



TEXAS EDUCATION AGENCY

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OPINION COMMITTEE

The Honorable Greg Abbott
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-43387

I.D. # 43387

Re: Opinion Request on Monetary Awards to Teachers

Dear General Abbott:

I am writing to ask your opinion regarding monetary awards to teachers under section 28.053 of the Texas Education Code (hereafter "Section 28.053") and Article III, Section 52 of the Texas Constitution (hereafter "Section 52").

As you know, Section 52(a) provides:

(a) Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company. However, this section does not prohibit the use of public funds or credit for the payment of premiums on nonassessable property and casualty, life, health, or accident insurance policies and annuity contracts issued by a mutual insurance company authorized to do business in this State.

Your office held in MW-68 (1979) that a school district may not authorize "supplemental compensation" for teachers beyond the salary contracted for, unless the district receives additional consideration. That opinion has been understood to prohibit payment of a "bonus" in addition to the salary to which a teacher is entitled under an employment contract. The principle set out in MW-68 appears to have been consistently followed¹. We have understood, however, that school districts can structure incentive payments for teachers as part of the compensation bargained for when the employment contract is entered into².

¹ E.g., Texas Attorney General Opinions JM-1113 (1989), county may not make retroactive pay raise; LO 93-57 (1993), commissioner's court may not award additional compensation for services already rendered; LO94-067 (1994), appraisal district may not award bonuses unless provided for as part of compensation agreement before services are rendered; JC-297 (2000), county may not pay insurance premiums for retirees as "unbargained-for, retroactive compensation"; JC-376 (2001), county may not pay retroactive increase for services already rendered; JC-370 (2001), county may not pay accrued vacation or compensatory time when such payments were not permitted at the time of accrual.

² For example, the agency has advised districts that additional payments conditioned on a particular level of student achievement satisfy Section 52 if they are prospectively agreed to at the time the contract is formed.

Section 28.053 creates an Advanced Placement Incentive Program that awards funds to public schools based on student participation in advanced placement ("AP") courses and scores on college AP tests. Funds are awarded to schools on a formula set out in subsection (a) and required to be used in a manner determined by a local "campus team". Although the campus teams are not required to use AP Incentive funds to make monetary awards to teachers, subsection (c) provides that "[n]othing in this section limits the authority of the team to direct expenditure of funds...for awards to individual teachers participating in the program." Subsections (d)(2) and (3) additionally provide that a teacher participating in the program may receive "a one-time award of \$250" for teaching certain AP courses, or "a share of the teacher bonus pool, which shall be distributed by the teacher's school in shares proportional to the number of courses taught."

Teachers employed by Texas school districts generally have employment contracts that run at least through the school year³. Although contracts vary from district to district, it is unusual for a teacher's contract to specify an entitlement to a particular teaching assignment. However, the laws that exist at the time and place a contract is signed are incorporated into the contract. *Cent. Educ. Agency v. George West Indep. Sch. Dist.*, 783 S.W.2d 200-201 (Tex. 1989).

We understand the recent amendment to Section 28.053 to empower each campus team to determine how AP Incentive Program funds are to be used at the campus. While the campus team is not required to under that section it could make monetary awards to teachers, either by using the formulas in subsection (d), or by some other method. The potential for a teacher to receive an award of state funds in excess of the salary contracted for raises the following questions in light of MW-68:

1. May a teacher be paid any additional amounts as determined by the campus team in its discretion under Section 28.053, if those amounts are in addition to the compensation for which the teacher has contracted?
2. May a district pay an amount to a teacher in addition to the compensation for which the teacher has contracted using the statutory methodology in Subsection 28.053(d), by virtue of the employment contract implicitly incorporating that provision?
3. May a district prospectively incorporate into its employment contract the receipt of additional compensation, contingent upon an award by the campus team?

Thank you for your attention to this request. Should you need any additional information, please contact David Anderson, General Counsel, at (512) 463-9720.

Sincerely,



Robert Scott
Chief Deputy Commissioner

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³ See generally, Subchapters A, C, D and E, Chapter 21, Texas Education Code. Contract terms may be multi-year and in the case of continuing contracts under Subchapter D are indefinite in term.