



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 15, 1994

Mr. William L. Cunningham  
Chair, Board of Regents  
Texas State University System  
333 Guadalupe, Tower III, Suite 810  
Austin, Texas 78701-3942

Letter Opinion No. 94-093

Re: Whether the Teacher Retirement System of Texas must credit a Southwest Texas State University faculty member for a mid-year salary increase (ID# 27765)

Dear Chairman Cunningham:

On behalf of the Texas State University System (the "system"), you ask whether the Teacher Retirement System of Texas ("TRS") must credit a Southwest Texas State University faculty member for a mid-year salary increase. You explain that in November 1992, the board of regents of the Texas State University System (the "board") approved a budget that gave faculty at Southwest Texas State University a three percent salary increase, effective January 1, 1992. TRS has refused to credit a retired faculty member with the three percent increase, citing Attorney General Opinion MW-68 (1979).

Section 822.201 of the Government Code describes the compensation which is subject to report and deduction for member contributions and to credit in benefit computations by TRS. Such compensation generally includes all salary and wages but excludes

expense payments, allowances, payments for unused vacation or sick leave, maintenance or other nonmonetary compensation, fringe benefits, deferred compensation . . . , [and] *compensation that is not made pursuant to a valid employment agreement.*

Gov't Code § 822.201(c) (emphasis added). Apparently, TRS concluded that some of the compensation that the faculty member earned pursuant to the three percent increase was not made pursuant to a valid employment agreement.

Section 44 of article III of the Texas Constitution provides that the legislature shall not grant extra compensation to any "officer, agent, servant or public contractors, after such public service shall have been performed or contract entered into." Section 53 of article III contains a similar prohibition: "The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into, and performed in whole or in part." Tex. Const. art. III, § 53.

In Attorney General Opinion MW-68, this office considered whether article III, section 53 prohibits a school district from making salary increases after the commencement of the school year and start date of the teachers' yearly contracts. The teachers had already rendered services under the yearly contracts. Attorney General Opinion MW-68, at 1. This office stated, "It is clear that additional compensation may not be paid for past services rendered," and went on to consider whether the school district had the authority to give teachers a salary increase for the remaining portion of the school year for which they were under contract at a lower salary. *Id.* This office concluded that "[I]n the absence of additional consideration, the school district may not increase a teacher's annual compensation under the contract once part performance has been rendered. The school board may, however, renegotiate a contract already performed in part where new consideration passes to the district in exchange for new benefits provided." *Id.* at 2.

Based on the facts asserted in your letter and letters we received from TRS, it appears that the faculty member at issue had a contract for the 1991-92 academic year that commenced on September 1, 1991, and ended on May 31, 1992. The board approved the three percent increase in November 1992 -- five months after the contract had been completed and performed in whole. The three percent increase for the period from January 1, 1992, to May 31, 1992, was clearly retroactive and beyond the board's authority under section 44 of article III of the Texas Constitution.<sup>1</sup> The system's contention that "[n]ew consideration passed to the university in exchange for the benefits it provided its teachers," is belied by the fact that the faculty member's 1991-92 academic year contract was completely performed five months prior to November 1992 when the board approved the three percent salary increase. Its contention that the three percent increase served a public purpose confuses the standards applicable under section 52 of article III with the standards applicable under sections 44 and 53. Section 822.201 of the Government Code permits TRS to exclude the compensation attributable to such an increase from a member's salary and wages when computing benefits.

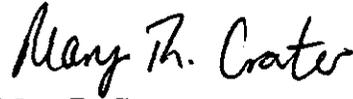
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<sup>1</sup>You do not appear to ask about the effect of the three percent increase on the faculty member's TRS credit for benefits for compensation under her summer 1992 or 1992-93 academic year contracts. We note that the board was not precluded under section 44 of article III from increasing the faculty member's salary for the 1992-93 academic year prospectively provided that new consideration passed to the system in exchange for the salary increase. *See* Attorney General Opinion MW-68, at 2.

**S U M M A R Y**

A three percent salary increase awarded five months after a contract has been completed and performed in whole is clearly retroactive and in violation of section 44 of article III of the Texas Constitution. Section 822.201 of the Government Code permits the Teacher Retirement System of Texas to exclude the compensation attributable to such an increase from a member's salary and wages when computing benefits.

Yours very truly,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter  
Assistant Attorney General  
Opinion Committee