



**THE ATTORNEY GENERAL
OF TEXAS**

**CLEAVELAND C. MARTIN
ATTORNEY GENERAL**

AUSTIN, TEXAS 78711

May 18, 1967

**Honorable Jules Damiani, Jr.
Criminal District Attorney
Galveston County
Galveston, Texas**

Opinion No. M-77

**Re: Right of employees of
a county hospital to
be represented by a
union which does not
bargain or claim the
right to strike.**

Dear Mr. Damiani:

**You have requested an opinion of this office concerning the
following question:**

**"Whether employees of the Galveston County Memorial
Hospital have the right to be represented by a union which
does not bargain or claim the right to strike."**

Article 5154c, V.A.C.S., reads as follows:

**"Section 1. It is declared to be against the public
policy of the State of Texas for any official or group of of-
ficials of the State, or of a County, City, Municipality or
other political subdivision of the State, to enter into a
collective bargaining contract with a labor organization re-
specting the wages, hours, or conditions of employment of
public employees, and any such contracts entered into after
the effective date of this Act shall be null and void.**

**"Section 2. It is declared to be against the public
policy of the State of Texas for any such official or group
of officials to recognize a labor organization as the bar-
gaining agent for any group of public employees.**

**"Section 3. It is declared to be against the public
policy of the State of Texas for public employees to en-
gage in strikes or organized work stoppages against the
State of Texas or any political subdivision thereof. Any
such employee who participates in such a strike shall for-
feit all civil service rights, re-employment rights and
any other rights, benefits, or privileges which he enjoys**

as a result of his employment or prior employment, providing, however, that the right of an individual to cease work shall not be abridged so long as the individual is not acting in concert with others in an organized work stoppage.

"Section 4. It is declared to be the public policy of the State of Texas that no person shall be denied public employment by reason of membership or nonmembership in a labor organization.

"Section 5. The term 'labor organization' means any organization of any kind, or any agency or employee, representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"Section 6. The provisions of this Act shall not impair the existing right of public employees to present grievances concerning their wages, hours of work, or conditions of work individually or through a representative that does not claim the right to strike.

"Section 7. If any clause, sentence, paragraph or part of this Act or the application thereof to any person or circumstances, shall for any reason be adjudged to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act and the application thereof, but shall be confined in its operation to the portion of the Act directly involved in the controversy in which judgment shall have been rendered and to the person or circumstances involved."

It is the opinion of this office that employees of the Galveston County Memorial Hospital may belong to a labor organization of their choice and present grievances through a labor organization that does not claim the right to strike or bargain collectively.

Two Court of Civil Appeals cases have discussed Article 5154c specifically Sections 4 and 6. The first was Beverly v. City of Dallas, 292 S.W. 2d 172, (Tex. Civ. App. 1956, error ref. n. r. e.) The Court held Article 5154c voided a city ordinance prohibiting union membership by public employees. The Court stated in part:

"We cannot find merit in appellees' position that the statute itself is contradictory, or contains contradictory terms. Appellees urge that Sections 1 and 2 are

in conflict with Section 6, and allege that the first two sections in prohibiting collective bargaining conflict with Section 6, which provides that this act shall not impair the existing right of public employees to present grievances individually or through a representative. We do not believe that these sections are in conflict. The statute is very clear in forbidding collective bargaining, and the recognition of a union as a bargaining agent, and declaring null and void any contracts entered into between municipal authorities and any such organization on that basis; but because it permits public employees to present grievances individually or through a representative, the statute does not contradict itself, nor does Section 6 conflict with the above provisions. The presentation of a grievance is in effect a unilateral procedure, whereas a contract or agreement resulting from collective bargaining must of a necessity be a bilateral procedure culminating in a meeting of the minds involved and binding the parties to the agreement. The presentation of a grievance is simply what the words imply, and no more, and here it must be remembered that the privilege is extended only with the express restriction that strikes by public employees are illegal and unlawful, as is collective bargaining, so it is clear that the statute carefully prohibits striking and collective bargaining, but does permit the presentation of grievances, a unilateral proceeding resulting in no loss of sovereignty by the municipality. We think the statute is clear, unambiguous and not contradictory of itself.

"We think the trial court was in error in holding that the ordinances of the City of Dallas prohibiting its employees from joining or belonging to labor organizations were valid. Such ordinances as those here involved are in clear conflict with Art. 5154c, one of the General Laws of the State of Texas. Art. XI, § 5 of the Constitution of Texas, Vernon's Ann. St., provides that no ordinance passed under a city charter shall contain any provision inconsistent with the General Laws of the State. We believe that the passage of the above statute in 1947 renders the ordinances here involved void, because they conflict with the valid law of the State of Texas. The statute specifically refers to public employees in Section 4 and is clear and unequivocal in its terms. The Dallas ordinances are equally clear and unequivocal in prohibiting city employees from joining or belonging to labor unions, and the answer by the City Council to the letter written by the two firemen was very definite in refusing permission, and stating that if they joined such

an organization they would be summarily dismissed from their employment. We hold, therefore, that this action and the ordinances of the City of Dallas are contradictory to and in violation of the General Laws of the State of Texas, and are therefore void and unenforceable."

Next in Dallas Independent School District v. American Federation of State, County and Municipal Employees Local 1442, 330 S. W. 2d 702 (Tex. Civ. App. 1959, error ref. n. r. e.), the Court said:


"Since enactment of above quoted legislation in 1947, and within its limitations, public employees may become members of a labor union. Beverly v. City of Dallas, Tex. Civ. App., 292 S. W. 2d 172. The Act (Article 5154c) deals exclusively with 'public employees, labor organizations, strikes, etc.' and with respect to appellants' point 3-b, it appears almost too plain for argument that the word 'representative' of Section 6 is referable to Labor Unions that do not claim a right to strike. In the field of labor law, our Legislature has consistently employed the term 'representative' as indicative of a labor union; see Art. 5154g, V. A. C. S. Also in the National Labor Relations Act, 29 U.S.C.A. § 151 et. seq. (excluding public employees, however), 'representative' is defined as including 'any individual or labor organization.' In the wording of Sec. 6, as appellees properly state, 'representative' was used instead of labor union or labor organization so as to afford a wider choice of agency to the public employee."

It is therefore our opinion that Section 6 of Article 5154c, provides that public employees have the right to present grievances concerning their wages, hours of work, or conditions of work through a labor union that does not claim the right to strike or bargain collectively.

S U M M A R Y

Public employees have the right to present grievances concerning their wages, hours of work, or conditions of work through a labor union that does not claim the right to strike or bargain collectively.

Yours very truly,



CRAWFORD C. MARTIN
Attorney General of Texas

Hon. Jules Damiani, Jr., page 5 (M-77)

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APPROVED:
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