



Robert Scott
Commissioner

December 21, 2007

The Honorable Greg Abbott
Attorney General of Texas
Office of the Attorney General
PO Box 12548
Austin, TX 78711-2548

Re: Request for Opinion Regarding Interpretation of Texas Education Code, Section 21.402

Dear General Abbott:

I am requesting your opinion regarding the following question:

What is the proper construction of the Texas Education Code, Section 21.402, to determine the minimum salary to be used in accordance with the Texas Government Code, Section 825.405, to calculate the required contributions by school districts to the Teacher Retirement System for compensation above the statutory minimum salary?

The Texas Constitution, Article 16, Section 67(b)(1) requires the legislature to "establish by law a Teacher Retirement System of Texas to provide benefits for persons employed by the public schools, colleges, and universities supported wholly or partly by the state." Article 16, Section 76(b)(3) requires the State to contribute an amount to TRS of "not less than six percent and not more than 10 percent of the aggregate compensation paid to individuals participating in the system." Beginning in 1984 and continuing to the present, the legislature has required local school districts to pay into TRS for certain professional employees' compensation that is in excess of the statutory minimum salary. Only districts under 125% of state average tax effort are subject to this requirement, but virtually all districts are within this tax effort range today.

The statutory provision imposing this obligation on local school districts is codified in the Texas Government Code, Section 825.405. In order to implement this requirement, it is necessary to be able to calculate both the statutory minimum salary and the amount of any additional salary paid by a school district. Section 825.404(b) provides the statutory method to make this determination, and reads as follows:

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TEXAS EDUCATION AGENCY

1701 North Congress Ave. ★ Austin, Texas 78701-1494 ★ 512/463-9734 ★ FAX: 512/463-9838 ★ <http://www.tea.state.tx.us>

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OPINION COMMITTEE

FILE # ML-45500-08
I.D. # 045500

"(b) For purposes of this section, the statutory minimum salary is the salary provided by Section 21.402 or the former Sections 16.056 and 16.058, Education Code, multiplied by the cost of education adjustment applicable under Section 42.102, Education Code, to the district in which the member is employed."

Subsections 21.402(a) through (c) generally establish a 21-step minimum salary schedule for classroom teachers, full-time librarians, certified full-time counselors, and full-time school nurses. The 21 steps provide for a monthly salary amount for each year of experience from zero or beginning, to 21 or more years of service. For the 2006-2007 school year, this statutory minimum salary ranged from \$27,320 to \$44,270 for a person on a 10-month employment contract. Subsection 21.402(f) requires that, notwithstanding the 21-step minimum salary schedule, a teacher or librarian who received a career ladder supplement on August 31, 1993, is entitled to at least the same gross monthly salary as the person received in the 1994-1995 school year, as long as the person remains employed by the same school district. None of these provisions is at issue in this request for your opinion.

House Bill 1, passed by the 79th Texas Legislature, Third Called Special Session, in 2006 amended Section 21.402 by adding new Subsections (c-1), (c-2) and (d):

(c-1) Notwithstanding Subsection (a), for the 2006-2007 school year, a classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse is entitled to a monthly salary that is at least equal to the sum of:

(1) the monthly salary the employee would have received for the 2006-2007 school year under the district's salary schedule for the 2005-2006 school year, if that schedule had been in effect for the 2006-2007 school year, including any local supplement and any money representing a career ladder supplement the employee would have received in the 2006-2007 school year; and

(2) \$250.

(c-2) Subsection (c-1) and this subsection expired September 1, 2007.

(d) A classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse employed by a school district in the 2006-2007 school year is, as long as the employee is employed by the same district, entitled to a salary that is at least equal to the salary the employee received for the 2006-2007 school year.

Under this provision, for the 2006-2007 school year, a covered employee on a 10-month employment contract was entitled to a salary at least equal to the sum of what the employee would have made under the school district's 2005-2006 salary schedule carried forward one year, including any local supplement, plus \$2,500.

House Bill 1 also amended Subsection 21.402(d) to establish the minimum salary for the 2007-2008 and subsequent school years. Subsection 21.402(d) sets the minimum salary for covered employees as their entire actual 2006-2007 salaries, as long as the employees remain employed in the same school district. Districts may provide additional compensation to these employees. Also, this provision does not apply to covered personnel who are initially employed by a school district in the 2007-2008 or subsequent school year.

The Teacher Retirement System ("TRS" or "System") does not make an independent determination of the statutory minimum salary in accordance with Section 21.402, but relies on the Texas Education Agency's determination. The Texas Education Agency ("TEA" or "Agency") is responsible for the implementation of Section 21.402. The TEA has developed and made available information for school districts to use to calculate the statutory minimum salary for professional employees covered by Section 21.402 and the districts' required payments to the TRS in accordance with Section 825.405. In general, the TEA has made this calculation based on Section 21.402(a) through (c), including the \$2,500 annual increase. However, the Agency has not interpreted the statutory minimum salary as including local supplements or minimum payments under Section 21.402 (d) as being applicable to the school districts' required payments to the TRS.

The agency's implementation of the 2006 amendments to Section 21.402 duplicates that for a similar pay increase enacted in 1999¹. That amendment provided for a pay increase in virtually identical wording:

(c-1) Notwithstanding Subsection (a), for the 1999-2000 and 2000-2001 school years, a classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse is entitled to a monthly salary that is at least equal to the greater of:

(1) the sum of:

(A) the monthly salary the employee would have received for the 1999-2000 or 2000-2001 school year, as applicable under the district's salary schedule for the 1998-1999 school year, if that schedule had been in effect for the 1999-2000 or 2000-2001

¹ Acts 1999, 76th Leg., R.S., ch. 396 (SB4)

school year, including any local supplement and any money representing a career ladder supplement the employee would have received in the 1999-2000 or 2000-2001 school year; and

(B) \$300; or

(2) the salary to which the employee is entitled under Subsection (a).

