



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

September 4, 1975

The Honorable Everett L. Anschutz
Executive Secretary
Employees Retirement System of Texas
Box 12337, Capitol Station
Austin, Texas 78711

Opinion No. H- 682

Re: Whether the Employees
Retirement System can
grant credit for service
as a county attorney.

Dear Mr. Anschutz:

You have asked whether the provision of article 6228a, section 4H, V. T. C. S., authorizing the Employees Retirement System (hereafter ERS) to grant credit for service as a county attorney so long as such service is not "simultaneously credited by any other retirement system or program" is valid in light of the recently enacted article 16, section 67 of the Texas Constitution.

Attorney General Opinion M-941 (1971) was decided under the constitutional provisions existing at that time and upheld the constitutionality of similar statutes authorizing credit for service as a county attorney. Article 16, section 67(a)(4) provides that general laws establishing retirement systems shall remain in effect subject to the general powers of the legislature. Thus, article 6228a, section 4H, remains effective unless it clearly violates a provision of the Constitution.

In our view the only pertinent provision of article 16, section 67, is subsection (a)(2) which provides in part that:

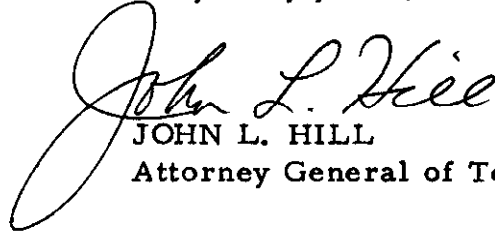
a person may not receive benefits from more than
one system for the same service . . .

However, article 6228a, section 4H does not authorize such a dual receipt of benefits, for service may not be credited by the ERS if it is simultaneously credited by another system. Furthermore, service credited by the ERS "may not thereafter be simultaneously credited by any other system." Art. 6228a, sec. 4H. Thus, a person could not receive benefits from more than one system for the same service. Since we are aware of no other constitutional provision which might prohibit the crediting of service as a county attorney, in our opinion the ERS may do so.

S U M M A R Y


The Employees Retirement System may grant credit for service as a county attorney to a qualified member of the System.

Very truly yours,

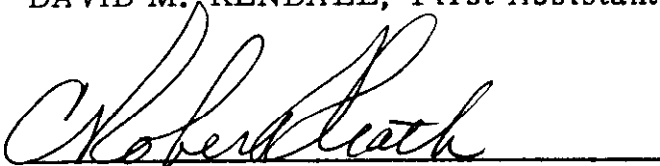


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APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee