



Texas Rehabilitation Commission

" A Human Energy Agency "

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OPINION COMMITTEE

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October 3, 2003

FILE # ML-43285-03
I.D. # 43285

VERNON "MAX" ARRELL
Commissioner

RQ-0114-GA

The Honorable Greg Abbott
Attorney General of the State of Texas
209 West 14th Street, 8th Floor
Price Daniel Building
Austin, Texas 78701

Re: *Request for Opinion – State Employee Payment of Benefit Replacement Pay Paid in Error*

Dear General Abbott:

The Texas Rehabilitation Commission requests your opinion on whether TRC must seek reimbursement from current and/or former state employees who erroneously received benefit replacement pay (BRP). This overpayment was solely the fault of TRC. If TRC is required to seek reimbursement from either the current or former employees, is reporting the overpayments to the comptroller sufficient to satisfy TRC's burden? Additionally, must TRC seek to recoup overpayments from both current and former employees?

From 1996 to May 15, 2003, TRC erroneously paid benefit replacement pay to twelve employees who were not eligible for the BRP. This overpayment was the result of a coding error made by TRC. None of the employees was in any way at fault or responsible for the overpayment. Seven of these employees are still employed by TRC; the other five are no longer with the agency. It is unknown if they are employed by the State of Texas.

Chapter 666 of the Texas Government Code addresses recovery of excess compensation paid to state employees. Benefit replacement pay is included in the definition of compensation. The language used in this chapter is permissive, seemingly allowing the state agency or the comptroller to recover excess compensation, but not requiring either to do so. For example, section 666.002(a) states that "[a] state agency *may* recover in accordance with this chapter the amount of a state employee's indebtedness to the agency...." (emphasis added). Section 666.002(b) uses virtually the same language, but allows the comptroller to recover the excess payment, albeit under different circumstances.

In cases where the comptroller is designated to recover the excess payment under section 666.002(b), the state agency is required to provide notice to the employee under section 666.003. This notice alerts the employee to the amount of the overpayment and states when the repayment of the funds must be



The Honorable Greg Abbott
Attorney General of the State of Texas
October 3, 2003
Page Two

made among other things. This notice must be given to the employee prior to the agency referring the action to the comptroller. Tex. Govt Code §666.005.

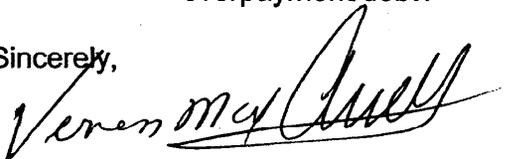
Chapter 666 of the Government Code appears to conflict with Section 403.055(f) which requires that "a state agency shall report to the comptroller each person who is indebted to the state...." Clearly, the language in 403.055(f) mandates that the state agency report those who are indebted to the state to the comptroller. Section 403.055(f) conflicts with Chapter 666, the language in the former being mandatory while the language in the latter is permissive.

The overpayment occurred solely as a result of a coding error at TRC, and through no fault of the individual employees. Under these circumstances, TRC feels that it should bear the cost of this error and not the employees. If, however, TRC is required to report this to the comptroller, what are TRC's obligations with respect to past employees? Chapter 666 seems to address only current employees. Also, is TRC required to give notice to the employees that recoupment is being sought or is this only necessary if TRC decides to refer the obligation to the comptroller?

Because of this ambiguity, TRC is requesting your opinion on whether the Texas Rehabilitation Commission must attempt to recover the amount overpaid to these current and former employees. For your convenience, these are the questions presented by TRC:

1. Must TRC seek to recover the above-referenced overpayments from both current and former employees?
2. If TRC is required to seek reimbursement from either the current or former employees, is reporting the overpayments to the comptroller sufficient to satisfy TRC's legal obligation?
3. If TRC is required to report this to the comptroller, what are TRC's obligations with respect to past employees? (Chapter 666 only appears to address current employees.)
4. Is TRC required to give notice to the employees that recoupment is being sought or is this only necessary if TRC decides to refer the obligation to the comptroller?
5. Are any of the debts barred by the applicable statute of limitations?
6. As this was TRC's error, does TRC have administrative discretion to waive the overpayment/debt?

Sincerely,



Vernon M. Arrell
Commissioner

CEL/dj