



UNDERSTANDING THE RULE AGAINST “GIFTS OF PUBLIC FUNDS”

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The Texas Constitution prohibits the gift of public funds to any individual

- ▶ Sec. 52. (a) Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company. Tex. Const. art. III, § 52

The Texas Constitution prohibits the gift of public funds to any individual

- ▶ The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever; provided that the provisions of this Section shall not be construed so as to prevent the grant of aid in cases of public calamity. Tex. Const. art. III, § 44.



However, an expenditure of public funds for a public purpose is not prohibited. *TEX. ATT'Y GEN. OP. GA-0076 (2003).*



The return benefit received by the school district need not be monetary, but instead may be accomplishing the school district's public purpose.

TEX. ATT'Y GEN. OP. GA-0076 (2003).

The Texas Supreme Court has established a three-part test to determine whether a payment violates Article III, Section 52:

- ▶ (1) The purpose of the payment is to accomplish a public purpose, not benefit a private party;
- ▶ (2) The entity must retain public control over the funds to ensure the public purpose is accomplished and the public's investment is protected; and
- ▶ (3) The entity must ensure that it receives a return benefit.

Tex. Mun. League Intergovernmental Risk Pool, 74 S.W. 3d. 377, 384. (Tex. 2002).



EMPLOYEES

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Constitutional Prohibition on Excess Payments

- ▶ The Legislature [...] shall not grant extra compensation to any officer, agent, servant, or public contractors, after such public service shall have been performed or contract entered into, for the performance of the same; Tex. Const. art. III, § 44.
- ▶ 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, or a contract has been entered into, and performed in whole or in part; nor pay, nor authorize the payment of, any claim created against any county or municipality of the State, under any agreement or contract, made without authority of law. Tex. Const. art. III, § 53.

Constitutional Prohibition on Excess Payments

- ▶ Tex. Const. art. III, § 53 applies to school districts. *Harlingen Ind. Sch. Dist. v. Page*, 48 S.W.2d 983 (Tex. 1932).
- ▶ “It is clear that additional compensation may not be paid for past services rendered.” *Empire Gas and Fuel Co. v. State*, 47 S.W.2d 265 (Tex. 1932); *Pierson v. Galveston County*, 131 S.W.2d 27 (Tex. Civ. App.—Austin 1939, no writ); *Tex. Att’y Gen. Op. MW-68* (1979).

Employee Bonuses

- ▶ If the school board adopts a specific bonus plan in advance, *however*, a district may award a bonus to non-contract and contract employees. *Tex. Att'y Gen. LO-94-067 (1994)*.
- ▶ Any increase in pay for non-contract employees should be established by the board before the pay period in which the work begins.
- ▶ For contract employees, authorization for a bonus payment should be established in advance, either in the employee's contract or the compensation plan
- ▶ Texas law requires a public hearing with specific procedural requirements when a political subdivision like a school district chooses to pay an employee more than an amount owed under a contract with the employee. *Tex. Loc. Gov't Code § 180.007*.

Bonuses/Pay Increases to Employees

- ▶ In the context of school district contract employees, a bonus is prohibited as an improper gift of public funds because the school district does not receive any value for the expenditure. *Op. Tex. Att'y Gen. No. MW-68 (1979)*.
- ▶ Absent additional duties or something of value exchanged for the bonus, payment of a bonus is an impermissible gift because the district is paying more but the employee is obligated to do nothing in addition to the same work he committed to by contract.

Can Employees be Given Small Gifts as Recognition for Work?

- ▶ Plaques, flowers, frozen turkeys, and other small gifts are allowable expenditures as long as the school board determines that these items serve a legitimate educational purpose, such as increasing employee morale or productivity. *Tex. Att'y Gen. LO-96-136 (1996)*
- ▶ As a general rule, these gifts should have a value of less than \$50 per gift, per occasion. *Tex. Penal Code 36.10 (establishing an exception to the prohibition on gifts to public servants for items with a value under \$50).*
- ▶ Cash equivalents such as gift cards should be avoided.