(c-2) Subsection (c-1) and this subsection expire September 1, 2001.

(d) A classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse employed by a school district in the 2000-2001 school year is, as long as the employee is employed by the same district, entitled to a salary that is at least equal to the salary the employee received for the 2000-2001 school year.

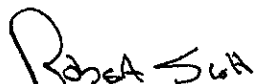
Following the 1999 amendment, school districts also questioned the application of the amendment to the minimum salary as that term is used in Section 825.404 of the Government Code. The sponsors of the 1999 legislation provided TRS and the Agency with the letter attached as Exhibit "A". The agency has implemented the 2006 amendment in the same manner, assuming the Legislature to be aware of that understanding of the language used in 1999 to amend Section 21.402 of the Education Code.

The TRS has notified me that some school districts have taken the position that the Agency's calculation of the minimum salary under Section 21.402, as used to determine the districts' payments to the System, is incorrect. In particular, these districts believe that all of Section 21.402, including Subsections (c-1) and (d) apply to this calculation. Including Subsections (c-1) and (d) in this calculation would increase the portion of the total compensation for employees covered by Section 21.402 that is regarded as state required minimum salary, and would reduce the portion of total compensation that is regarded as supplementation by the local school districts. In essence, the districts' position is that Subsection (c-1) made the entire 2005-2006 compensation part of the state minimum salary for 2006-2007, and that Subsection (d) makes the entire 2006-2007 compensation part of the state minimum salary for 2007-2008 and subsequent school years, if the person remains employed by the same school district.

Resolving this issue regarding the interpretation of Section 21.402 is necessary to calculate the State's and the local school districts' payments to TRS in accordance with Section 825.405. The TEA estimates that the difference between its interpretation of Section 21.402 and the interpretation being urged by some school districts could be in excess of \$100 million per school year of contributions to the TRS.

We appreciate your attention to and assistance with this request for your opinion. This issue is of great importance to school districts and the Teacher Retirement System. Please expedite your review as much as possible. If we may provide any clarification or assistance, please contact me or David Anderson, General Counsel.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert Scott". The signature is written in a cursive style with a large initial "R".

Mr. Robert Scott
Texas Commissioner of Education

Cc: Ronnie Jung
TRS Executive Director

David Thompson
Bracewell & Giuliani

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August 12, 1999

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 Charles L. Dunlap, Executive Director
 Teacher Retirement System of Texas
 1000 Red River
 Austin, Texas 78701

 Office of
 Executive Director

Dear Mr. Dunlap:

A question has been raised regarding the responsibility for the Teacher Retirement System (TRS) contribution for local salary supplements and steps for certain school district personnel. We appreciate the opportunity to clarify these matters for you.

As you are aware, Section 825.405, Texas Government Code ("TGC"), requires local school districts to pay the TRS contribution on that portion of an employee's salary that exceeds the statutory minimum under Section 21.402, Texas Education Code ("TEC"). As you are also aware, Senate Bill 4, 76th Legislative Session, revised Section 21.402 to, *inter alia*, add school nurses and counselors to the minimum salary schedule and to provide all personnel covered by the minimum salary schedule with a \$3000 pay raise.

We have been informed that several representatives from local school districts have raised the somewhat creative argument that, because new TEC § 21.402 (c-1) requires school districts to pay the local supplement plus the \$3000 raise, the local supplement (or step raise), should be considered part of the minimum salary for the purposes of TGC § 825.405. The state, therefore, should pick up the TRS contribution on these supplements or steps.

This position is without merit for several reasons. First, TGC § 825.405 specifically uses the term minimum salary. The only time that term is used in TEC § 21.402 is in subsection (a) in relation to the permanent formula factors. Secondly, because TEC § 21.402 (c-1) is a temporary provision (*see* TEC §

21.402(c-2)), it is clearly not intended to be included in calculating the state's TRS obligation. If such were the case, the state would only be responsible for the local supplement for the next two school years.

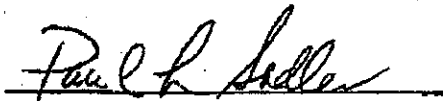
Even assuming that these statutory provisions may be subject to differing interpretations, there was no legislative intent for the state to become responsible for these local supplements and steps, especially for only a limited two-year period. At no time during the Senate Bill 4 process or the discussions surrounding the Appropriations bill was this scenario contemplated. This was no oversight. Literally dozens of cost estimates were prepared by the staff of the Legislative Budget Board concerning the state and local cost of the various proposed education bills and versions of Senate Bill 4. In every case, and at all times during this process, we were fully aware that certain state actions could result in an additional TRS obligation for the state. Had we intended for the state to pick up the additional TRS cost of the local supplements and steps, we would have built such a cost into our estimates, as well as into the final bill. Indeed, we did budget for an additional \$90 million TRS state obligation brought on by the \$3000 pay raise.

We hope this clarifies the issue for you. If you have any additional questions, please feel free to contact us.

Sincerely,



State Senator Teel Bivins
Chair, Senate Education Committee



Representative Paul Sadler
Chair, House Public Ed. Committee

cc: Bush, Perry, Laney, Ratliff,
Junell, James H. Simms (TRS Chair), Chase Untermeyer(SBOE Chair), Mike
Moses