



RECEIVED
OCT 23 2003
OPEN RECORDS DIVISION

COMMITTEE ON DEFENSE AFFAIRS AND STATE-FEDERAL RELATIONS

MEMBERS

Leo Berman - CBO
Dianne White Delisi
John Mabry Jr.
Tommy Merritt
Paul Moreno
Rick Noreiga
Gene Seaman

FRANK J. CORTE JR.
CHAIRMAN

SCOTT CAMPBELL
Vice-Chairman

DONOVAN BURTON
Chief Committee Clerk

RQ-0121-GA

RECEIVED
OCT 23 2003

OPINION COMMITTEE

October 10, 2003

The Honorable Greg Abbott
Attorney General of the State of Texas
Post Office Box 12548
Austin, Texas 88711

FILE # ML-43313-03
I.D. # 43313

RE: Request for Attorney General Opinion

Dear General Abbott:

As a person authorized to request a written opinion from the Attorney General on a question affecting the public interest, I hereby request your opinion on the following issues:

1. According to HB 2400, codified as Texas Local Government Code, § 143.072(g), Fort Worth is required to continue to maintain coverage for health insurance benefits that the employees were receiving on the dates that they were called to military service. Who is required to pay for the continuing coverage? At Fort Worth, the City and the employees pay for part of the cost of the insurance. Does the statute require both the City and the employees to continue to pay their portions of the premiums? If the employee pays a portion of the premium, may the City collect the employees' payments while they are away on military service? If the employees discontinue payments, can the City legally discontinue the health insurance?

It is Fort Worth's interpretation that "continue to maintain" implies that the City and the employee continue to pay their respective shares of the expenses of health insurance. The employee, while on military leave, must remit to the City his or her share of the premium. If the employee fails to pay, the City may discontinue the benefits. The language of the new statute does not require either the City or the employee to carry the full cost of the health insurance premium during military leave. Fort Worth's interpretation is further explained in the enclosed letter from the City Attorney, David L. Yett.

The Honorable Greg Abbott
October 10, 2003
Page 2

2. Another question relates to the donation of paid leave time, which is HB 2400, codified as Texas Local Government Code, § 143.075(c). According to this section, employees are allowed to donate paid leave time to be used by military personnel who have exhausted their paid leave accumulations. Fort Worth only allows police officers to accrue 90 days of vacation. Any additional time is "use it or lose it." It is taken "off the books" in December. This is known as a "cap." Can the officers donate leave that is over the cap? For example, a police officer has 92 days of vacation time on the books and donated the additional two days. The officer has to use the two days by the end of December or lose them. Instead of using the days, the officer donates them to the military leave bank. Do the two donated days expire in December, or do they remain in the leave bank indefinitely?

It is Fort Worth's interpretation that officers may only donate leave that is not over the cap. If the vacation would have been taken off officers' vacation accrual, it should be taken out of the leave bank, too. Otherwise, the military personnel would be able to use leave time that the donors could not have used themselves. If the time that is over the cap stays on the books, the City would be donating the time, not the police officer. This is beyond the requirement of the statute. Fort Worth's interpretation is further explained in the enclosed letter from Mr. Yett.

The City of Fort Worth wishes to insure that it is in compliance with HB 2400, but some of the requirements are not clear. Therefore, on Fort Worth's behalf, I am requesting that you issue an opinion for guidance on these questions.

Respectfully requested,



Frank J. Corte Jr.
Chair, Defense Affairs and State-Federal Relations Committee