



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 20, 2022

The Honorable Dee Hobbs
Williamson County Attorney
405 M.L.K. Street #7
Georgetown, Texas 78626

Opinion No. KP-0414

Re: Meaning of the term “salary” as used in article XVI, subsection 40(b) of the Texas Constitution (RQ-0447-KP)

Dear Mr. Hobbs:

On behalf of the City of Hutto (“City”), you ask about a scenario where a “city council member accepted an employment position with a state college system and received compensation from state funds.”¹ The Texas Constitution places limits on the compensation state employees may receive for concurrent service as members of local governing bodies. You therefore ask “whether ‘compensation’ received under Section 3.04 of the Hutto City Charter is a ‘salary’ [for purposes of article XVI, subsection 40(b) of] the Texas Constitution.” Request Letter at 2. You also ask whether “the Hutto City Council, as a home-rule municipality, [may] construe by ordinance the compensation amount in its charter to be the actual minimum necessary amount for the performance of the duties of public office related to regular council meeting attendance[.]” *Id.*

The City of Hutto’s charter (“Charter”) provides, in relevant part:

- b) City Council members shall receive as compensation the sum of four hundred dollars (\$400.00) for attendance at each regular City Council meeting; provided, however, that no City Council member shall receive compensation for more than two (2) meetings in any one month.
- c) The Mayor and City Council members shall be entitled to all necessary expenses incurred in the performance of their official council duties upon approval by the City Council.

¹See Letter from Honorable Dee Hobbs, Williamson Cnty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 2 (Feb. 15, 2022), <http://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2022/pdf/RQ0447KP.pdf> (“Request Letter”).

HUTTO, TEX., CITY CHARTER, § 3.04 (2021).

Your questions require the construction of the Charter, an undertaking outside the purview of an attorney general opinion. *See, e.g.*, Tex. Att’y Gen. Op. No. KP-0231 (2019) at 1 (stating “this office does not ordinarily construe city charter provisions in attorney general opinions”). Nevertheless, we can advise you generally as to legal principles pertinent to your questions.

No court has addressed whether the terms “salary” and “compensation” are synonymous in article XVI, subsection 40(b) of the Texas Constitution.

Your first question concerns the meaning of the term “salary” in article XVI, subsection 40(b), which provides in relevant part:

State employees or other individuals who receive all or part of their *compensation* either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts. Such State employees or other individuals may not receive a *salary* for serving as members of such governing bodies, except

TEX. CONST. art. XVI, § 40(b) (emphasis added); *see* Request Letter at 2.

A court’s “guiding principle when interpreting the Texas Constitution is to give effect to the intent of the voters who adopted it.” *Degan v. Bd. of Trustees of Dallas Police & Fire Pension Sys.*, 594 S.W.3d 309, 313 (Tex. 2020). “Presuming that the language of the Texas Constitution is carefully selected” a court “construe[s] its words as they are generally understood” and “rel[ies] heavily on the plain language of [its] literal text.” *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 580 (Tex. 2000).

With those rules in mind, we first consider the common meaning of the term “salary” as used in the text of article XVI, subsection 40(b). Salary is commonly defined as “[a]n agreed compensation for services . . . [usually] paid at regular intervals on a yearly basis” and “fixed compensation paid regularly . . . for services.” *City of Houston v. Bates*, 406 S.W.3d 539, 547 (Tex. 2013) (examining two dictionary definitions of the term salary). A payment that is not fixed and certain but is contingent upon being earned for “work done, labor performed, or money collected” is not a salary under the common meaning of the term. *See Wichita Cnty. v. Robinson*, 276 S.W.2d 509, 513–14 (Tex. 1954); *see also Keszenheimer v. Reliance Standard Life Ins. Co.*, 402 F.3d 504, 508 (5th Cir. 2005) (concluding that per diem and auto allowance compensation, which vary each month, were not salary under the term’s common meaning). Thus, focused solely on the common meaning, a court would likely conclude that a per meeting payment contingent upon attendance at the meeting is not a salary.

