

PHIL KING
State Representative
District 61

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RQ-0183-GA

February 8, 2004

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

FILE # ML-43498-04

I.D. # 43498

Re: Request for Opinion Regarding Article XVI, Section 66, Texas Constitution

Dear General Abbott,

During the 78th Legislature I authored HJR 54, a constitutional amendment which protects certain benefits in public retirement systems. The HJR was passed by the Legislature and was overwhelmingly approved by the voters. A question has arisen on the amendment, now codified as Art. XVI, Sec. 66, Tex. Const., regarding its effect on disability benefits paid to employees forced to retire due to an on-the-job injury.

Certain public retirement systems within the State of Texas mandate medical retirement when injuries incurred in the course and scope of employment render an employee incapable of performing as required. For example, I was recently contacted by a medically retired municipal police officer. After one year of disability income from a line of duty injury he was forced to accept medical retirement or be terminated. The former officer is not prohibited by the terms of his retirement from engaging in post-retirement employment. However, compensation for such employment is charged against his retirement income. The net effect is that the former officer works for no compensation until such time as his new employment income matches his retirement income. This is obviously a disincentive to seek post-retirement employment. As I understand such income restrictions are common to most public retirement systems.

It has been suggested that HJR 54 prohibits a reduction of benefits such as encountered by this former police officer. This was clearly not the intent of the legislation but may be a consequence. I request your opinion as to the effect of Article XVI, Section 66, Texas Constitution upon medical and disability retirement benefits where the retirement was the result of an on-the-job-injury. Please note that specific statutory benefits are mandated for certain police officers and firefighters.

As always, I appreciate your time and attention to this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Phil King".

Phil King
State Representative