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FILE # ML-45446-07
I.D. # 45446

November 9, 2007

RQ-0647-GA

The Honorable Greg Abbott
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

Re: Request for Attorney General Opinion: May a general law city, with a population below 10,000, lawfully provide payroll deduction for its employees when the city has entered into a collective bargaining contract that provides for payroll deduction?

Dear General Abbott:

The municipality of Balcones Heights is a type A general law city. Balcones Heights has entered into a collective bargaining agreement with its police officers association. The agreement provides that the city will payroll deduct dues for members of the police officers association. The city is concerned that it cannot legally payroll deduct dues, since Local Gov't Code section 141.008, which gives permission to cities over 10,000 to do payroll deductions, does not apply since Balcones Heights population is under 10,000. I therefore request an opinion on whether a general law city, with a population below 10,000, can lawfully provide payroll deduction for its employees when the city has entered into a collective bargaining contract that provides for payroll deduction?

I believe that a city under 10,000 can lawfully deduct dues when called for in a collective bargaining agreement. Local Government Code section 51.001 says that municipal governments can adopt any rule that is proper for carrying out a power that is granted to it by law:

“§ 51.001. ORDINANCE, RULE, OR REGULATION NECESSARY TO CARRY OUT OTHER POWERS. The governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule, or police regulation that:

(1) is for the good government, peace, or order of the municipality or for the trade and commerce of the municipality; and

(2) is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality.”

Local Government Code section 51.002 gives the city the power to act as long as it is necessary for the good order of the municipality:

“§ 51.012. ORDINANCES AND REGULATIONS. The municipality may adopt an ordinance, act, law, or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the municipality as a body politic.”

Local Government Code section 51.014 gives the city the power to enter into contracts:

“§ 51.014. AUTHORITY TO CONTRACT. The municipality may contract with other persons.”

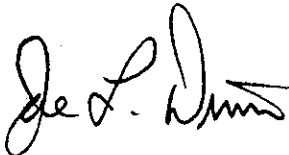
Under Local Government Code section 174.023, a police association has the right to bargain with a city over “compensation, hours, and other conditions of employment.” Under section 174.109, an agreement reached “is binding and enforceable against a public employer, an association, and a fire fighter or police officer covered by the agreement.” Finally, to the extent that Local Government Code section 141.008 may imply that a city under 10,000 cannot payroll deduct, an agreement in a collective bargaining agreement, under chapter 174, would preempt any such implied restriction:

“§ 174.005. PREEMPTION OF OTHER LAW. This chapter preempts all contrary local ordinances, executive orders, legislation, or rules adopted by the state or by a political subdivision or agent of the state, including a personnel board, civil service commission, or home-rule municipality.”

Therefore, I respectfully request an Attorney General Opinion on whether a general law city, with a population below 10,000, can lawfully provide payroll deduction for its employees when the city has entered into a collective bargaining contract that provides for payroll deduction.

Your time and attention to this matter is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Driver". The signature is fluid and cursive, with a large initial "J" and "D".

Joe Driver
Chairman, Law Enforcement Committee