Compensating Employees During Emergency Closures

- ▶ A district may pay employees even if it is not legally-obligated to pay them, if the district takes steps to avoid an improper use of public funds.
- ▶ These steps include:
 - ▶ (1) determine that the expenditure serves a public purpose;
 - ▶ (2) retain sufficient control over the expenditure to ensure that the public purpose is accomplished; and
 - ▶ (3) ensure that the district receives a return benefit. *Op. Tex. Att'y Gen. GA-76 (2003)*
- ▶ In the case of temporary closings due to weather events or epidemics, some boards have concluded that paying employees for hours not worked increases morale and reduces employee turnover
- ▶ Adopt a policy providing that the district may authorize such payment by resolution or other board action.

Compensating Employees During Emergency Closures

- ▶ To overcome a challenge that such payment is a gift of public funds, the board should adopt such a resolution or take similar action at an open meeting that complies with the Texas Open Meetings Act.
- ▶ The resolution or action should address:
 - ▶ (a) the public purpose is served by continuing wage payments;
 - ▶ (b) which employees will continue to receive wage payments;
 - ▶ (c) whether nonexempt employees who will be required to work while the school is closed will receive premium payments; and
 - ▶ (d) the duration of the payments (which can be revisited if the district is required to remain closed for longer than anticipated)

Retroactive payment of unused sick leave

- ▶ The constitutional ban against legislative grant of extra compensation to public servants after services have been rendered prohibits payment for county deputy's unused sick leave which accrued before date of action to authorize payment of such unused sick leave. *Lee v El Paso County*, 965 S.W.2d 668 (Tex. App.--El Paso 1998, pet. denied).

STUDENTS

Payment of student medical expenses

- ▶ A school board may pay for its students' medical expenses, incidental travel, and other incidental services related to an injury sustained at school only if the expenditure accomplishes a public purpose.
Tex. Att'y Gen. Op. GA-0076 (2003)
- ▶ Payment for student medical expenses must meet the Texas Supreme Court three-part test. *AG Op. No. GA-0076.*

Gifts/Incentives to Students

- ▶ Incentives for high test scores.
- ▶ Attendance incentives.
- ▶ Christmas/holiday gifts.
- ▶ Are the gifts designed to accomplish a public educational purpose?
- ▶ Do they provide a return benefit to the District?

DONATIONS

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- ▶ “These provisions [Article III, section 52] bar donations of funds from one governmental entity to another, as well as donations from governmental entities to private entities.” See *Harris County Flood Control Dist. v. Mann*, 140 S.W.2d 1098 (Tex. 1940); *San Antonio Indep. Sch. Dist. v. Board of Trustees of San Antonio Elec. & Gas Sys.*, 204 S.W.2d 22 (Tex. Civ. App.-El Paso 1947, writ ref'd n.r.e.).

THIRD-PARTY SERVICE PROVIDERS

- ▶ Although a political subdivision may not make an unrestricted grant of funds to a private, nonprofit corporation, it may contract with it to provide services or accomplish a public purpose that the county is authorized to provide.
- ▶ A county may contract with it to provide medical care for its indigents and to assist in providing ambulance services in the county.
- ▶ City or County may contract with a local development corporation if it serves a public purpose, and must be subject to adequate controls, contractual or otherwise, to ensure that the public purpose is accomplished.
- ▶ County may contract with private corporation to provide recreational facility for aged persons. Tex. Att'y Gen. Op. No. JM-65 (1983).
- ▶ County with authority to establish a "wildlife hotline" may contract with a private entity to operate hotline. Att'y Gen. Op. LO-93-079.

SALE OF PROPERTY

- ▶ A sale of real property at a grossly inadequate price is in effect a gift of public funds. *City of Cuero v. Tupper-Texas, Inc.*, 226 F.2d 121, 124 (5th Cir. 1955)

Insurance

- ▶ The District is not authorized to spend public funds on insurance to benefit persons to whom it owes no legal duty and shall not expend public funds for that purpose. (Lawnmowers)
- ▶ Unauthorized insurance includes no-fault personal injury protection and uninsured motorist coverage. *Atty. Gen. Op. H-602 (1975).*