar examination for the first time and have not yet received the results. Also included were students who have completed one-half of the required curriculum and are enrolled in a clinical legal education course | | |

| Year | Licensing | Enforcement | Administration |
|------|---|-------------|---|
| 1977 | <ul style="list-style-type: none"> - Fees <ul style="list-style-type: none"> - Maximum fee for examination increased to \$75 (Art. 310) - Prepaid Legal Services <ul style="list-style-type: none"> - No member of the Bar may provide legal services pursuant to any prepaid legal services program, unless the sponsoring organization first applies to and receives approval of the arrangement from the Board of Directors of the State Bar (Art. 320b) - The Board of Directors must approve applications of organizations meeting requirements set out in the Prepaid Legal Services Act | | <ul style="list-style-type: none"> - Board of Law Examiners <ul style="list-style-type: none"> - Membership expanded from five to nine lawyers |

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Criterion 4

The extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies.

The review of this criterion was directed at evaluating the agency's definition of its target population. The existence of other similar populations was explored and the extent of any overlap and duplication of services offered was analyzed. When applicable, the review also dealt with any efforts to establish coordinative relationships between agencies serving similar target groups and to minimize any duplication of services. This information was collected through discussions with agency personnel, review of statutes and rules, and the identification of other agencies with the potential ability to offer these same services.

Regulatory Jurisdiction

The Board of Law Examiners was created by the Act of 1919 to "consist of five lawyers, having the qualifications required of members of the Supreme Court of the State. They shall be appointed by the Supreme Court and shall each hold office for a period of two years, and until his successor shall be appointed, and shall qualify." Amendments by the Sixty-fifth Legislature (1977) increased membership of the Board to nine lawyers. The four additional members of the Board were appointed by the Supreme Court and took office on October 1, 1977.

Duties prescribed by statutes and rules promulgated by the Supreme Court make the Board of Law Examiners responsible to "pass upon the eligibility of all candidates for examination for license to practice law within this state, and

examine such of these as may show themselves eligible therefor, as to their qualifications to practice law." Therefore, the specific target population of the Board includes only those who declare themselves candidates for examination for a license to practice law in Texas.

Overlapping Functions

The board does not perform any functions which directly relate to or overlap the functions of any other state agency. The population for which the Board of Law Examiners has responsibility is not subject to any direct or indirect jurisdiction by any other state agency.

The preparation of examinations by the board members, conducting of examinations of candidates, grading of examination papers, investigation of the moral character and fitness of declarants and applicants and review of personal attributes such as citizenship, residence, age and education, somewhat parallel the functions of other state licensing agencies. However, this board is different in that it does not issue original or renewal licenses nor does it have any regulatory powers over licensed attorneys.

There is a need for technical knowledge and professional skills on the part of members of the Board of Law Examiners since they must write and grade eight parts (subjects) of the 14-part Bar examination used in Texas. Six parts of the examination is a multistate uniform examination prepared under coordination of the National Conference of Bar Examiners. The multistate six-hour (multiple choice-type) examination is used by approximately 44 states and is machine-scored with the results being certified to the board. The examination prepared and graded by the board members counts as eight-fourteenths (8/14) and the multistate examination counts as six-fourteenths (6/14) of the Texas Bar Examination. The passing grade is a composite score of 75.

Summary

In summary, the Board of Law Examiners determines the eligibility for examination and examines a group of persons who are not under the jurisdiction of any other state agency. Both professional and technical expertise appear to be required in the performance of the duties of the board and staff. In this review no agencies were identified with overlapping programs or populations; therefore, there seems to be little potential for consolidating the Board of Law Examiners with any other state agency.

Criterion 5

Whether the agency has recommended to the legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates.

The review under this criterion centered on statutory changes which affect the operations of the agency. In the period covering the last three legislative sessions, the review focused on both proposed and adopted changes in the law; prior to that period, the staff review was limited to only adopted changes. In analyzing these changes, the approach was taken that a statutory modification must be of clear benefit to the state's citizens to be considered to be in the interest of the public.

Exhibit V-1 presents a tabular synopsis of the proposed legislative changes affecting the Board of Law Examiners.

