



**THE TEXAS A&M UNIVERSITY SYSTEM**  
Office of General Counsel

May 7, 2008

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

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**OPINION COMMITTEE**

FILE # ML-45674-08  
I.D. # 45674

Re: Request for Opinion  
Interpretation of entitlement to state contributions

**RQ-0712-GA**

Dear Attorney General Abbott:

The purpose of this correspondence is to request an opinion on behalf of The Texas A&M University System ("TAMUS"). An opinion is sought regarding the following question:

- (1) Is an individual who is both a retired state employee and an active state employee for a different state agency governed by the provisions of Chapter 667, *Texas Government Code*?
- (2) If the answer to the above question is no, and the individual is qualified for participation eligibility in the Texas Employees Group Benefits Program both under Sections 1551.101 and 1551.102, *Texas Insurance Code*, is that individual entitled to receive the state contribution as an active employee as well as a retiree?

**Statement of Facts**

The Texas A&M University System is an agency of the State of Texas. It is composed of nine universities, seven agencies, and a Health Science Center (hereafter jointly referred to as "members").

A former employee of one of the System members, Texas Agriculture Extension Service (now known as Texas AgriLife Extension Service) retired in approximately 1999. Subsequently, he went to work for the Texas Department of Criminal Justice ("TDCJ"). He currently receives the state contribution for Texas Employees Group Benefit Program participation from TDCJ, but not from TAMUS. TAMUS also currently has employees who are ERS retirees and TRS active employees, who have been denied their retiree state contribution based on Chapter 667, *Texas Government Code*.

**Applicable Law**

Texas Government Code, 667.001(a) states: 'this chapter applies to a person who is or may become employed by more than one state agency or institution of higher education.'

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667.001(b) discusses persons who are "employed." No clarity is given as to whether this applies only to active employees, or whether retirees are included in this definition as well. Later, in Section 667.005, it states "The total state contribution toward *the person's* group insurance is limited to the amount specified in the General Appropriations Act for a full-time active employee" (emphasis added). The use of "the person's" appears as though it could be broader than active employee. It is not clear whether, for example, a retiree who works part time in one position, would then be allowed to add to the retirement contribution the state contribution for active employment to get to the maximum contribution allowed by this section. If this were acceptable, it seems that receiving both state contributions is not prohibited, and is covered by this chapter of the Government Code.

In the event that Chapter 667 does not apply to retirees, we next turn to Chapter 1551, *Texas Insurance Code*. The discussed individual currently participates in the group benefit program, in accordance with his eligibility established in Section 1551.101(b). However, he is also qualified to participate as an annuitant under Section 1551.102, which defines the terms under which someone is eligible to participate during retirement. Section 1551.103 states "an individual eligible to participate in the group benefits program under Section 1551.101 or 1551.102 may not be denied *any* group coverage under this chapter" (emphasis added). Does this include an individual who is eligible to participate under both referenced sections? It appears as though "any" group coverage would include the state contribution as an active employee as well as a retiree. The law specific to waiver (Section 1551.1045) does not state that an individual must waive his or her entitlement to benefits or the state contribution, only that it may be waived. We find no other statutory indication that an individual who is eligible for state contributions as both an active employee and a retiree should be denied both contributions.

The Employee Retirement System ("ERS") website makes only one mention of choosing between coverage as an active employee or as a retiree, but further review of the material suggests that the discussion is related only to those who retire from ERS or another system like Teacher Retirement System ("TRS"). A flyer on "Retirees Who Return to Work" is also available for affected individuals. The closest indication it gives is on page 2, where it states "All benefits you elect will be as an active employee. In other words, you may not keep your health coverage as a retiree and enroll in optional coverage as an active employee." This still has no discussion specific to state contribution entitlement. Therefore, it provides little assistance in this matter.

### Summary

It appears as though Chapter 667 was not intended to address active employees and retirees, but it is not completely clear. It is also being relied upon as the basis on which to deny the state contribution to retirees who return to work for a different state agency. Therefore, we seek an opinion on the meaning of the Chapter. Further, the statutes do not clearly provide that an individual is not eligible to receive his or her state contribution, both as an active employee and as a retiree. Similarly, no statute indicates that an individual is entitled to both. We seek clarification on this issue.

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Thank you in advance for your time and consideration of this matter. Should you require additional information to make a determination, please do not hesitate to contact me.

Sincerely,



Scott Kelly  
Deputy General Counsel

SK:KBR

cc: Dr. Mike McKinney, Chancellor  
Mr. Jay Kimbrough, Deputy Chancellor and General Counsel