



The Senate of  
The State of Texas

SENATOR RODNEY ELLIS  
District 13

PRESIDENT PRO TEMPORE  
1999 - 2000

September 11, 2006

The Honorable Greg Abbott  
Attorney General of Texas  
209 West 14th St.  
Austin, TX 78701

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ACTION BY Nancy Fuller  
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OPINION COMMITTEE

**RQ-0530-GA**

FILE # ML-44992-01

I.D. # 44992

Dear General Abbott:

I would like to request an Attorney General's Opinion to clarify several issues regarding the interpretation of Article XVI Section 40 of the Texas Constitution, which relates to the compensation of persons who serve as members of governing bodies and also receive all or part of their compensation from the State of Texas.

Correspondence regarding this important issue from Laredo City Attorney Jaime L. Flores is enclosed for your review. Please contact my office if you have further questions.

Sincerely,

Rodney Ellis

Enclosure: Correspondence from Laredo City Attorney Jaime L. Flores



# CITY OF LAREDO

## OFFICE OF THE CITY ATTORNEY

August 16, 2006

The Honorable Judith Zaffirini  
Texas State Senator  
1407 Washington St.  
P.O. Box 627  
Laredo, Texas 78042-0627\*

Jaime L. Flores  
City Attorney

Jerry Bruce Cain  
Assistant City Attorney

Valeria M. Acevedo  
Assistant City Attorney

Anthony C. McGettrick  
Assistant City Attorney

Ernesto A. Garcia  
Assistant City Attorney

V. Melissa Saldaña  
Assistant City Attorney

Dear Senator Zaffirini:

There have recently arisen several questions on the correct interpretation of Article XVI Section 40 of the Texas Constitution regarding the compensation of four members of the Laredo city council. Three city council members are employees of a school district and a fourth one is a faculty member of a public institution of higher learning. We seek your assistance with these issues because the matter has potential impact on all cities in Texas depending on how the state constitution is interpreted.

Article XVI, Section 40 (b) of the Texas Constitution states in relevant part:

(b) State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts. Such State employees or other individuals may not receive a salary for serving as members of such governing bodies, except that:

(1) a schoolteacher, retired schoolteacher, or retired school administrator may receive compensation for serving as a member of a governing body of a school district, city, town, or local governmental district...

(2) a faculty member or retired faculty member of a public institution of higher education may receive compensation for serving as a member of a governing body of a water district created under Section 59 of this article or under Section 52, Article III, of this constitution. (Tex. Const. art XVI, sec. 40 (b)).

The questions on which we seek your assistance and the assistance of the Attorney General arise under this constitutional provision and under applicable Attorney General opinions interpreting this provision, and under the related issue of reimbursement of actual expenses of elected officials.

There is no dispute regarding the matter of compensation of these council members. The Constitution is clear as it applies to these individuals. However, as the first two questions posed below will elucidate, there is a question as to whether two council members can qualify for payment if they take on certain additional duties.

The third question posed below goes specifically to the issue of reimbursement of actual expenses. The Attorney General has clarified that even if a council member is prohibited from receiving compensation he may still receive a payment if he can demonstrate that the payment constitutes reimbursement for expenses only. Attorney General Opinion JM-1266 (1990).

This opinion was further clarified in 1993 stating that "although it is true that a mere reimbursement of expenses does not constitute compensation for purposes of Article XVI, Section 40, it is also true that, in order to qualify as reimbursement, the amount paid to the individual must correspond to the actual expenses incurred. Attorney General Letter Opinion 93-33 (1993). The Attorney General also concludes in another letter opinion in 1995 that while a council member could not receive 'fees of office', he could receive actual expenses pursuant to that provision." Attorney General Letter Opinion 95-001 (1995), citing L.O. No. 94-72 and L.O. No. 93-33.

Additionally, the City Charter of Laredo, Texas provides that "the Mayor and Council Members will receive reimbursement for their actual and necessary expenses incurred in the performance of their duties of office." Laredo City Charter Article II, Section 2.02 (1995).

