

RQ-0397-JC



Susan D. Reed
Criminal District Attorney
Bexar County, Texas

RECEIVED
JUN 27 2001
OPINION COMMITTEE

June 25, 2001

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

FILE # ML-42050-01
I.D. # 42050

Re: Request for an opinion relating to a County's obligations for longevity pay supplements to assistant prosecutors under HB 178.

Dear Attorney General Cornyn:

Recently Governor Perry signed into law HB 178; it takes effect on January 1, 2002. This bill amends Chapter 41 of the Government Code by adding subchapter D which mandates longevity pay for assistant prosecutors in the state who have accrued at least four years of lifetime service credit. We have several legal questions relating to a proper interpretation of the language in the bill:

1. What is a county's legal obligation to pay a longevity supplement if there are insufficient appropriations by the legislature to reimburse a county for amounts expended?
2. If a county currently provides for longevity pay to employees, can they credit such payments toward any longevity pay required under HB 178?
3. Do the first four years of a prosecutor's service count in the calculation of longevity pay?

Brief

HB 178 does not appear to make a county's obligation to pay a longevity supplement contingent on reimbursement from the state. The statute provides at Sec. 41.255 (a) that "the county **shall** pay a longevity pay supplement under this subchapter out of the county general fund [emphasis added]." While the state is obligated to reimburse a county for amounts expended for longevity pay supplements under Sec. 41.255 (d), the legislature appears to have appropriated insufficient funds to make a full reimbursement statewide. The fiscal note accompanying the bill estimates the cost to the state would be \$131,200 for fiscal year 2002, and \$196,800 for each year thereafter, but our estimate of the fiscal impact on Bexar County alone indicate that we will be required to pay approximately \$135,000 in a full fiscal year based upon the number of prosecutors

currently eligible. Regardless of whether the legislature sufficiently funded the reimbursement program, HB 178 appears to be a partially unfunded mandate to counties. Generally the state has no legal obligation to pay more than has been appropriated by the legislature. See Mutchler v. Texas Department of Public Safety, 681 S.W.2d 282 (Tex.App.3 Dist. 1984).

Our next question is whether a county can credit any longevity pay it currently provides to employees toward longevity payments to prosecutors required under HB 178. Our only hesitation in assuming an affirmative answer to this question is that Sec. 41.255 (b) of the statute states “the county may not reduce the salary of the assistant prosecutor to offset the longevity pay supplement.” While there is no current provision in the state statutes for longevity pay for county employees, the Bexar County Commissioners Court has authorized a longevity pay supplement as part of its employee pay plan for all Bexar County employees, including assistant criminal district attorneys. Since this is a longevity supplement based upon years in service to the County, it appears that Bexar County should be able to credit itself for any longevity payments required for prosecutors under HB 178 without violating the Sec. 41.255 (b) offset prohibition.

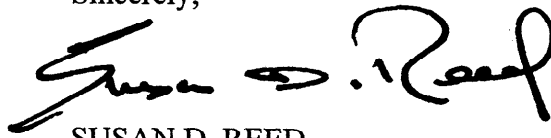
Our final question is whether the first four years of a prosecutor’s service count in the calculation of longevity pay. HB178 states that the monthly increase in a prosecutor’s salary for longevity pay “**is effective** beginning with the month following the month in which the fourth year of lifetime service credit is accrued [emphasis added].” See Sec. 41.253 (b). The provision of the bill immediately preceding this one states at Sec. 41.253 (a) that “the monthly amount of longevity is \$20 for each year of lifetime service credit.” If the first four years of service credit are counted in the calculation, a prosecutor gets an \$80 supplement beginning in the month following the month in which the fourth year of his lifetime service credit is accrued. But if the first four years are not counted in the calculation, then the prosecutor doesn’t earn a \$20 monthly supplement until the month following the month in which the fifth year of his lifetime service credit is accrued. A prosecutor can’t receive the supplement until after the fifth year, in this scenario, because he needs to earn a year of lifetime service credit before he can receive any longevity supplement. The fiscal note accompanying this legislation is confusing on the issue. (See attached fiscal note). The last paragraph of the fiscal note contains the following conclusion:

Based on the information obtained from the TDCAA **and assuming four years of credit**, the costs to the state would be \$131,200 for the fiscal year 2002 [emphasis added].

As stated previously, our analysis of the real cost to counties indicates that the estimate of cost to the state to reimburse counties is too low. If the first four years of a prosecutor’s service do not count in the calculation of longevity pay, this may account for the underestimate. In addition, the assumption of four years credit is confusing. It appears this language in the fiscal note evidences an intent to exclude the first four years in the calculation.

Your help in assisting us with these questions to HB 178 is greatly appreciated. Please do not hesitate to call me if you should need any clarification regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan D. Reed". The signature is written in a cursive style with a large, looped "R" at the end.

SUSAN D. REED



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GW TEXT VIEWER Monday June 18, 2001

HELP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 77th Regular Session

May 3, 2001

TO: Honorable Royce West, Chair, Senate Committee on Jurisprudence

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB178 by Luna, Vilma (Relating to longevity pay for certain assistant prosecutors.), As Engrossed

* Estimated Two-year Net Impact to General Revenue Related Funds for *
 * HB178, As Engrossed: negative impact of \$(328,000) through the *
 * biennium ending August 31, 2003. *
 * *
 * The bill would make no appropriation but could provide the legal *
 * basis for an appropriation of funds to implement the provisions of *
 * the bill. *

General Revenue-Related Funds, Five-Year Impact:

* Fiscal Year	Probable Net Positive/(Negative)	*
* Impact to General Revenue Related		*
* Funds		*
* 2002	\$ (131,200)	*
* 2003	(196,800)	*
* 2004	(196,800)	*
* 2005	(196,800)	*
* 2006	(196,800)	*

All Funds, Five-Year Impact:.

* Fiscal Year	Probable Savings/(Cost) from	*
* General Revenue Fund		*
* 0001		*
* 2002	\$ (131,200)	*
* 2003	(196,800)	*
* 2004	(196,800)	*

*	2005	(196,800) *
*	2006	(196,800) *

Fiscal Analysis

The bill would entitle certain assistant prosecutors to a monthly longevity payment of \$20 for each year of lifetime service credit up to an annual limit of \$5,000. The payment would begin in the month following the fourth year that the service credit is accrued. The counties would pay out of their general funds and then be reimbursed by the state for amounts expended for longevity pay supplements. The bill would take effect January 1, 2002.

Methodology,

There is no current provision in the statutes for longevity pay for assistant prosecutors. The Texas District and County Attorneys Association (TDCAA) provided information to develop the cost estimates. There are currently 1,639 assistant prosecutors throughout Texas. Based on an analysis of House Bill 3563, Seventy-sixth Legislature, approximately one-half of the prosecutors have over four years of service. A current analysis yielded approximately the same number of prosecutors with over four years of credit.

Based on the information obtained from the TDCAA and assuming four years of credit, the costs to the state would be \$131,200 for fiscal year 2002. For each year thereafter, the estimated costs would be \$196,800 per year. Similar fiscal implications would occur each year for as long as the provisions of the bill remain in effect.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts
LBB Staff: JK, TB, DB