



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Claude A. Williams
Chairman and Executive Director
Texas Unemployment Compensation Commission
Austin, Texas

Dear Sir:

Opinion No. O-3336

Re: Whether or not money paid under the "Plan for Employees' Pension, Disability Benefits and Death Benefits" constitutes wages within the meaning of Section (c) of Article 5221b-17, Vernon's Annotated Civil Statutes.

We received your letter dated March 25, 1941, requesting our opinion as to whether or not certain payments, as described in a "Plan for Employees' Pension, Disability Benefits and Death Benefits", are wages within the meaning of Section (c) of Article 5221b-17, supra.

We quote from the booklet, which sets out the payments made under the "Plan" as follows:

"I. Pensions.

"1) Retirement on pension is provided for employees coming under the classes listed below. Employees in Class A may be retired on a service pension either at their own request or at the discretion of the Committee. Employees in Classes B and C may be retired on a service pension only at the discretion of the Committee and with the approval of the President or Vice President.

"a) Service Pensions

"Class A — Employees whose age is 60 years or more (females 55 or more) and whose term of employment has been 20 years or more.

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"Class B — Employees whose age is 55 to 59 years (females 50 to 54) and whose term of employment has been 25 years or more.

"Class C — Employees whose age is less than 55 years (females less than 50) and whose term of employment has been 30 years or more.

"b) Disability Pensions

"Class D — Any employee whose term of employment has been 15 years or more and who becomes totally disabled by reason of sickness may, at the discretion of the Committee and with the approval of the President or Vice President, be granted a disability pension, which shall continue for such period only as the Committee may decide.

"2) The amount of the annual pension in any of the above cases is 1% of the average annual pay for 10 years, multiplied by the number of years in the employee's term of employment. The minimum pension will be \$30 a month, but this is not to apply to disability pensions granted to employees of less than 20 years' service or to pensions granted to "part time" employees.

"Example: An employee whose term of employment at time of retirement has been thirty years and whose average pay for ten years has been \$1,500 a year, will receive an annual pension equal to 30% of \$1,500, or \$450, payable in monthly amounts of \$37.50.

"3) Service pensions are subject to the provisions with respect to deductions as set forth in Section 8, Paragraphs 27 and 28.

"2. Accident Disability Benefits.

"Total Disability—Full pay 13 weeks, half pay for remainder of disability. Maximum benefits to be \$20 a week after six years of benefit payments.

"Partial Disability—For first 13 weeks, 100% of loss in earning capacity; for remainder of disability, 50% of loss in earning capacity. Period of payments not to exceed six years in all.

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"Beginning January 1, 1940, the thirteen-week periods specified above shall, for accident disability cases originating on and after that date, be increased to conform to the schedule for full-pay periods set forth in the Sickness Disability Benefit schedule below, if the term of employment is 15 years or more.

"3. Sickness Disability Benefits.

"These benefits commence on the eighth calendar day of absence on account of sickness and, beginning January 1, 1940, the sickness disability benefits in sickness disability cases originating on and after that date shall be as follows:

- "a) If term of employment has been 2 to 5 years -- full pay 4 weeks; half pay 9 weeks.
- b) If term of employment has been 5 to 10 years -- full pay 13 weeks; half pay 13 weeks.
- c) If term of employment has been 10 to 15 years -- full pay 13 weeks; half pay 39 weeks.
- d) If term of employment has been 15 to 20 years -- full pay 26 weeks; half pay 26 weeks.
- e) If term of employment has been 20 to 25 years -- full pay 39 weeks; half pay 13 weeks.
- f) If term of employment has been 25 years or more -- full pay 52 weeks.

Note: Benefits are not provided in the Plan for sickness of employees of less than two years' service. In such cases such practice as the Company may establish from time to time will be followed.

"4. Death Benefits.

If the employee leaves a wife who was living with him at the time of his death, a husband who was physically or mentally incapable of self-support and who was actually supported by the employee at the time of her death, or a child under the age of 18 years (or over that age if physically or mentally incapable of self-support) who was actually supported by the employee at the time of death, the amount to be awarded is the maximum specified in the schedules.

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"In all other cases the amounts to be awarded (within the limits indicated by the schedules) and the persons to whom the payments shall be made are subject to the discretion of the Benefit Committee.

"Beneficiaries are limited to a wife (or husband), dependent children and other dependent relatives of the deceased.

"The Death Benefit schedules are:

"a) Accident Death Benefits.