Given the above stated applicable law and Attorney General Opinions, I now turn to describe the facts regarding the four council members impacted:

1. Council Member A is employed by the United Independent School District ("UISD"). The UISD Superintendent has assigned him duties and responsibilities and he is evaluated and paid for his performance as a Registrar and as an Assistant Boys Track Coach. Based on the fact that he is an assistant coach teaching physical education, and that he is not required to be certified as a teacher, similar to substitute teachers, the city pays him for his services as a city council member.
2. Council Member B is also employed by the UISD. He is not, however, in a teaching or substitute teaching position; he is an administrator, specifically, the Support Services Manager. He is not paid by the city for his services as a city council member; but he is reimbursed for any actual expenses that he incurs that are related to his service as a member of the council.

3. Council Member C is also employed by the UISD. He is not, however, in a teaching or substitute teaching position; he is an administrator, specifically the Director of UISD's Support Services Department. He is not paid by the city for his services as a city council member; but he is reimbursed for any actual expenses that he incurs that are related to his service as a member of the council.

4. Council Member D is employed by Texas A&M International University ("TAMIU") located here in Laredo, Texas. He is a full-time professor teaching marketing and possibly other courses at the University. He is not paid for his services as a city council member; he is only reimbursed for any actual expenses that he incurs that are related to his service as a member of the council.

Based on those fact situations then, the affected council members have raised the following questions regarding the possibility of their qualifying for compensation and reimbursement of their actual expenses:

1. Could the two UISD administrators be paid for their city council service if they were to acquire a position as a "coach" of UIL (University Interscholastic League) events coaching UIL teams for math, debate, or other UIL events, whether they are certified or not to coach/teach same?
2. Would these "UIL coaching" positions qualify as "substitute teaching" and enable the city to pay them for their city council services pursuant to Attorney General Opinion GA-0394 dated February 6, 2006?
3. Regarding reimbursement of actual city-related expenses:
  - a. May expenses for meals consumed by council members and their constituents at times when the council members meet with them to discuss city issues be reimbursed to the council members?
  - b. May membership fees of a civic organization, such as Kiwanis, be reimbursed to a council member if he submits claims stating that he attended such meetings as a representative of the city?
  - c. May expenses incurred by a council member for maintenance of a home office (as defined and qualified under Internal Revenue Services rules), to the extent such home office is used for city business, including pro-rated rent or mortgage and electricity consumed, be reimbursed to the council member as actual expenses?

For example, council member X uses 10% of his home for a certain amount of time to study the council agenda. May the city reimburse him for those pro-rated expenses?

d. May annual leave earned at the place of employment (UISD, or wherever for that matter) used by a council member in order to attend to city business, (for example to attend a workshop) be reimbursed to the council member at his actual workplace daily pay rate as an actual expense?

e. And finally, and perhaps more of a permanent resolution to local reimbursement questions, may indeed governing bodies of home rule cities draft and enact their own ordinances setting policies for what is or is not reimbursable as actual expenses as well as set maximum amounts reimbursable per member without violating any state statute or the Texas Constitution?

In summary, with regard to the issues of allowed compensation in questions 1 and 2 above, we seek your assistance and the Attorney General's advice and guidance. We do so also with regard to question 3, however, we realize that the number and kinds of questions concerning what may and what may not be reimbursable expenses may be endless and that these questions may ultimately be the best for the local governing body to decide. And, if indeed this is the best approach, then we shall proceed with preparing such policies; however, we seek your guidance and concurrence on this, as this issue has in fact been an area of past concern to the Attorney General. Essentially we need to be sure before we proceed with such self-governing regulation.

Thank you for your time and consideration in assisting us with these issues. In the event that you or the Attorney General's Office needs clarification of any part of this request, please contact me directly at the above address or at 956-791-7319.

Sincerely,



Jaime L. Flores  
City Attorney