



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

DAN MORALES
ATTORNEY GENERAL

October 6, 1992

Mr. Robert Eckels
Chairman
Committee on County Affairs
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 92-60

Re: Whether a contractor on a building or construction project with a political subdivision of the state is required by article 8308-3.23(c) of the Workers' Compensation Act to obtain workers' compensation insurance coverage for its employees employed on the project (ID# 17233)

Dear Representative Eckels:

We understand you to ask whether, under subpart (c) of article 8308-3.23 V.T.C.S., a provision of the Texas Workers' Compensation Act, a contractor on a building or construction project with a political subdivision of the state is required to obtain workers' compensation insurance coverage for its employees employed on the project. In our opinion, article 8308-3.23(c) clearly imposes such requirement.

Article 8308-3.23(c) provides:

In a building or construction contract entered into by this state or a political subdivision of this state, including a municipality, the governmental entity shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for all employees of the contractor employed on the public project. A subcontractor on the project must provide such a certificate to the general contractor relating to the coverage of the employees of the subcontractor. The general contractor shall provide the certificate of a subcontractor to the governmental entity. A contractor

who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.

You note that subpart (a) of article 8308-3.23 permits an employer to "elect to obtain workers' compensation insurance coverage," "[e]xcept for public employers and as otherwise provided by law." You suggest that in light of the provision of subpart (a), which states that an employer's obtaining of workers' compensation coverage is generally optional, subpart (c) of article 8308-3.23, quoted above, should be construed to permit an employer/contractor contracting with a political subdivision within the ambit of subpart (c) to elect not to provide workers' compensation insurance coverage but to satisfy the latter provision's coverage requirement by presenting proof of other kinds of insurance coverage for its employees. In our opinion, the specific provision of subpart (c) requiring contractors with political subdivisions to obtain "workers' compensation insurance coverage" is clearly an exception to the general provisions of subpart (a) permitting employers to elect to obtain such coverage. Such exception to the general provision of subpart (a) is indeed contemplated in the proviso of subpart (a), "[e]xcept for public employers and as otherwise provided by law."

We think it clear that the references in subpart (c) to the "coverage" required by that provision are simply shorthand for "workers' compensation insurance coverage" as that term is spelled out in other parts of the provision. We note, too, that the last sentence of subpart (c) of article 8308-3.23, which indicates that the required coverage may be provided "through a group plan or other method satisfactory to the governing body of the governmental entity," is not inconsistent with our construction of the subpart's provisions as requiring "workers' compensation insurance coverage" since state law provides for obtaining workers compensation insurance coverage through "group plans" or "other methods." See Ins. Code art. 5.57A (*group plans*); Ins. Code arts. 5.55B (optional deductible workers' compensation insurance plans to allow policyholders to self-insure for the deductible amount); article 8308-3.51 *et seq.* (workers compensation self-insurance regulation). See also art. 8308-1.03(48) (defining "workers' compensation insurance coverage" for purposes of the Workers' Compensation Act to mean "an approved insurance policy to secure the payment of compensation, coverage to secure the payment of compensation through self-insurance as provided by this Act, or coverage provided by a governmental entity to secure the payment of compensation").

S U M M A R Y

A contractor on a building or construction project with a political subdivision of the state is required by article 8308-3.23(c) of the Workers' Compensation Act to obtain workers' compensation insurance coverage for its employees employed on the project.

Yours very truly,

A handwritten signature in cursive script that reads "William Walker". The signature is written in black ink and is positioned above the typed name and title.

**William Walker
Assistant Attorney General
Opinion Committee**