



THE ATTORNEY GENERAL
OF TEXAS

April 6, 1990

JIM MATTOX
ATTORNEY GENERAL

Honorable John Owens
Henderson County Attorney
Henderson County Courthouse
Athens, Texas 75751

LO-90-14

Dear Mr. Owens:

You ask whether a general law municipality may fund a longevity pay system for its employees.

Unlike a home-rule city that possesses powers not denied it by statute or constitution so long as the city has incorporated those powers in its charter, City of Corpus Christi v. Unitarian Church, 436 S.W.2d 923 (Tex. Civ. App. - Corpus Christi 1969, writ ref'd n.r.e.), a city incorporated under the general laws of the state has only such powers as those expressly given it and those which may be necessarily implied therefrom. Ex parte Ernest, 136 S.W.2d 595 (Tex. Crim. App. 1940); Massengale v. City of Copperas Cove, 520 S.W.2d 824 (Tex. Civ. App. - Waco 1975, writ ref'd n.r.e.).

In Foster v. City of Waco, 255 S.W. 1104 (Tex. 1923), the supreme court stated:

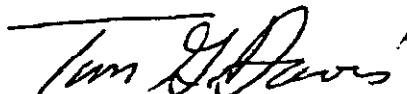
It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident, to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation -- not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied. Of every municipal corporation the charter or statute by which it is created is its organic act. Neither the corporation nor

its officers can do any act, or make any contract, or incur any liability, not authorized thereby, or by some legislative act applicable thereto. All acts beyond the scope of the powers granted are void. (Emphasis added.)

Section 141.032 of the Local Government Code provides that a municipality with a population of 10,000 or more inhabitants pay each member of its fire or police department in addition to all other money paid for services rendered in the department, longevity pay of four dollars a month for each year of service in the department, not to exceed 25 years. Article 6813d, V.T.C.S., provides for a longevity pay scale for a certain class of state employees.

We find no law expressly giving a general law municipality the authority to establish and fund a longevity pay system for all its employees, nor do we find any law from which such authority may be implied.

Very truly yours,



Tom G. Davis
Assistant Attorney General
Opinion Committee

APPROVED: Rick Gilpin, Chairman
Opinion Committee

Sarah Woelk, Chief
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TGD/mc

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