EXHIBIT V-1

Tabular Synopsis of Proposed Legislation
1973-1977
Board of Law Examiners

| <u>Session</u> | <u>Bill</u> | <u>Proposed Change</u> | <u>Action</u> |
|----------------|-------------|---|---------------|
| 63rd (1973) | H.B. 287 | Would have repealed Article 306a relating to the prerequisites for taking the Bar exam for license to practice law. | Failed |
| | H.B. 340 | Amended Article 306a by permitting service as a judge of any court of record in the state for 10 consecutive years to be substituted for the prelegal study and training required to take the Bar exam. | Adopted |

EXHIBIT V-1
cont'd.

| <u>Session</u> | <u>Bill</u> | <u>Proposed Change</u> | <u>Action</u> |
|----------------|-------------|--|---------------|
| 64th (1975) | H.B. 395 | Exempted graduates of Texas Law schools approved by the American Bar Association as well as persons having completed 80 semester hours of instruction from taking the Bar exam. | Failed |
| | S.B. 512 | Would have amended Article 306 by extending the eligibility to take the Bar exam to: persons having completed 90 semester hours toward a bachelor's degree; persons employed in the office of, and under direct supervision of a licensed attorney for at least 36 months, and at least 30 hours per week prior to the Bar exam. | Failed |
| 65th (1977) | H.B. 1304 | Amended Article 304 by increasing the membership of the Board from five to nine lawyers and also amended Article 310 by increasing the fee for the Bar examination from an amount not to exceed \$40 to an amount not to exceed \$75. | Adopted |
| | S.B. 729 | Same as H.B. 1304 | Failed |

Of the six bills introduced in the last three sessions, four (H.B. 287, 340, 395, S.B. 512) dealt primarily with eligibility requirements to take the State Bar examination. Of these only one, H.B. 340, passed.

During the Sixty-fifth session, the Board of Law Examiners and the State Bar jointly recommended an increase in the board membership from five lawyers to nine, as well as an increase in the Bar exam fee. The result was the passage of H.B. 1304 which amended Article 304 and Article 310. As reported in the board's self-evaluation report, the reason for the increase in the number of board members was to assist the overburdened members in the administration of the exam. In fiscal year 1964, 771 exams were given. This number increased to 2,315 in fiscal

year 1977. The increase in fees, according to the report, was to more adequately compensate board members and to cover increased expenses due to more meetings and travel involved to the six cities where the exam is given twice each year.

Criterion 6

The promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The review under this criterion centered on: 1) an identification of the type and frequency of complaints received by the agency, 2) the adequacy of administrative procedures used to process these complaints, and 3) the appropriateness and patterns of actions taken to address the complaints. Information for the review was obtained through interviewing agency staff, examining complaint files, and analyzing data presented in the agency's self-evaluation report.

The staff of the Board of Law Examiners is responsible to the board for maintaining the records of candidates for admission to the Bar. The data collection and administrative support functions performed also have a direct bearing on procedures used for the accumulation of information relating to the background and character of new law students.

Interviews with the secretary of the board revealed that complaints received are generally received by telephone and in most instances relate to attorney discipline. As a result, such calls are referred to the Office of the General Counsel of the State Bar of Texas. Specific inquiries concerning information and procedures governing admission to the Bar are routinely handled by the staff, and concerns which cannot be resolved by the staff are referred to the chairman of the board. Typically, these concerns relate to board policies, deadlines and admission procedures. Complaints are not categorized by area of concern and tabulated by the staff so analysis of the type and frequency of candidate contact with the board could not be made during the review.

Records of all inquiries received by the staff are maintained and care is taken to minimize problem areas which interrupt the admissions process.

Candidates who are unsuccessful on the Bar examination may resolve their concerns by either writing or telephoning board members for informal discussions and counseling. Such conferences are offered as a preliminary step to either reexamination or a formal Rule X review which may be requested by the candidate who has failed two or more examinations. Rule X of the Rules Governing Admission to the Bar of Texas, part of an Order of the Supreme Court dated February 26, 1974 became effective August 1, 1974 and provides that the candidate may request a review of his examination papers by the board if his request is made within two weeks after the mailing of examination results.

A central complaint file is not maintained by the staff, and the board does not employ investigators or enforcement staff typical of regulatory agencies. Although the board may hold formal hearings on admissions and policy or procedures concerns raised by candidates for admission to the Bar, such deliberations by the board are infrequent, based on a review of minutes of board meetings and interviews with the secretary to the board.

Summary

The secretary to the board states that little public concern for the activities of the board has been expressed. Additionally, the review indicated that the board has adopted procedures for the timely disposition and resolution of inquiries concerning board procedures and Bar admissions requirements.

