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RECEIVED

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OPINION COMMITTEE

March 24, 2003

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

FILE # ML-43043-03
I.D. # 43043

Re: Whether an elected district attorney accrues lifetime service credit for longevity pay under section 41.251 et seq. of the Texas Government Code

Question:

Does someone who served as an elected District Attorney, Criminal District Attorney, or County Attorney who performs the duties of a District Attorney accrue lifetime service credit for the purpose of longevity pay under Chapter 41, Subchapter D. of the Texas Government Code, once that elected prosecutor leaves elected office and becomes an Assistant District Attorney, Assistant Criminal District Attorney, or Assistant County Attorney who is otherwise eligible under the act?

Discussion:

Chapter 41, Subchapter D. of the Texas Government Code provides for longevity pay for assistant prosecutors who work in offices that perform the duties of a district attorney. Section 41.252 allows for longevity pay for assistant prosecutors who are full-time employees not on leave without pay on the first workday of the month, and who have accrued at least four years of lifetime service credit. Section 41.253 sets the monthly amount of longevity pay at \$20 for each year of lifetime service credit. The act does not specifically define lifetime service credit.

Since this law has only been in effect since January 1, 2002, there is no case law defining lifetime service credit. Therefore, we can only look to the legislative history and purpose of the act, and the words of statute for our analysis of the question.

This law was first proposed by Representative Vilma Luna during the 77th Regular Session of the Legislature, as HB 178. In looking at the legislative history of the bill, the bill analysis states its background and purpose. The bill analysis states that many of the assistant prosecutors who are responsible for felony prosecution in Texas "have more than four years experience in this field".

The salaries of these experienced prosecutors has not kept pace with the salaries of experienced attorneys in the private sector. In order to correct this inequity, HB 178 provides for state longevity pay for certain assistant prosecutors. Based on this stated purpose, an elected prosecutor who leaves office and becomes employed as an assistant prosecutor would bring the desired "experience in [the] field" discussed by HB 178 to their new positions. They too are being undercompensated for this experience in their new positions as assistant prosecutors. In order to encourage their continued and valuable service as prosecutors, the stated purpose of HB 178 clearly applies to them. Many elected prosecutors, especially those coming from smaller jurisdictions, perform all of the functions of assistant prosecutors, including preparing and trying felony cases. They perform these duties while also having to perform all of the administrative functions of the office. Often, they perform these prosecutorial functions as the sole attorney in the office. Obviously, their "experience in [the] field" of prosecution is equal to or greater than other assistant prosecutors. Conversely, many assistant prosecutors in large jurisdictions often only perform administrative functions, and rarely, if ever try cases. These assistant prosecutors are entitled to the longevity pay despite their lack of trial work.

The statute does not define lifetime service credit as time exclusively accrued as an **assistant** prosecutor. It only states that **assistant** prosecutors are the ones to receive longevity pay for their lifetime service credit. As stated above, elected prosecutors bring the same or even greater prosecutorial experience to their positions as assistant prosecutors. Therefore, if they are otherwise eligible under the act, they should be similarly rewarded for their service as assistant prosecutors.

Should you need any further clarification or information, please contact me at 281.341.4469. Thank you in advance for your attention to this question.

Sincerely,



John F. Healey, Jr.
District Attorney
Fort Bend County, Texas

enclosure