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APR 28 2005

OPINION COMMITTEE

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Norma Chávez

FILE # ML-44199-05

I.D. # 044199

April 25, 2005

The Honorable Greg Abbott
Texas Attorney General
209 West 14th St.
Austin, TX 78711-2548

RQ-0339-GA

RE: Retroactive pay for municipal employees

Dear Attorney General Abbott:

I respectfully request an Attorney General's Opinion on the following issue. The Socorro Civil Service Commission held a meeting on February 21, 2005 where they considered the evaluation and pay rate adjustment for municipal employees. As part of the discussion, consideration was given to retroactive pay rate increases to the employees from the date of their last evaluation. The City Attorney advised the Commission and Council that granting of retroactive pay rate increases is prohibited by law. Attached is the legal opinion issued by the City of Socorro City Attorney on this issue.

Please contact my office at 512.463.0622 should you require further information.

Kindest Regards,

Norma Chávez,
State Representative
Chair, Border & International Affairs Committee



DISTRICT 76



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FACSIMILE TRANSMITTAL SHEET

TO: Lilia Ruiz, Interim City Manager
FAX NO.: 858-9288
FROM: R. Contreras
DATE: February 26, 2005

RE: Retroactive Pay Opinion

Attached please find the Memorandum of Legal Opinion for inclusion in the meeting packet for the City Council.

Thank you.


Richard Contreras
Interim City Attorney

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MEMORANDUM OF LEGAL OPINION

Date: February 26, 2005

TOPIC: Retroactive Pay Raises

**TO: Mayor and City Council
Civil Service Commission
Lilia Ruiz, Interim City Manager
Department Heads**

I have been directed to prepare and submit to the City a legal opinion that supports the recommendation made by me to the Socorro Civil Service Commission at its meeting of February 21, 2005, in which I advised that retroactive pay raises were not legal in that they are prohibited by the Texas Constitution.

References:

The Texas Constitution, Article 3 Legislative Department, Section 53 - Entitled "County or Municipal Authorities; Extra Compensation; Unauthorized Claims.

Attorney General Opinion No. JM-1113, dated November 9, 1989.

History:

On February 21, 2005, at the meeting of the Socorro Civil Service Commission, an item was considered by the Commission regarding the evaluation and pay rate adjustment for municipal employees. As a part of that discussion, consideration was being given to the granting of retroactive pay rate increases to the employees back to the date of their evaluations. I advised the Commission that the granting of retroactive pay rate increases were prohibited by law and I advised against the granting of same. I further advised the Commission that this topic had been addressed prior to the end of my prior service to the City and that a written legal opinion had been provided to the City from my office.

The discussion also addressed the following items:

1. At what time does a raise become effective?

2. Does the act of the inclusion of pay raises in the budget automatically grant pay raises?

Opinion:

Pay raises that are granted to the employees of a county or municipal authority become effective on the date that the raises are granted by that authority. In the City, the only authority that may grant a pay raise is the City Council. The City Council has never vested that authority to grant raises to employees in the Civil Service Commission, Department Heads, Supervisors, or the City Manager. The preparation of an evaluation is not to be considered as the granting of a pay rate increase but rather only as a report on the status and progress of the employee and a recommendation for a pay rate increase, if any. That recommendation is then forwarded to the Civil Service Commission for review and recommendation for approval to City Council for final action.

The burden for the timely granting of pay rate increases thus falls on the individual Department Heads. If the evaluation is delayed for any reason and the recommendation is not forwarded to the Civil Service Commission and ultimately to City Council then the pay rate increase will also be delayed.

Article 3, Section 53, of the Texas Constitution clearly states that county and municipal authorities are not permitted to grant extra compensation, fee, or allowance to a public officer, agent, servant or contractor, after service has been rendered, ...

By its very essence the term retroactive pay indicates that services of that employee have already been rendered and that person was compensated pursuant to the lawful compensation set at that time. The payment of additional compensation for services already rendered is prohibited.

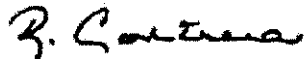
The attached Texas Attorney General Opinion addresses this issue and it further addresses the issue regarding the budgeting of pay rate increases and whether that act in itself is sufficient to authorize retroactive pay rate increases.

The Opinion addresses the acts of a county that attempted to grant the retroactive pay rate increases and cites the Texas Constitution that applies to both county and municipal authorities. To argue that the opinion thus only applies to counties is not applicable here and should not be a distraction to this opinion. The important purpose of the inclusion of this opinion is that it addresses the fact that a

pay rate increase becomes effective when it is specifically granted to an employee by an authorized act of the municipal authority.

I cannot address the reasons why retroactive pay rate increases were allowed in prior years but I will consider any legal opinions that contradict this opinion and I invite same for my consideration.

Please advise if you require additional information.



Richard Contreras
Interim City Attorney