



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 24, 1992

Mr. Ray Farabee  
Vice Chancellor and General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2981

Letter Opinion No. 92-41

Re: Whether the board of regents of The University of Texas System has the legal authority to provide prepaid legal services coverage to its employees as part of the university's cafeteria plan (RQ-327)

Dear Mr. Farabee:

You request our opinion as to whether the board of regents of The University of Texas System (the "university") legally may provide its employees with prepaid legal services coverage. We begin by examining the authority by which the university may provide its employees with various kinds of insurance coverages. Article 3.50-3 of the Insurance Code contains the Texas State College and University Employees Uniform Insurance Benefits Act (the "act"). Ins. Code art. 3.50-3, § 1; *see* 19 T.A.C. ch. 25, subch. B (implementing and administering the act). Under the act, each institution, which term includes the university,<sup>1</sup> must implement the Texas State College and University Employees Uniform Insurance Benefits Program (the "program"). Ins. Code art. 3.50-3, § 4(a). In accordance with the

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<sup>1</sup>As used in the act, "institution" means

The University of Texas System, The Texas A&M University System, Texas Tech University, and the University of Houston System, except that an institution that elects to participate in the Employees Uniform Group Insurance Program under Section 3A of the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) on or before April 1, 1992, may not participate in the Texas State College and University Employees Uniform Insurance Benefits Program after coverage has begun under the Employees Uniform Group Insurance Program.

Ins. Code art. 3.50-3, § 3(a)(7); *see also* 19 T.A.C. § 25.32. You have informed us that the university participates in the Texas State College and University Employees Uniform Insurance Benefits Program, not the Texas Employees Uniform Group Insurance Program. Thus, the university is an institution within the context of article 3.50-3 of the Insurance Code.

program, a participating institution must provide its eligible employees<sup>2</sup> with basic life, accident, and health insurance coverage.<sup>3</sup> Attorney General Opinion JM-543 (1986) at 3; *see* 19 T.A.C. § 25.33 (establishing basic coverage standards). Prepaid legal services coverage, which does not fall into the categories of life, accident, or health insurance coverage, clearly is not a type of basic coverage the university is required to provide its employees. We look, therefore, to types of coverage the act authorizes, but does not require, an institution to provide or offer its employees.

Under article 3.50-3, section 4(e) of the Insurance Code, the governing board of each institution may implement a cafeteria plan<sup>4</sup> if the governing board determines that the establishment of a cafeteria plan is feasible, would benefit the institution and employees who would be eligible to participate in the cafeteria plan, and would not adversely affect the program. *See also* Ins. Code art. 3.50-3, § 14B; 19 T.A.C. § 25.57. You advise that the university has implemented a cafeteria plan. We understand you to ask whether the university may provide or offer prepaid legal services coverage as part of the cafeteria plan.

In Attorney General Opinion JM-543, this office considered whether The University System of South Texas (South Texas) could establish a cafeteria plan consisting of various taxable and nontaxable fringe benefits in the area of life, accident and health, and disability insurance. Attorney General Opinion JM-543 at 1. The opinion concluded that article 3.50-3 of the Insurance Code authorized South Texas to establish such a cafeteria plan, but the opinion expressly noted that the requestor had "not inquired about authority to include group legal services . . . in a cafeteria plan." *Id.* at 4. Consequently, the opinion did not address that question.

Subsequent to that opinion, the legislature added section 4(e) to the act. Acts 1987, 70th Leg., ch. 204, § 11, at 1483. Section 4(e) states, in pertinent part, "The governing board may include in a cafeteria plan any benefit that may be included in a cafeteria plan under federal law." Before we consider what a cafeteria

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<sup>2</sup>*See* Ins. Code art. 3.50-3, § 3(a)(4) (defining "employee"); 19 T.A.C. § 25.32 (same).

<sup>3</sup>In lieu of participating in the health insurance benefits provided by the act, an eligible employee may elect to participate in a health maintenance organization. Ins. Code art. 3.50-3, § 4(b)(4)(D).