The procedures used in the processing of complaints appear to be in accord with the duties and responsibilities placed upon the board. However, the limited availability of records concerning the extent of complaint activity which occurred during the period covered in the review did not permit an analysis of the time required to finally dispose of complaint issues.

Criterion 7

The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates, and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The rules of the State Board of Law Examiners are promulgated by the Supreme Court of Texas. No instances of public participation in the rule-making process were identified by the agency staff and no attempts to inform the public of the agency's functions could be cited by staff members. The agency self-evaluation report indicates that the board is required to meet with the deans of the Texas law schools annually. These meetings allow the board to inform the deans of any recent or anticipated changes in board rules or policies.

As an agency of the Supreme Court, the Board of Law Examiners has not been required to comply with the Administrative Procedures Act. Consequently, the board does not notify the public of its activities through the Texas Register. No policy regarding public notification of board meetings or planned rule changes was identified.

Summary

The agency is governed by rules promulgated by the Supreme Court. No rules may be promulgated by the Board of Law Examiners. The board has taken no action which would involve the public in the rule-making process of the Supreme Court and no public notices of board meetings or rule changes are published by the board.

Criterion 8

The extent to which the agency has complied with applicable requirements of an agency of the United States or of this state regarding equality of employment opportunity and the rights and privacy of individuals.

The review under this criterion centered on an identification of agency Equal Employment Opportunity reporting requirements and policies regarding the rights and privacy of individuals. Federal and state statutes were reviewed; agency policies and procedures were documented; and appropriate agency files were inspected to determine the adequacy of records maintained to verify the data presented under this criterion. The Governor's Office of Personnel and Equal Employment Opportunity was consulted. The general procedures regarding personnel actions and protection of the rights and privacy of individuals were examined through interviews and review of files.

The Board of Law Examiners is staffed by employees of the Supreme Court of Texas. Therefore, the board is under no mandate to file an Affirmative Action Plan with the Governor's Personnel and Equal Employment Opportunity Office.

Staff members of the Board of Law Examiners are covered under the Affirmative Action Plan filed by the Supreme Court and include five employees: one Hispanic female, one black female and three white females. It was stated by the secretary to the board that no charges of discrimination had been filed which involved the board or its staff.

Review of the board's procedures concerning the rights and privacy of members of its staff and of candidates for admission to the bar revealed a high degree of diligence in protecting and preserving the rights and privacy of both the staff members and the candidates for admission.

Summary

In summary, our review disclosed that the staff of the Board of Law Examiners, as employees of the Supreme Court of Texas, are in compliance with federal and state requirements concerning equal employment opportunity and the rights and privacy of individuals.

Criterion 9

The extent to which the agency issues and enforces rules relating to potential conflicts of interest of its employees.

The review under this criterion centered on an identification of documented agency practices and procedures regarding the filing of individual financial statements and affidavits with the Office of the Secretary of State. The provisions of the statute (Article 6252-9b, V.A.C.S.) were reviewed and agency interpretations of the nature and intent of the provisions of the Act were sought. Records maintained by the agency and the Secretary of State under the authority of the legislation concerned with conflict of interest were reviewed to determine the extent of agency compliance with the letter and intent of the Act and to verify the accuracy of the data presented under this criterion. In addition, inquiries were directed to selected areas where conflicts of interest might exist that could not be discerned through review of official documents.

According to Article 6252-9b, Section 2, Subdivision 8(A), a "state agency" is defined as:

"any department, commission, board, office or other agency that:

- (i) is in the executive branch of state government;
- (ii) has authority that is not limited to a geographical portion of the state; and
- (iii) was created by the constitution or a statute of this state" (emphasis added)

The Board of Law Examiners, acting under the supervision of the Supreme Court of Texas is thus exempted from the provisions of Article 6252-9b. The board, however, is composed of lawyers and therefore, subject to the Code of Professional Responsibility of the State Bar which provides similar safeguards as Article

6252-9b. Disciplinary Rule 8-10, for example, prohibits a lawyer who holds public office from using his position to: obtain special advantage in legislative matters for himself or for a client; influence a tribunal to act in favor of himself or a client; and accept anything of value for the purpose of influencing his action as a public official. However, there is no provision in the code which requires of board members written disclosure, as does Article 6252-9b, of any interest, financial or otherwise, or any business transaction or professional activity, which requires board members or staff to publicly disclose financial, business, or professional activities which would indicate conflicts of interest with the discharge of their official duties.

