



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 25, 1992

Honorable Al Granoff
Chairman
State, Federal and International
Relations Committee
P. O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 92-53

Re: Constitutionality of Dallas Police
Department's compensation of members
for time spent on "standby" or "on-call"
status (ID# 16301)

Dear Representative Granoff:

You ask whether the prohibition on a city's granting extra compensation after a service has been rendered prevents the payment, in cash or compensatory time, of members of the Dallas Police Department (the "department") for the time they spend on "standby" or "on call" status. Department employees on standby or on call status are deemed to be "able to come and go as they please" but must be available by telephone or pager and be able to respond within 45 minutes, including travel time, when summoned to duty. They must be able to present themselves for duty properly attired and not under the influence of intoxicants such that their performance is impaired or their appearance affected. See Dallas Police Department SPECIAL ORDER NO. 92-1, March 27, 1992. You indicate that your question is prompted by an opinion of the Dallas City Attorney's office that compensation of police department members for time spent on standby or on call status would violate the above-mentioned prohibition in article III, section 53 of the Texas Constitution.¹

¹The relevant portion of article III, section 53 reads:

The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered . . .

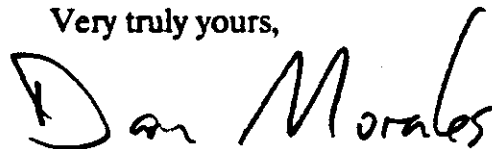
Article III, section 53 has been construed to prohibit a county's or municipal authority's *increasing* the compensation for services *after* such services have been rendered. *See, e.g., Dallas Co. v. Lively*, 167 S.W. 219, 220 (Tex. 1914). Thus adoption of a policy of compensating members of the department would violate article III, section 53, only if it provided for compensation for time spent on standby or on call status prior to the time the policy was adopted. *See generally* Attorney General Opinions JM-1113 (1989); H-402 (1974); H-51 (1973).

Please note that we limit our response here to whether the portion of article III, section 53, relating to the granting of extra compensation after services have been rendered would be violated by the provision of compensation for time spent on standby or on call status. We do not address the legality of such compensation with respect to other provisions of law or any contractual obligations incumbent on the parties. *See, e.g.,* the Fair Labor Standards Act, 29 U.S.C. § 206 *et seq.*; Tex. Const. art. III, §§ 51 (generally prohibiting political subdivisions' grants of public money), 53 (portion relating to grants of extra compensation on contracts entered into and performed in whole or in part).

S U M M A R Y

A police department may adopt a policy of providing compensation for time spent on standby or on call status without violating the portion of article III, section 53 of the Texas Constitution relating to grants of extra compensation after services have been rendered, so long as the change does not increase compensation for services performed prior to the date of the change.

Very truly yours,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive style with a large initial "D".

Dan Morales
Attorney General of Texas