"Regardless of the employee's term of employment an Accident Death Benefit not to exceed the amount specified below may be paid in case of death by accident arising out of and in the course of employment:

"Three years' pay, not to exceed \$5,000; provided, however, that if a greater amount could have been paid under the Sickness Death Benefit schedule below had the employee died from sickness rather than from accident, the maximum of \$5,000 is increased to the amount of the Sickness Death Benefit.

"In addition to the Accident Death Benefit the necessary expenses of burial, not to exceed \$250, will be paid.

"b) Sickness Death Benefits.

"If the deceased employee had a term of employment of two years or more, a Sickness Death Benefit not to exceed the maximum shown below may be paid:

Employee's Term of Employment		Maximum Sickness Death Benefit
2 but less than 3 years		4 months' wages
3 " " " 4 "		5 " "
4 " " " 5 "		6 " "
5 " " " 6 "		7 " "
6 " " " 7 "		8 " "
7 " " " 8 "		9 " "
8 " " " 9 "		10 " "
9 " " " 10 "		11 " "
10 years or more		12 " "

The minimum Sickness Death Benefit shall be \$250.

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"Payments in Case of Death of Pensioners.

"In the discretion of the Committee payments may be made to the wife (or husband), dependent children or other dependent relatives of the deceased. The maximum amount of such payments shall not exceed the amount which could have been paid under the Sickness Death Benefit schedule if the pensioner had died on his last day of active service."

The "Plan" is administered by a Committee of five (5) persons who are appointed by the directors of the Company. A pension fund is created for the purpose of paying pensions to those who qualify. All benefits paid to employees and contributions made to the pension fund are paid by the Company, the employer, and are charged to operating expenses. No assignment of pensions or other benefits will be permitted or recognized by the Company.

Whether or not any of the above designated benefits are taxable wages depends upon Section (c) of Article 5221b-17, supra. Said Article reads as follows:

"(c) 'Wages' means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as wages payable by his employing unit. The reasonable cash value of remuneration payable in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the Commission."

The Plan expressly provides that, except in the event of termination of the Plan, no employee shall have a right to a service pension by reason of service less than for the period of time as herein set out. Therefore, to become eligible for a pension, the employee must reach the required age and must have worked a required number of years before he becomes eligible to receive any service pension benefit. When one begins receiving his service pension, he is no longer in the employment of the Company. We are of the opinion that the service pensions are not remuneration payable for personal services, and therefore are not wages as that term is defined in Section (c) of Article 5221b-17, supra.

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In connection with the disability pensions, we note that said pensions are paid to employees whose terms of employment have been for fifteen (15) or more years and who become disabled as the result of sickness or accident other than by accidental injury arising out of and in the course of their employment. An employee who has worked less than fifteen (15) years is entitled to no such pension nor does he have any right to participate in the fund. We note further that the amount of pension he receives is left to the discretion of the Committee. For these reasons, we are of the opinion that these disability pensions are not wages within the meaning of Section (c) of Article 5221b-17.

The accident disability benefits are paid to employees on account of physical disability to work by reason of accidental injury arising out of and in the course of employment by the Company. An employee is entitled to receive these benefits regardless of his length of employment. It appears to us that these benefits are remuneration received by the employee for injuries arising out of and in the course of employment rather than remuneration for services rendered to the employer. We, therefore, hold that such benefits are not wages within the meaning of Section (c) of Article 5221b-17, supra.

As to the sickness disability benefits, we are of the opinion that such benefits are wages within the meaning of Section (c) of Article 5221b-17, supra, and are taxable as such. We enclose a copy of our opinion No. 0-2249 in which we held this type of benefits to be wages.

We are of the opinion that the accident death benefits and the sickness death benefits are not wages within the meaning of Section (c) of Article 5221b-17, supra; due to the very nature of these benefits, the employee is never entitled to them during his lifetime and the beneficiary does not perform any services for the employer for which the benefits are paid.

For the reasons heretofore discussed we are of the opinion that certain payments, made to a beneficiary in case of the death of a person drawing a pension from the Company, are not wages within the meaning of Section (c) of Article 5221b-17, supra.

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We express no opinion as to whether or not any payments made to employees would be wages within the meaning of Section (c) of Article 5221b-17 should the Plan be terminated by the Company.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED MAY 9, 1941

Thomas Bellus

FIRST ASSISTANT
ATTORNEY GENERAL

By *Lee Shoptaw*
Lee Shoptaw
Assistant

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