Criterion 10

The extent to which the agency complies with the Open Records Act and the Open Meetings Act.

Examination of elements under this criterion was separated into components dealing with responsibilities for making agency documents available to the public under open records requirements and responsibilities for public notification of proposed agency actions. Under the area of open records, statutes were reviewed in relation to written or unwritten policies used by the agency. Where written policies did not exist, interviews were conducted to determine actual compliance. Materials contained in the self-evaluation report were verified and open records decisions reviewed. Open meetings compliance was verified through review of agency written and unwritten policies to determine if they accurately reflected statutory requirements. Interviews with agency personnel were conducted in instances where written policies were lacking or information contained in minutes of meetings was incomplete or unclear. Records in the Office of the Secretary of State were reviewed on a selected basis to determine compliance with posting and informational requirements.

Open Records

The Attorney General of Texas, in Open Records Decision 136 issued July 7, 1976, held that the Board of Law Examiners is not subject to the provisions of the Open Records Act. Practically all records of the board pertain to the qualifications of candidates for admission to the Bar, inquiries into candidate character and results of examinations. Therefore such files are considered to affect the privacy of individuals and are not made available to the public.

Open Meetings

The Board of Law Examiners is not required to advance notice to the public of its regular or special meetings. The agenda of the board's meetings is generally restricted to matters directly related to the eligibility of candidates to be examined or admitted to the Bar. Therefore, little public interest is generated in the meetings of the Board of Law Examiners, and the agency is not required to comply with the provisions of the Act.

Summary

In summary, the Board of Law Examiners is not subject to the provisions of the Open Records Act and the Open Meetings Act. Generally, meetings are limited to four or five meetings per year; two meetings for conducting examinations for admission of candidates to the Bar, one meeting with members of the Supreme Court, one meeting with the deans of Texas law schools, with special meetings being called rather infrequently.

Criterion 11

The impact in terms of federal intervention of loss of federal funds if the agency is abolished.

Article 305 (V.A.C.S.) requires the Board of Law Examiners to pass upon the eligibility of all candidates for examination for license to practice law in Texas and to examine all eligible candidates. The functions performed by the board are functions which the federal government has traditionally left to the states. No federal standards were identified which would affect the practice of law or the licensing of lawyers in the State of Texas if the agency were to be abolished.

The agency's administrative costs are paid by fees collected and deposited in local banks and by funds appropriated to the Supreme Court by the legislature. The agency receives no federal funds and no loss of federal funds would be anticipated if the agency were abolished.

CONCLUSIONS

Originally the examination phase relating to the regulation of attorneys was carried out by district courts and the Supreme Court. Over time, the Supreme Court has become the body responsible for this activity. The functions of preparing, administering, and grading the examinations are delegated to the Board of Law Examiners. The board is responsible for passing upon the eligibility of all candidates for examination for license to practice law and for preparing and conducting examinations of eligible candidates as to their qualifications to practice law. The board is composed of nine members appointed by the Supreme Court, all of whom are required to have those qualifications required of Supreme Court judges. The Supreme Court prescribes the necessary personal qualifications of applicants seeking to study law and determines through its rules the fitness of applicants seeking to be examined and licensed as attorneys.

All states regulate the practice of law and the majority of the states place this responsibility within the jurisdiction of the Supreme Court of the state. Only a handful of states provide for appointment of members by another authority than the court or allow public membership on the boards of examiners.

Unlike the general licensing boards created in Texas for the purpose of regulating various occupations, the Board of Law Examiners has no statutory or delegated regulatory authority over licensed attorneys. The sole responsibility of the board lies in the area of determining eligibility for examination and administering the examination phase.

The board's operations are funded from state appropriations for personnel and office expense of the board's staff. The expenses relating to expenses incurred in holding examinations are paid from the examination fee of \$75. Any remaining balances from these fees are divided equally among the nine board members as

compensation for their services. For the 1977 period, this amounted to a little over \$20,000 per member.

The objectives of the Board of Law Examiners are the determination of the candidates eligibility as to age, residence, citizenship and education and the administration of the tests, which consists of standardized portions and portions prepared by the board. The review indicated that in areas that the board has operated within the guidelines established by statute and Supreme Court rule. Financial resources for office staff are used efficiently although the conduct of two separate investigations places an unnecessary burden upon these resources when one investigation at the time of applying for examination would suffice.

