



CAMERON COUNTY DISTRICT ATTORNEY

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County and District Attorney

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OPINION COMMITTEE

RQ-0445-GA

February 3, 2006

Honorable Gregg Abbott, Texas Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-44611-06
I.D. # 44611

RE: REQUEST FOR ATTORNEY GENERAL OPINION ABOUT BENEFITS GIVEN TO MAYOR AND CITY COMMISSIONERS OF BROWNSVILLE, TEXAS, A HOME-RULE CITY.

Dear General Abbott:

I.

Investigation of the Question

Pursuant to §402.043 of the Texas Government Code, my office is seeking an opinion from the Office of the Attorney General as to whether or not the Mayor and City Commissioners of the City of Brownsville, a home-rule city, may receive health insurance and car allowances as "employees" of the City of Brownsville. While the Attorney General has been reluctant to interpret city charters, the question here is whether or not any opinion can be issued that is responsive to the questions being asked? Are health insurance and car allowances received by the Mayor and Commissioners a form of compensation? If they are a form of compensation, is the receipt of these benefits by the Mayor and City Commissioners in violation of the Charter of the City of Brownsville? And finally, could the car allowances constitute a reimbursement and not compensation and thus, fall outside the charter provision?

Historically, the members of the City Commission in Brownsville have received payment for their attendance at City Commission meetings pursuant to Article V, §13, of the City Charter of the City of Brownsville as amended in 1943. This charter provision reads as follows:

The mayor and city commissioners elected after the adoption of this amendment shall each receive as compensation for their services during their term of office the sum of ten dollars (\$10.00) for their attendance for the full duration of each regular or special meeting; provided, however, that in no event shall they be paid for more than two regular and three special meetings in any one calendar month.

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It is our understanding that in 1999, the Internal Revenue Service issued a ruling that categorized city commissioners as "employees" for tax reporting purposes. Apparently, as a result of this categorization, it was concluded that the city commission members could receive health care coverage through the City's group insurance plan like other employees of the City of Brownsville do.

In 2004, the City Commissioners and Mayor also began receiving monthly car allowances of three hundred and fifty dollars (\$350.00) and five hundred dollars (\$500.00), respectively, to defray the costs of city related travel and travel to various government functions in their privately owned vehicles.

It is our understanding that the compensation package and the relevant charter provisions have been fully disclosed in all state and federal audits since the inception of the benefits package. Also, these charter provisions have been disclosed in the course of bond issuance and remain unchanged since the Charter's enactment in 1914.

Recently, the local newspaper began questioning the allowance and health coverage extended to commission members and has claimed that these benefits are prohibited by the City Charter section referenced above.

II.

Brief of the Issues

In a previous opinion issued by your office styled G.A. 130, you considered charter language from the Pleasanton, Texas, city charter regarding benefits received by their commission members, which are similar to those being provided to city commission members in Brownsville. We believe that opinion is instructive here. In that opinion your office concluded that health insurance benefits or premiums were a form of compensation. You also explained procedures for interpreting charter provisions and commented on the Internal Revenue Code. *Attorney General of Texas Opinion No. GA-0130*.

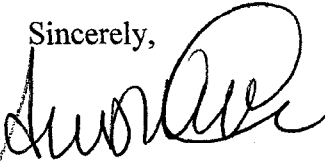
It appears well settled that, when a charter is adopted, the instrument becomes fundamental law of the municipality in the same manner that the Texas Constitution is the fundamental law of the State. *Sierra Club v. Austin Indep. Sch. Dist.*, 489 S.W.2d 325,332 (Tex.Civ.App.- Austin 1972), rev'd on other grounds, 495 S.W.2d 878 (Tex. 1973); see *Corsicana v. Willman*, 147 Tex. 377, 216 S.W.2d 175 (1949).

Additionally, the only apparent limitation upon these powers is that the charter may not be in conflict with the general laws of the State or in contravention of the Texas Constitution. *Forwood v. City of Taylor*, 147 Tex. 161, 214 S.W.2d 282, 286, (1948); *Sierra Club*, 489 S.W.2d at 332-333; *City of El Paso v. Town of Ascarate*, 209 S.W.2d 989, 994 (Tex.Civ.App.- El Paso 1947, writ ref'd); *City of Fort Worth v. Morrison*, 164 S.W.2d 771, 772 (Tex.Civ.App.- Fort Worth 1942, writ ref'd); *Yellow Cab Transit Co. v. Tuck*, 115 S.W.2d 455,457 (Tex.Civ.App.- Dallas 1938, writ ref'd).

Finally, it appears that the municipality can exercise such powers as are expressly granted by the charter or those which may be reasonably implied from the powers granted, or those that are incidental to the purpose for which the municipal corporation was created. *Anderson v. City of San Antonio*, 123 Tex. 163; 67 S.W.2d 1036,1037 (1934); *Davis v. City of Taylor*, 123 Tex. 39; 67 S.W.2d 1033,1034 (1934); *Foster v. City of Waco*, 113 Tex. 352; 255 S.W. 1104, 1105 (1923); *Willman*, 213 S.W.2d 155, 157.

Accordingly, it appears that the Brownsville City Charter language sets a cap on the amount of payment that can be received by commission members per month specifically for their attendance at regular and special commission meetings but does not address the issue of other benefits or payment for additional expenses incurred by the Mayor and City Commissioners in the exercise of their daily duties as public officials. At the request of the Mayor and City Commissioners, through their City Attorney, we are now seeking a formal opinion from the Attorney General in an effort to resolve the possible interpretations.

Sincerely,



Armando R. Villalobos
Cameron County and District Attorney

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