



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 29, 1998

The Honorable James A. Farren
Criminal District Attorney
Randall County Courthouse
501 16th Street
Canyon, Texas 79015

Letter Opinion No. 98-099

Re: Whether Randall County may buy back sick leave from an employee without violating article III, section 53 of the Texas Constitution (RQ-1150)

Dear Mr. Farren:

You inform us that "Randall County has in its policy manual the ability to buy back up to 10 days of sick leave from an employee," and that "[t]he buy back is offered each year to all employees if they have at least 20 sick days on the books." You ask whether this practice is consistent with article III, section 53 of the Texas Constitution.

Counties have authority to provide sick leave benefits to county employees as a form of "compensation . . . [or] other allowances" under section 152.011 of the Local Government Code.¹ The provision of compensation, including sick leave,² must be consistent with article III, section 53 of the Texas Constitution, which provides in part: "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 . . ."³

This provision bars the commissioners court from providing a retroactive increase in compensation to a county employee,⁴ but it does not bar the commissioners court from adopting a policy to compensate county employees for their unused sick leave and applying that policy

¹Attorney General Opinions JM-910 (1988), H-860 (1976), H-797 (1976).

²Sick leave is a form of compensation or an allowance within article III, section 53 of the Texas Constitution. See *Ward v. City of San Antonio*, 560 S.W.2d 163 (Tex. Civ. App.--San Antonio 1977, writ ref'd n.r.e.).

³Tex. Const. art. III, § 53. Article III, section 44 of the Texas Constitution places the same fiscal restraints on the state as article III, section 53 does on counties and municipal authorities.

⁴Attorney General Opinion JM-1113 (1989) at 3.

prospectively.⁵ Once the county adopts this policy, it is a term of term of employment applicable to sick leave accrued thereafter.

In Attorney General Opinion H-860, this office determined that county and precinct officers and employees could be compensated for unused sick leave on termination from employment, pursuant to a county policy that had previously established this term of employment.⁶ Attorney General Opinion H-797 concluded that article III, section 53 did not bar a county from compensating retiring employees for unused sick leave that they have earned.⁷ Accordingly, Randall County may, consistent with article III, section 53 of the Texas Constitution, adopt and apply a policy to compensate its employees for unused sick leave by “buying back” some of that sick leave annually, as long as the policy is applied prospectively.

S U M M A R Y

The commissioners court of a county has authority to provide sick leave benefits to county employees as a form of “compensation . . . [or] other allowances” under section 152.011 of the Local Government Code. A county may, consistently with article III, section 53 of the Texas Constitution, adopt and apply a policy to compensate its employees for unused sick leave by “buying back” some of that sick leave annually, as long as the policy is applied prospectively.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

⁵See Attorney General Opinions DM-129 (1992) at 3-4 (if benefits of city “sick leave pool” are available only prospectively, it will not violate article III, section 53); JM-1160 (1990) (county policy that increases county employees’ sick leave prospectively does not violate article III, section 53).

⁶Attorney General Opinion H-860 (1976).

⁷Attorney General Opinion H-797 (1976). The General Appropriations Act adopted in 1975 provided for payment of one-half of a state employee’s accumulated sick leave upon termination of employment. Act of June 2, 1975, 64th Leg., R.S., ch. 743, art. V, § 7b, 1975 Tex. Gen. Laws 2417, 2849-50; see Attorney General Opinion H-766 (1976) (application of rider to institutions of higher education).