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Rod Ponton

Presidio County Attorney

OPINION COMMITTEE



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September 20, 2017

The Honorable Ken Paxton
Attorney General of Texas
Attention: Opinion Committee
PO Box 12548
Austin, TX 78711-2548

Attorney General Paxton,

FILE # ML-48208-17
I.D. # 48208

RQ-0182-KP

These questions were brought by Presidio County Sheriff Danny Dominguez. I am writing to request an opinion on the following issue concerning the authority of a County Commissioner's Court to implement a health wellness plan that penalizes county employees who use tobacco products through a monthly deduction off of their paycheck:

Does Local Government Code section 155.001-003 incorporate such a deduction? No such action is defined in this section of code.

Does Local Government Code section 155.021 incorporate such a deduction? No such action is defined in this section of code.

Does Local Government Code section 155.061-063 incorporate such a deduction? No such action is defined in this section of code.

Does Local Government Code section 157.006 incorporate such a deduction? No such action is defined in this section of code.

Does Local Government Code section 157.101 incorporate such a deduction? No such action is defined in this section of code.

Factual Background

On September 12, 2017, during their regular meeting, the Presidio County Commissioner's Court heard a presentation from Texas Association of Counties (TAC) Wellness Consultant Mark Zollistch as defined by the eighth agenda item (see Exhibit 1) to discuss and

take action as appropriate to approve wellness incentives for 2017/2018 for Presidio County employees.

The presentation included a plan (See Exhibit 2) to have each county employee sign an affidavit stating if they use tobacco products or not. Those employees who use tobacco products will be required to enroll in and complete a TAC sponsored tobacco cessation program in order to avoid a monthly surcharge being deducted from their check. Unsuccessful completion of the cessation program will result in the monthly paycheck deductions. Tobacco users who decline to enter the cessation program will automatically receive the monthly paycheck deduction. Zollistch stated that the regular rate of paycheck deductions can be determined by the Commissioner's Court, but usually range from \$35-50 monthly for each employee. The collected payroll deductions can then be placed into a separate account that can be spent any way that the County desires.

Opinion Request

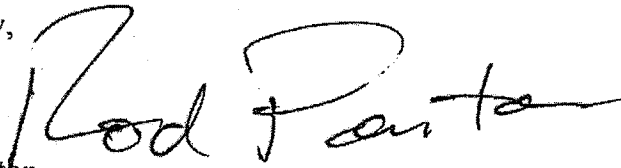
After reviewing the Government Code, sections 155.001-003, 155.021, 155.061-63, 157.006, and 157.101, the code seems to clearly outline the policies, procedures, and requirements for county employees to earn insurance benefits, receive paycheck deductions to pay for such benefits, and procedures for county officials to legally make said deductions from employee paychecks. The code states the Commissioner's Court authority to choose what

companies will provide health insurance benefits to employees if the companies meet the standards laid out in the code. None of the above mentioned sections of the code delineate any standards for actions such as this proposed wellness plan to be placed in force upon county employees by the Commissioner's Court, with the result being a paycheck deduction for failure to comply.

I respectfully request an Attorney General's opinion on the questions presented herein.

Thank you for your time and consideration in this matter. Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Rod Pontón". The signature is written in a cursive style with a large, stylized "R" and "P".

Rod Pontón
Presidio County Attorney

cc: Presidio County Sheriff Danny Dominguez