

PHIL KING
State Representative
District 61

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COUNTIES:

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State of Texas
House of Representatives
Austin

Capitol Office:
P.O. Box 2910
Austin, Texas 78768-2910
512-463-0738
Fax: 512-463-5896

District Office:
2110 Fort Worth Highway
Weatherford, Texas 76086
817-596-4796

Fax: 817-596-4760

E-mail: phil.king@house.state.tx.us

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OPINION COMMITTEE

August 21, 2007

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

RQ-0632-GA

FILE # ML-45376-07

I.D. # 045376

Dear General Abbott:

I am requesting your assistance through the issuance of an Attorney General's Opinion concerning the scope of the term "benefits accrued" as used in Article XVI, Section 66, Texas Constitution of 1876, as amended. For the purposes of this request, please assume that the employees at issue are vested participants in a municipal retirement plan subject to this provision.

I was one of the principal sponsors of the legislation (HJR 54) approved by the electors in 2003. The purpose of the measure was to prohibit reduction or impairment of accrued benefits of public servants who had achieved vested status in their respective retirement systems. Prior to the adoption of this measure, Texas was alone among the 50 states of the Union in failing to provide some measure of protection for vested participants in public employee retirement systems from unwarranted impairment or reduction of benefits. Beginning with the case of *City of Dallas v. Trammell*, 101 SW2d 1009 (Tex, 1937), the Supreme Court of Texas held that public pensions, even though a part of the employment contract, were nonetheless subject to reduction even post-retirement. *Trammell* was cited with approval in many cases on the same issue for the next 60 plus years.

I have become aware that the City of Ft. Worth is currently considering an ordinance which would, in my view, constitute precisely the kind of impairment which this constitutional provision was intended to prevent. Specifically, the City is proposing to cap the amount of overtime compensation which can be used in calculating the salary base upon which pension benefits rest. The affected employees have contributed to the retirement fund from all the overtime earned, yet the City proposes to cap the use of that overtime.

This poses several problems, in my view. First, how can employees be required to contribute to the pension fund on money that would not be counted towards the pension benefit? Second, those affected employees are all vested in the plan and the City proposal takes no account of their protected rights to this benefit. Third, the City's primary justification for the

limitation is that it is paying too much overtime. The assignment of overtime and staffing issues are entirely within the City's control. Why should employees be assigned to work overtime, pay the contributions to the pension fund, and then be deprived of the value of those contributions in the calculation of their pension benefits? The limitation in the use of overtime will result in lower benefits to the plan participants. It will also result in the workers who put in the most time on the job receiving relatively lower benefits than their peers, while at the same time, making relatively higher employee contributions. It seems that this is precisely the type of impairment which the Constitution is designed to prevent.

There is no question about the City's ability to limit the use of overtime for non-vested employees or future employees. This inquiry is limited solely to current, vested employees.

In light of the above, I respectfully request an opinion on the following issue:

Does the proposed limitation of the use of overtime in the calculation of retirement benefits for vested employees, who have contributed to the plan on all money earned, and which result in lower retirement benefits, constitute a reduction or impairment of accrued retirement benefits in violation of Article XVI, Section 66 of the Texas Constitution?

Thank you for your prompt attention to this matter.

Respectfully,



Phil King
State Representative