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OPINION COMMITTEE

June 5, 2003

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The Honorable Greg Abbott  
Attorney General of Texas  
P. O. Box 12548  
Austin, Texas 78711-2548

**RQ-0062-GA**

Re: Request for Opinion – Application of Section 22.004(b) of the Education Code to Retired Then Rehired School District Employees

Dear General Abbott:

I am requesting your opinion on behalf of the Ysleta Independent School District regarding the extent to which a school district, that does not participate in the State's Uniform Group Coverage Program, must provide group health coverage to personnel who have retired under the Teacher Retirement System and are eligible for health coverage under the Texas Public School Retired Employees Group Insurance Program, but have returned to work under so-called "retire/rehire" provisions.

This issue is one of concern to school districts across the state, including school districts in El Paso County. It is our belief that a Texas independent school district is not required to provide health coverage to an employee who is eligible for coverage under the Texas Public School Retired Employees Group Insurance Program, and solicit your opinion in this regard.

Employees of Texas independent school districts participate in the Teacher Retirement System of Texas ("TRS"). Tex. Gov't Code, Ch. 821 *et. seq.* Persons who have retired under TRS ("TRS retirees") are eligible for coverage under the Texas Public School Retired Employees Group Insurance Program. Tex. Ins. Code art. 3.50-4. TRS refers to the retiree health insurance program as "TRS-Care." 34 Tex. Admin. Code §§ 41.1 *et. seq.* After retirement, certain educational personnel can be re-employed by Texas school districts, without foregoing their retirement benefits, under certain specific conditions and circumstances. *See, e.g.,* Tex. Gov't Code § 824.602. Pursuant to this provision, numerous TRS retirees have returned to active employment with Texas school districts.

Article 3.50-7 of the Texas Insurance Code establishes the Texas School Employees Uniform Group Health Coverage Program. TRS refers to this health insurance program as "TRS-ActiveCare." 34 Tex. Admin. Code §§ 41.30 *et. seq.* Although many school districts are now participating in this Uniform Group Health Coverage Program, several larger school districts have not been eligible to participate. Under this Plan, participation "is limited to employees . . . who are full-time employees and to part-time employees who are participating members of the Teacher Retirement System of Texas." In Section 2(4) of this Article, the word "employee" is defined to mean "a participating member of the Teacher Retirement System of Texas who is employed by a participating entity and who is not receiving coverage from" the Texas Employees Uniform Group Insurance Benefits Act, the Texas State College and University Employees Uniform Insurance Act, or TRS-Care. A "participating member" of TRS normally does not include a TRS retiree. Tex. Gov't Code §§ 822.002, 822.003; 34 Tex. Admin. Code § 41.33(5). TRS rules limit eligibility for the TRS-ActiveCare program to participating, contributing members of TRS -- *i.e.*, school district employees who are not TRS retirees. 34 Tex. Admin. Code §§ 41.33, 41.34. Thus, generally speaking, a TRS retiree who has been employed by a school district and is eligible for coverage under TRS is not eligible for health coverage from the district if it is a participating entity under the TRS-ActiveCare program established by Article 3.50-7.

Section 22.004(b) of the Education Code provides that a district that does not participate in the TRS-ActiveCare Program established under Article 3.50-7 shall otherwise "make available to its employees group health coverage . . ." The question posed to you regards the obligation, if any, of such districts to provide health coverage to retired TRS-Care eligible employees who have returned to work.

As part of the same legislation that enacted Article 3.50-7 of the Insurance Code, the 77<sup>th</sup> Legislature also adopted Article 3.50-8, captioned "Active Employee Health Coverage or Compensation Supplementation." This section of the Insurance Code provides for an annual payment of at least \$1,000 per "employee" from TRS to each school district, to be held in trust for the benefit of the employees on whose behalf the district received the funds. Such funds are to be used, at the election of employee, to help defray the employee's cost of health coverage, or as supplemental compensation. "Employee" is defined in Section 1(2) of this Article to be an employee who is a participating (contributing) member of TRS who is "not a retiree covered under the Texas Public School Retired Employees Group Insurance Program." The TRS rules limit eligibility to "participating members" of TRS. 34 Tex. Admin. Code § 41.42.

Thus, the Legislature in setting up the TRS-ActiveCare Program specifically excluded from eligibility TRS retirees, as well as other persons employed by a school district, who are covered by another state uniform insurance program, including TRS-Care. Under these circumstances, it does not make sense that the Legislature would require a school district that was not yet participating in the TRS-ActiveCare Plan to offer group health coverage to TRS retirees who are no longer "participating members" of TRS, or who are covered by TRS-Care, as we do not believe that the Legislature intended to place this greater burden on such a school district.

Moreover, TRS retirees already have group health coverage "available" to them through TRS-Care, and therefore there is no need for a school district to separately make available coverage to them under § 22.004(b) of the Education Code. Accordingly, we believe that a school district that is not participating under the TRS-ActiveCare Plan set up by Article 3.50-7 of the Insurance Code need not provide, under the health plan it makes available to its employees under § 22.004(b) or § 22.005 of the Education Code, coverage to TRS retirees.

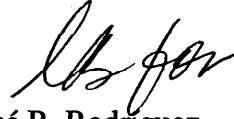
Additionally, many school districts at least partially subsidize the cost of health coverage provided to their employees. Even if school districts that have employed TRS retirees who are eligible for coverage under TRS-Care, but who have rejected such coverage, need to "make available" to those employees group health coverage, we do not believe that they are required to provide that coverage on the same subsidized basis as they provide to their non-retiree employees. Certain "minimum effort" requirements of school districts, regarding their funding of employee health insurance, are contained in Article 3.50-9 of the Insurance Code. It defines "participating employee" to indicate a requirement of TRS membership, at Sec. 1(1). The maintenance of effort and minimum effort requirements are keyed to the number of "participating employees" employed by the district, as is the amount of state aid available to districts in order to assist them in meeting the minimum effort requirement. Under TRS rules, the state assistance is based on "the number of employed participating members." 34 Tex. Admin. Code § 41.43. Therefore, there is no legal reason why a school district should be required to subsidize any portion of the cost of a local health coverage plan for those employees that are already eligible for coverage under the Texas Employees Uniform Group Insurance Benefits Act, the Texas State College and University Employees Uniform Insurance Benefits Act, or the TRS-Care Program.

In summary, the following two points accurately summarize the law in this area:

1. A school district that is not participating in the TRS-ActiveCare Plan is not required to provide group health coverage to any of its employees who are *not* "participating members" of TRS, *or* who *are* receiving coverage from a uniform group insurance program under the Texas Employees Uniform Group Insurance Benefits Act, the Texas State College and University Employees Uniform Insurance Benefits Act, or from the TRS-Care Program.
2. If an employee of a Texas school district who is eligible to receive coverage under the Texas Employees Uniform Group Insurance Benefits Act, the Texas State College and University Employees Uniform Insurance Benefits Act, or the TRS-Care Program, but who has rejected such coverage, is entitled to participate in the group health coverage plan offered by a school district under § 22.004(b) or § 22.005 of the Education Code, then the school district need not subsidize any of the cost of such group coverage to such an employee.

The Honorable Greg A. ...  
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Respectfully submitted,



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