



TEXAS EDUCATION AGENCY

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Jim Nelson
Commissioner of Education

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Opinion Committee

Fwd. 11-8 LR RQ-0142-98

November 1, 1999

Mr. John Cornyn
Office of the Attorney General
PO Box 12548
Austin, Texas 78711

FILE # MB 41095-99
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Dear General Cornyn:

This letter is to request your opinion regarding the provisions of Section 11.201(c) of the Texas Education Code, which provides as follows:

A board of trustees of an independent school district that makes a severance payment to a superintendent shall report the terms of the severance payment to the commissioner. The commissioner shall reduce the district's Foundation School Program funds for the school year following the school year in which the first payment is made by an amount equal to the severance payment made by the board of trustees to the superintendent.

This provision was added during the 1995 revision of the Education Code¹ in response to legislative concerns about districts expending substantial sums to buy out superintendents' contracts².

Payments to departing superintendents often involve threatened or actual litigation between the superintendent and the district and are thus often couched as settlements of numerous potential or asserted causes of action by both parties. The agency has understood the term "severance payment" to include all payments made to a departing superintendent, at least up to the amount remaining due to the superintendent under the contract³. Several districts have taken exception to this position, contending that payments in settlement of actual or contemplated litigation are not within the definition of "severance payment". I have attached a sample of the correspondence received by this agency regarding this issue.

¹ Acts, 1995 74th Legislature, Ch 260, § 1.

² A school district is authorized to enter into an employment contract with a superintendent for up to five years under Section 11.201(b) of the Texas Education Code.

³ The agency has not considered payments for services actually performed to be "severance payments". Thus, salary for time served as a superintendent, including periods of time during which an individual is suspended with pay have not been considered "severance pay". Neither have payments for accumulated vacation or sick leave been considered "severance pay", to the extent they are provided for under the superintendent's employment contract.

In addition to payments made to superintendents who will no longer be employed by the district, some districts have entered into "consulting agreements" with former superintendents, often paying them amounts very similar to the remaining payments under the employment contract. A sample of letters received by the agency regarding these arrangements is also attached.

My questions are as follows:

1. Are payments made to a departing superintendent that are couched as settlement of actual or contemplated litigation with the district "severance payments" as contemplated by Section 11.201?
2. If your answer to question number 1 is "yes", is the term "severance payment" limited to amounts due under an existing contract or are all amounts paid to a departing superintendent properly considered "severance payments"?
3. Are "consulting agreements" with former superintendents within the meaning of "severance payment", particularly when duties are either unspecified or consist of providing transitional services during a period covered by the original employment contract?
4. Is payment of insurance premiums or other benefits by the district after the termination of an employment contract with the district within the meaning of "severance payment"?

I appreciate your assistance in interpreting this statute. Should you need additional information, please feel free to contact David Anderson, General Counsel, at 463-9720.

Sincerely,



Jim Nelson
Commissioner of Education