<sup>4</sup>The act adopts the definition of "cafeteria plan" articulated in § 125 of the Internal Revenue Code of 1986 (26 U.S.C. § 125). Ins. Code art. 3.50-3, § 3(a)(14); *see also* 19 T.A.C. § 25.32; *infra* text accompanying note 6.

plan may include under federal law, we first must consider whether this portion of section 4(e) adopts federal law only as it existed at the time the legislature inserted this into the act, or whether section 4(e) incorporates later amendments to the federal law.<sup>5</sup> A statute that adopts the terms of another statute without restating them is either a statute of *specific reference* or a statute of *general reference*. 2B SUTHERLAND STATUTORY CONSTRUCTION § 51.07, at 189 (5th ed. 1992). A statute of specific reference refers specifically to a statute by its title or section number. *Id.* at 189-90. A statute of specific reference adopts the incorporated statute as it is at the time of adoption; the reference does not include subsequent amendments. *Id.* at 190; *Trimmier v. Carlton*, 296 S.W. 1070, 1074 (Tex. 1927); *St. Paul Mercury Ins. Co. v. Billiot*, 342 S.W.2d 161, 163 (Tex. Civ. App.--Beaumont 1960, writ ref'd). By contrast, a statute of general reference refers to the law on the subject generally. 2B SUTHERLAND, *supra*, at 190. A statute of general reference adopts the incorporated law as it reads at any given time thereafter; thus, the reference includes subsequent amendments. *Id.*; *see also id.* § 51.08, at 192. This statute does not refer to a specific statute; rather, it refers to federal law generally. Accordingly, we believe that section 4(e) is a statute of general reference, and that it therefore includes all amendments to applicable federal law made subsequent to the Texas Legislature's enactment of section 4(e).<sup>6</sup> Thus, whether an employer may offer prepaid legal services coverage to its employees as part of the employer's cafeteria plan is a question involving the interpretation of federal law, a task that is beyond the purview of this committee. Consequently, we decline to answer those questions that involve or depend upon the interpretation of federal law.

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<sup>5</sup>We note that Congress has made several changes to federal law relating to cafeteria plans since the Texas legislature added § 4(e) to the act in 1987. Furthermore, we note that title 26, § 125(f) of the United States Code provides that the term "qualified benefit" includes "any other benefit permitted under regulations." *See also* 54 Fed. Reg. 9501 (to be codified as 26 C.F.R. § 1.125-2 (Q&A-4(b)) (proposed Mar. 7, 1989).

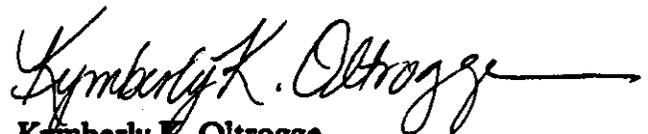
<sup>6</sup>Additionally, we note that a legislature's adoption of congressional statutes, when the adoption includes future enactments and amendments may, appear to be a delegation of legislative power. *See* 1 SUTHERLAND, *supra*, § 4.12, at 148 (4th ed. 1985). We have not found any Texas cases adopting this rule or a contrary rule. In our opinion, the legislature's adoption of federal law in this instance represents an effort to make state law consistent with federal law. *See id.* at 149. Furthermore, we do not foresee any permanent loss of legislative power. The legislature is free to enact law that diverges from the federal laws anytime the legislature disagrees with the federal enactment. *See id.* Accordingly, we do not believe that this incorporation of federal law unlawfully delegates legislative power.

Finally, you ask whether article III, section 51 of the Texas Constitution precludes the university from providing prepaid legal services coverage to its employees. Article III, section 51 forbids "gratuitous appropriation of public money or property" for private purposes. Attorney General Opinion H-365 (1974) at 3 (quoting *City of Tyler v. Texas Employers' Ins. Ass'n*, 288 S.W. 409, 412 (Tex. Comm'n App. 1926, judgm't adopted)). Whether providing prepaid legal services coverage as part of the employee benefit package serves a public purpose is a decision that the university must make in the first instance. Attorney General Opinion H-403 (1974) at 4; see also Attorney General Opinions JM-1255 at 3 (and cases cited therein), JM-1229 at 6-7 (1990); JM-1091 (1989) at 2; C-474 (1965) at 5.

### S U M M A R Y

Under article 3.50-3 of the Insurance Code, The University of Texas System may include in its cafeteria plan prepaid legal services coverage so long as federal law permits the inclusion of the prepaid legal services coverage in a cafeteria plan. Whether federal law permits the inclusion of prepaid legal services coverage in a cafeteria plan is a question involving the resolution of issues of federal law, a task that is beyond the purview of this committee. The university's inclusion of prepaid legal services coverage in the employee benefit package does not violate article III, section 51 of the Texas Constitution if the university decides in the first instance that such an expenditure serves a "public purpose."

Yours very truly,



Kimberly R. Oltrogge  
Assistant Attorney General  
Opinion Committee