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Opinion Committee
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

FILE # INL-40619-99
I.D. # 40619

Opinion Committee

Dear General Cornyn:

I would like to request an opinion regarding the Texas Local Government Code and workers compensation.

I would appreciate an opinion on the following:

1. Does the term "full pay" as used in Texas Local Government Code, Section 143.073(a) mean gross pay or net pay?
2. If "full pay" means gross pay, then is a municipality required to pay federal taxes on that portion of the injured officer's workers' compensation income benefit?

This request for clarification stems from a case in Plano. Attached is a copy of the brief sent to my office by the City of Plano. If you have any further questions, please do not hesitate to contact my office in Plano at 972-378-3229.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Florence Shapiro".
Florence Shapiro

FS/cs

Attachments

**BRIEF TO ACCOMPANY REQUEST FOR
ATTORNEY GENERAL'S OPINION**

QUESTIONS

1. Does the term "full pay" as used in Texas Local Government Code, Section 143.073(a) mean gross pay or net pay?
2. If "full pay" means gross pay, then is a municipality required to pay federal taxes on that portion of the injured officer's workers' compensation income benefit?

FACTS

On May 21, 1996 a City of Plano police officer was injured in an accident in the line of duty. For 63 days or 4.5 pay periods during the period from December 1996 through February 1997, the police officer received, through no fault of his own, his regular pre-injury paycheck as well as his workers compensation income benefit check. The officer received \$960 per pay period from Workers Compensation for a total of \$4,320 and his pre-injury salary from the city of \$1,597.88 gross pay (\$1,244.56 after deductions for taxes and retirement contributions) per period for a total of \$7,190.46. No deductions of any kind were made from the Workers Compensation income benefit payments but the city withheld from each regular check his pre-injury deductions of \$241.47 for federal taxes and \$111.85 for Texas Municipal System Retirement (TMRS) thus making his net pay (take-home) \$1,244.56 per check.

Upon discovering its error, the city took the position that the officer was entitled to receive his Workers Compensation income benefit of \$960 per pay period and an amount from the city sufficient to raise his net pay per pay period to \$1,244.56; cover his full contribution to TMRS; and pay his federal taxes on that portion of his pay exclusive of the Workers

Compensation income benefit. Under the city's interpretation, during the 63 day period, the police officer received an overpayment of \$4,320.00 net pay and \$1,022.03 in federal income taxes for a total of \$5,342.03.

The officer contended that he was entitled to the \$960.00 workers' compensation income benefit and salary continuation in the amount of \$637.88. The officer agreed that he received an overpayment of \$4,320 and repaid the city that amount but denied that he owed the \$1,022.03 the city had paid in federal income taxes.

ANALYSIS

The City of Plano is a municipality subject to the provisions of Chapter 143 of the Texas Local Government Code (TLGC). Section 143.073(a) of the TLGC states:

"A municipality shall provide to a fire or police officer a leave of absence for an illness or injury related to the person's line of duty. The leave is with **full pay** for a period commensurate with the nature of the line of duty illness or injury. If necessary, the leave shall continue for at least one year." (Emphasis added)

Because the police officer's injuries occurred while performing police duties, he was entitled to receive Workers Compensation benefits of \$960 per pay period. Texas Labor Code (TLC), Section 408.003(a)(2) also required the city to supplement the officers' benefits "by an amount that does not exceed the amount computed by subtracting the amount of the income benefit payments from the employee's **net pre-injury wages**." (Emphasis added)

CITY'S CONTENTION

Under the TLGC and TLC provisions previously cited, it is the city's contention that it was under an obligation to supplement the officer's workers compensation income benefit such

that the Defendant would receive the net (take-home) pay he would have received had he not been injured. The provisions of Section 143.073(a) of the TLGC and Section 408.003(a)(2) of the TLC should be construed so as not to create a conflict. Clearly the intent of the legislature was to ensure that an injured fire or police officer would not suffer any loss of pay or benefits as a result of an injury in the line of duty. To require the city to pay income taxes on that portion of the injured officer's tax free workers' compensation benefit payment puts the officer in a position better than that which existed prior to the injury. It is neither a right of the employee to receive nor an obligation of the city to pay taxes on workers compensation benefits which are not subject to federal taxation.

OFFICER'S CONTENTION

The City of Plano has adopted Chapter 143 of the Texas Local Government Code. The officer contends that he was entitled to receive an amount equal to the difference between his gross pay and the payments received from workers' compensation. The officer further contends that the common, everyday meaning of the phrase "**full pay**" in TLGC, Section 143.073(a), means gross pay, not net pay. If the legislature had intended to use the phrase "net pay," it would have done so as it did in TLC, Section 408.003(a)(2). Since the legislature enacted legislation specifically addressing a police officer's line of duty injury, the broader provisions of TLC, Section 408.003(a)(2) do not apply to salary continuation payments to a police officer who is covered under TLGC, Chapter 143.

SUMMARY

The City of Plano and the affected officer request that you make a determination as to the meaning of TLGC, Section 143.073(a) and TLC, Section 408.003(a)(2) as it relates to the

obligation of a municipality to pay the gross salary of an officer injured in the line of duty and receiving non-taxable workers' compensation income benefits.