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OPINION COMMITTEE

RQ-0584-JC

August 2, 2002

FILE # ML-42737-02
I.D. # 42737

The Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

Re: Request for Opinion Regarding a Third-Party Entity Providing Staff-Leasing Services Under Contract With a School District

Dear Attorney General Cornyn:

This letter is to respectfully request an Attorney General Opinion regarding the following:

- 1a. Does Government Code Sec. 824.005(b), which provides for revocation of retirement benefits, apply to a retired teacher who is employed in a public school as a temporary employee of a third-party entity that provides staff services under a contract with the school?
- 1b. Does Government Code Sec. 824.601, which provides for loss of monthly retirement benefits upon resumption of service, apply to a retired teacher who is employed in a public school as described above? If so, does Government Code Sec. 824.602 provide any exception to Sec. 824.601 that would apply to a retired teacher who is employed in a public school as described above?
2. Does a retired teacher who is employed in a public school as described above enjoy the limited immunity from personal liability provided to "a professional employee of a school district" under Education Code Sec. 22.051?
3. Does the Staff Leasing Services Act, Texas Labor Code Section 91.001 *et seq.*, require licensing of a third-party entity providing staff-leasing services under contract with a school district?

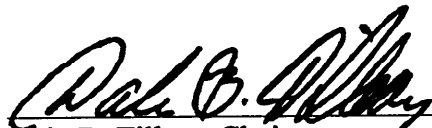
BACKGROUND

It has come to the attention of the committee that third-party entities are contracting with school districts to provide staff-leasing services whereby the third-party entity employs retired teachers on a "temporary" basis and supplies the teachers to a school district. The third-party entities are promoting this arrangement as a way around TRS rules that revoke or limit retirement annuity payments for retirees who return to work on a full-time basis in the public schools. The committee is concerned that this arrangement could possibly imperil the teachers' retirement benefits. Individual teachers and teacher organizations have, in addition, expressed questions about the loss of retired teachers' limited liability and the applicability of other provisions and protections in the Texas Education Code. (See the accompanying promotional brochure and sample contracts for educators and school districts that have been used by one such third-party entity.)

Also, questions regarding the appropriate licensing of such third-party entities have been raised. I am seeking clarification to determine whether these entities fall under the Staff Leasing Services Act.

I thank you for your consideration and await your reply.

Sincerely,



Dale B. Tillery, Chairman
House Committee on Pensions and Investments

DBT/jpu

Enclosures: 3