



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

September 8, 1992

Mr. Wayne Blevins, Ed.D.
Executive Secretary
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

Letter Opinion No. 92-47

Re: Whether the Board of Trustees of the Teacher Retirement System of Texas may contract with an employee to provide incentive pay in addition to a regular salary (RQ-229)

Dear Dr. Blevins:

You have requested an opinion from this office concerning the compensation of a chief investment officer for the Board of Trustees of the Teacher Retirement System of Texas (TRS). You inform us that employees of the board of trustees are compensated from "membership fees and a small portion of the system's investment earnings," "under a budget adopted by the Board of Trustees." The board is considering a contract with the employee that would provide him with "incentive pay which would be based upon performance criteria established in advance of the service that is being compensated," in addition to a regular salary. Accordingly, you ask the following:

May the Teacher Retirement System of Texas provide incentive pay to an employee in the form of a lump sum bonus based upon criteria established by the system prior to the rendition of the employee's service for which the incentive payment is made?

Article III, section 44 of the Texas Constitution provides that the legislature "shall not grant extra compensation to any [public] officer, agent, servant, or public contractors, after such public service shall have been performed or contract entered into, for the performance of the same" The interpretive commentary to this section in Vernon's Texas Constitution Annotated explains that

[p]rohibition of extra compensation after the rendition of services is provided to prevent payments in the nature of gratuities for services previously performed. It is sought to prohibit the legislature from freely giving away the people's

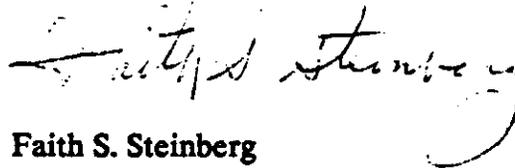
money for services previously rendered, for which disbursement the people would receive no return whatsoever.

This provision does not bar the granting of compensation in addition to a regular salary where the additional compensation forms part of the employee's contract, entered into prior to the rendition of the services being compensated. *See Olshan Demolishing Co. v. Angleton Indep. Sch. Dist.*, 684 S.W.2d 179, 185 (Tex. App.--Houston [14th Dist.] 1984, writ ref'd n.r.e.). In your case, the additional compensation and the criteria for its award would form part of the employee's contract. We therefore conclude that the incentive pay program you propose would not violate article III, section 44 of the Texas Constitution. We note that we have addressed only the constitutional questions you raised in your request letter, and not other statutes or regulations that might apply to the chief investment officer's compensation.

S U M M A R Y

The Board of Trustees of the Teacher Retirement System of Texas may contract with an employee to provide incentive pay in addition to a regular salary without violating article III, section 44 of the Texas Constitution, so long as the contract pre-dates the services being compensated.

Yours very truly,



Faith S. Steinberg
Assistant Attorney General
Opinion Committee