



TEXAS
WORKERS' COMPENSATION COMMISSION
SOUTHFIELD BUILDING, MS-4D, 4000 SOUTH IH-35, AUSTIN, TEXAS 78704
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Opinion Committee

April 27, 1993

MBJ

RQ-00533-DM

~~FILE #~~

I.D.# 20031

RQ-533

The Honorable Dan Morales
Attorney General
Price Daniel, Sr. Building
209 West 14th Street
Austin, Texas 78701

Dear General Morales:

I am writing to request an opinion regarding whether a political subdivision is required to pay death benefits to the Subsequent Injury Fund.

Art. 8308-2.14 establishes the Subsequent Injury Fund (SIF) and makes it liable for the payment of workers' compensation benefits to injured employees who meet certain criteria. The funding of the SIF is governed by Art. 8308-2.26 which requires insurance carriers to pay 364 weeks of death benefits to the SIF if a compensable death occurs and no beneficiaries eligible to receive death benefits exist or no claim for death benefits is made. The term "insurance carrier" is defined in Art. 8308-1.03(28) to include "... a governmental entity that self-insures, either individually or collectively."

Art. 8309h is the law governing workers' compensation insurance for employees of political subdivisions. §3(a) of that article adopts certain provisions of the Texas Workers' Compensation Act (Art. 8308-1.01 et seq) and applies them to political subdivisions. Among the provisions adopted by §3(a) is Art. 8308-2.26 and, as a result, if an employee of a political subdivision dies from a compensable injury and no eligible beneficiaries exist or no claim for death benefits is made, the political subdivision is required by law to pay 364 weeks of death benefits to the SIF.

The Texas Municipal League (TML) asserts that the legislature did not have the authority to adopt Art. 8308-2.26 as a part of Art. 8309h because Art. III, §52 of the Texas Constitution prohibits the legislature from authorizing:

... any county, city, town, or other political corporation or subdivision ... to lend its credit or grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever ...

In support of its position, the TML notes that two constitutional amendments were required in order to enable political subdivisions

to provide workers' compensation insurance for their employees. Those amendments are found in found in Art. III, §§60 and 61. The first amendment, §60, was adopted in 1948 and applies to counties and other political subdivisions. It states:

The Legislature shall have the power to pass such laws as may be necessary to enable all counties and other political subdivisions of this State to *provide Workman's Compensation Insurance*, including the right to provide its own insurance risk for all employees of the county or political subdivision as in its judgment is necessary or required ... (Italics added).

The second amendment, §61, was adopted in 1952 and applies to municipalities. It states:

The Legislature shall have the power to enact laws to enable cities, towns, and villages of this State to *provide Workmen's Compensation Insurance*, including the right to provide their own insurance risk for all employees ... (Italics added).

The basic thrust of the TML argument is that Art. III, §§ 52, 60, and 61 allow political subdivisions to provide workers' compensation coverage solely for the benefit of their employees and that payments of workers' compensation death benefits to the SIF do not qualify as such.

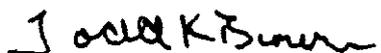
The Commission believes the argument made by TML is incorrect. As the italicized language above indicates, the constitutional amendments authorize political subdivisions to provide workers' compensation insurance coverage for their employees. One part of providing such coverage is making death benefit payments to the SIF in appropriate cases. The amendments do not indicate any intent that the provision of such coverage is limited solely to making payments for the benefit of employees of political subdivisions. The Commission would also note in support of this position that political subdivisions currently make death benefit payments to eligible beneficiaries when a compensable death occurs. These payments do not meet the standard proposed by the TML because the payments are made for the benefit of persons other than the employee. Thus, if Art. III, §§60 and 61 of the Constitution intended to limit workers' compensation payments made by political subdivisions solely to those which benefit their employees, political subdivisions would be prevented from making death benefit payments to the beneficiaries of deceased employees.

It is also important to be aware that the SIF currently pays out money in two instances. First, when an employee is injured and meets certain requirements, the SIF pays income benefits to the employee. (Art. 8308-4.47) Second, when benefit payments are made pursuant to certain Commission orders and are subsequently reversed, the SIF will reimburse to an insurance carrier the amount of money ordered to be paid. The TML makes no argument that its members or their employees are not entitled to receive payments from the SIF and, in fact, is currently involved in litigation with the Commission because the TML is seeking reimbursement from the

SIF in instances other than those which the law provides. It seems unlikely that the intent of Art. III, §§ 60 and 61 is to allow political subdivisions to reap benefits from the SIF without requiring those same political subdivisions to bear their share of the funding of the SIF. In short, the Commission believes that political subdivisions, like all other insurance carriers, are required to pay death benefits into the SIF in appropriate cases. However, if you believe political subdivisions are not obligated to pay into the Fund, please also advise us of whether they may obtain reimbursement from the Fund.

If you have any questions or need additional information, please contact Claudia Nadig, Assistant General Counsel, at the address above or at 440-3969.

Sincerely,


Todd K. Brown
Executive Director

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