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March 8, 2000

The Honorable John Cornyn
Attorney General of Texas
Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0203-JC
FILE # M1-41316-00
I.D. # 41316

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OPINION COMMITTEE

Dear General Cornyn:

I am writing to request an Attorney General's Opinion under authority of Texas Gov't Code Ann. §402.042(b)(2).

Tex. Gov't Code Ann. Section 659.0115 provides as follows:

- (a) A state agency that reemploys a retired agency employee to perform services substantially similar to the services the retiree performed for the agency during the last 12 months of service before retirement may not pay the retiree a salary at an annualized rate that exceeds the lesser of:
- (1) the rate of compensation the retiree received from the state during the last 12 months of service before retirement; or
 - (2) \$60,000.
- (b) The salary limitation provided by Subsection (a) does not apply to a retiree's first six months of reemployment after retirement, except that if a retiree is reemployed for more than six months after retirement, the limitation applies to the entire period of reemployment.

A situation has arisen where a reemployed retiree spent the last 12 months of his tenure with TDH before retirement performing two separate and distinct special assignments. Specifically, during his last year of service with TDH before retirement, the employee worked for six months as the director of the department's Texas Integrated Eligibility System (TIES) and for the last six months as Division Director for the Women, Infants and Children (WIC) Vendor Operations Division.

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He was recently reemployed by TDH to perform substantially similar duties to those performed during his last six months of employment.

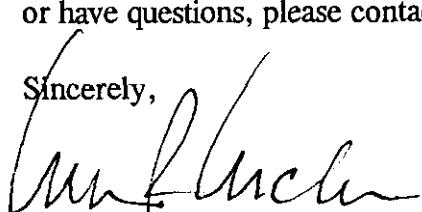
The reemployed retiree has also submitted employment applications for several vacancies within TDH that pay greater than a \$60,000 annual salary. The reemployed retiree is currently doing an exemplary job as Division Director of the WIC Vendor Operations Division. The employee has expressed a desire to remain employed in that capacity, but not if his salary is to be capped to comply with the provisions of Section 659.0115(a).

QUESTIONS:

- (1) For purposes of imposing the annual salary limitation, should the word "during" in Section 659.0115(a) be interpreted to mean that the employee must have been performing substantially similar duties for the entire 12 months before retirement or must have been performing substantially similar duties at any time during the last 12 months before retirement?
- (2) Given the restrictions of Section 659.0115(a), must this reemployed retiree's salary be capped if he continues performing his present duties in WIC for more than six months from reemployment?
- (3) If you are of the opinion that Section 659.0115(a) must be interpreted as applying to substantially similar duties performed at any time in the last 12 months before retirement, then would this reemployee retiree's salary remain capped if he is selected for and accepts a different position within TDH prior to the expiration of his first six months of reemployment?
- (4) If the reemployed retiree is selected for and accepts one of the other positions that he has applied for, could he continue on the payroll at his (uncapped) pre-retirement rate of compensation, which exceeds the \$60,000 limitation in Section 659.0115(a), or must he have a break in service before being eligible to return to employment with substantially different duties from those performed during his last six months before retirement?

Your consideration of this request will be greatly appreciated. If you need additional information or have questions, please contact the assigned staff attorney, Don R. Bradley at (512) 458-7236.

Sincerely,



William R. Archer III, M.D.
Commissioner of Health