While educational requirements necessary for examination have increased, they do not seem to have unduly restricted entry into the field and applicants for examination have also increased. Results derived from pass/fail rates do not indicate a pattern of restrictiveness. In the one instance where a significant imbalance was disclosed by the pass/fail rate, the board took steps to attempt to determine and correct the causes. The board has developed limited procedures to assist those individuals who fail the examination in determining the causes for failure. However, this procedure for review only takes place after the individual has failed the examination twice and the review disqualifies the candidate from sitting for the examination during the examination session at which such review is given. Other areas covered in the review concerning restrictions on entry into the field of law indicated that all other states except Texas and Florida allow the practice of law by felons considered to be rehabilitated and that Texas restrictions concerning immigrant lawyers appeared unduly stringent.

Under current law, the board is exempted from the statutory requirements concerning open meetings, open records and conflict of interest.

If the legislature determines that the functions currently being performed by the board should be continued, the following changes could be considered to increase the efficiency and effectiveness of the performance of those functions:

THE LEGISLATURE SHOULD CONSIDER REQUIRING THE APPOINTMENT OF PUBLIC MEMBERS TO THE BOARD OF LAW EXAMINERS FOR LIMITED PURPOSES.

Public membership on the board would be appropriate for areas dealing with aspects other than preparing, administering and grading examinations. Reviews of qualifications of applicants and the general nature of information required for this determination would benefit from the viewpoints of members of the general public.

THE LEGISLATURE SHOULD CONSIDER LIMITING THE COMPENSATION RECEIVED BY BOARD MEMBERS TO ACTUAL AND NECESSARY EXPENSES INVOLVED IN THE DISCHARGE OF THEIR DUTIES.

The method of compensating members of this board for their services is unique not only among agencies in Texas but in other states of comparable size. While it may be argued that a change in the method of compensation will make it more difficult to find qualified members to serve in this capacity, other boards and commissions of equal stature do not suffer for lack of qualified individuals to serve in a similar capacity.

CONSIDERATION SHOULD BE GIVEN TO MODIFYING THE PROCESSES CONCERNING EXAMINATIONS TO PROVIDE FOR REEXAMINATION OF THE PARTS FAILED AND TO PROVIDE A REVIEW OF THE FAILED PORTIONS.

Until 1944, partial credit was allowed for those subjects passed and applicants were allowed to retake those subjects not passed before within the next 12 months. The current exam consists of a national multi-state section and a section written by the Board of Law Examiners. It would seem appropriate to allow reexamination of sections failed thus easing the restrictive nature of the current examination.

Coupled with a partial pass system, the board could undertake reviews, with applicants who made such a request, on the parts failed immediately after the first examination. The current practice of requiring an applicant to fail twice before a review is granted and then being denied the opportunity to take the exam at the next available date appears to place restrictions on the examination processes that have no clear benefit to the public or the person seeking licensure.

RESTRICTIONS CONCERNING PERSONS CONVICTED OF A FELONY
AND IMMIGRANT ATTORNEYS SHOULD BE MODIFIED.

The statutory prohibition against the admission of a convicted felon to the practice of law poses a significant restriction on entry into the field. The requirement that immigrant attorneys immigration of lawyers who often have qualifications equal to or superior to lawyers already practicing in Texas. A policy of endorsement providing for the case-by-case determination of whether an examination should be required would appear to be a less restrictive approach which would provide public protection.

THE BOARD OF LAW EXAMINERS SHOULD BE MADE SUBJECT TO
PROVISIONS RELATING TO OPEN MEETINGS, OPEN RECORDS AND
CONFLICTS OF INTEREST.

Currently, the members of the board are required to possess the same qualifications as judges of the Supreme Court. Under provisions dealing with conflicts of interest, the members of the Supreme Court are required to file financial statements in accordance with the statutory provisions. The filing of the statements by the members of the Board of Law Examiners would appear to be a logical extension of the requirements placed on the judges of the Supreme Court and would allow the public some capability to assess actions of the board in this area. Since the full measure of disclosure cannot be weighed except through open meetings, it would also seem appropriate to extend this requirement to the board also. Records held by the board are currently not subject to open records provisions and are classified as confidential records by rule of the Supreme Court. Records of a similar nature held by other agencies performing a like function are open to public review and there seems to be no logical grounds for the current exclusion.