At the same time, “[i]n determining the intent of the framers and adopters of a constitutional proposition,” a court may also “consider contextual factors such as ‘the history of the legislation, the conditions and spirit of the times, the prevailing sentiments of the people, the evils intended to

be remedied, and the good to be accomplished.” *Degan*, 594 S.W.3d at 313; *see also Woods v. VanDevender*, 296 S.W.3d 275, 281–82 (Tex. App.—Beaumont 2009, pet. denied) (examining, among other things, information published by the Texas Legislative Council and the language that appeared on the voters’ ballot to construe an amendment to the Texas Constitution). Relying on contextual factors as evidence of legislative intent, this office previously concluded the Legislature used the terms “salary” and “compensation” interchangeably in subsection 40(b). *See* Tex. Att’y Gen. LO-94-072 at 3. As a general rule, compensation is a more comprehensive term than salary. *See id.*; *see also* BLACK’S LAW DICTIONARY 342 (10th ed. 2014) (defining compensation to mean “[r]emuneration and other benefits received in return for services rendered”); Tex. Att’y Gen. Op. No. GA-0449 (2006) at 2 (concluding compensation included premium payments for health insurance and car allowances). However, no court has directly addressed the meaning of the terms “salary” and “compensation” in article XVI, subsection 40(b) of the Texas Constitution. Therefore, we cannot predict with certainty whether a court would conclude the Legislature equates the term “salary” with “compensation” in subsection 40(b).

Whether the per meeting compensation in the Charter may be construed to constitute the reimbursement of expenses rather than “salary” for purposes of article XVI, subsection 40(b) is left to the discretion of the appropriate City officials, subject to judicial review.

We understand your second question to ask whether the city council could, by ordinance, construe the per meeting compensation in section 3.04 of the Charter to constitute the reimbursement of expenses. *See* Request Letter at 2. You raise this issue because a mere reimbursement of expenses does not constitute “salary” for purposes of subsection 40(b). *See* Tex. Att’y Gen. Op. No. GA-0530 (2007) at 6. But a reimbursement must be for legitimate expenses, and simply denominating a payment as an expense rather than a salary does not alter the nature of the payment. *See* Tex. Att’y Gen. Op. No. JM-1266 (1990) at 3. A determination as to whether the per meeting compensation constitutes actual reimbursement of expenses will involve fact questions for the City to decide in the first instance, but we offer some general guidance regarding the City’s authority to adopt ordinances and construe the Charter.

The City is a home-rule city that derives its authority from the Texas Constitution and the Charter adopted by its voters. *See Powell v. City of Houston*, 628 S.W.3d 838, 842 (Tex. 2021). A municipal ordinance adopted by the City’s governing body may not conflict with state law or the Charter. *See* TEX. CONST. art. XI, § 5(a) (“[N]o . . . ordinance passed under [a city] charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.”); *Powell*, 628 S.W.3d at 843 (considering whether an ordinance complied with the city charter and state law). Nor may an ordinance amend a Charter provision. *See* TEX. CONST. art. XI, § 5(a) (providing a city charter is amended by a majority vote of the qualified voters of the city); *see also* Tex. Att’y Gen. Op. No. GA-0433 (2006) at 2 (“[T]he City charter provision granting authority to amend the charter by ordinance is invalid because it is inconsistent with the constitutional requirement that all charter amendments be adopted by a majority of a city’s qualified voters.”).

While the decision as to the proper interpretation of section 3.04 of the Charter is left to the discretion of the appropriate City officials in the first instance, it is subject to judicial review.

A court would construe section 3.04 using the general rules of statutory interpretation. *See Powell*, 628 S.W.3d at 843. If a city charter does not define a term, a court looks “to its common, ordinary meaning unless a contrary meaning is apparent from the” charter’s language. *Powell*, 628 S.W.3d at 843; *see also City of Corpus Christi v. O’Brien*, No. 13–08–00267–CV, 2009 WL 265281, at *4 (Tex. App.—Corpus Christi, Feb. 5, 2009, pet. denied) (not designated for publication) (interpreting the term “compensation” in a city charter). Courts construe undefined terms within the context used and not in isolation. *See Guitar Holding Co., L.P. v. Hudspeth Cnty. Underground Water Conservation Dist. No. 1*, 263 S.W.3d 910, 915–16 (Tex. 2008); *see also Tex. Att’y Gen. LO-93-33* at 2 (considering a state law that provided for both a per diem payment and a reimbursement of expenses and concluding the per diem payment was necessarily regarded as a salary).

S U M M A R Y

Article XVI, subsection 40(b) expressly permits a state employee or an individual who receives *compensation* from the state to serve as a member of the governing body of a city but prohibits the person from receiving a *salary* for the latter unless the person receives compensation from the state for work performed in certain capacities. Because of the multiple possible meanings of these terms, we cannot predict with certainty whether a court would conclude the Legislature equates the term “salary” with “compensation” in subsection 40(b).

Whether the per meeting payment provided under section 3.04 of the Hutto City Charter may be construed to constitute the reimbursement of expenses rather than “salary” for purposes of subsection 40(b) is left to the discretion of the appropriate City officials in the first instance, subject to judicial review.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly slanted style.

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