

**Teacher Retirement System
of Texas**

1000 Red River Street
Austin, Texas 78701-2698

EXECUTIVE SECRETARY
Wayne Blevins, Ed.D.



October 9, 1991

RQ-229

ID# 13880
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Opinion Committee

Honorable Dan Morales
Office of the Attorney General
Price Daniel Sr. Building
14th & Lavaca
Room 800
Austin, Texas 78711-2548

Re: Whether the TRS Board of
Trustees may contract for
incentive pay

Dear Attorney General Morales:

The Board of Trustees of the Teacher Retirement System of Texas is preparing to employ a new chief investment officer. The Board is considering the possibility of providing, in addition to a regular salary, incentive pay which would be based upon performance criteria established in advance of the service that is being compensated. Your opinion is sought concerning the legality of such incentive pay.

The retirement system holds its funds in trust for the exclusive benefit of members and their beneficiaries. See Article 16, Section 67, Texas Constitution. From certain of these funds (membership fees and a small portion of the system's investment earnings) the expenses of the system, including compensation for its employees, are paid under a budget adopted by the Board of Trustees. These administrative expenses are therefore not paid from the State Treasury or from legislative appropriations.

We are aware of constitutional provisions and previous Attorney General's opinions which prohibit certain additional pay by public entities after service has commenced or been performed, e.g., Article 3, Section 44 and Article 3, Section 53 of the Texas Constitution, and A.G. Ops. MW-68 (1979) and JM-1113 (1989).

We are also aware of certain cases in which additional compensation for public employees have been approved. Where the additional compensation has been agreed upon in advance of the rendition of services, courts have allowed the compensation. See, Foreman v. Gooch, 184 S.W.2d 481 (Tex. Civ. App.-- Beaumont 1944, writ ref. n.r.e.) and Olshan Demolishing v. Angelton Independent School District, 684 S.W.2d 179 (Tex. App.--14 Dist. [Houston] 1984, writ ref. n.r.e.). Though the constitutional prohibition forbids paying extra compensation for past performance or adding additional consideration to the contract already entered into, the prohibition does not apply to payment

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of any sum based upon the contract of employment nor does it apply to the method or time of payment. City of Orange v. Chance, 325 S.W.2d 838 (Tex. Civ. App.--Beaumont 1959, no writ).

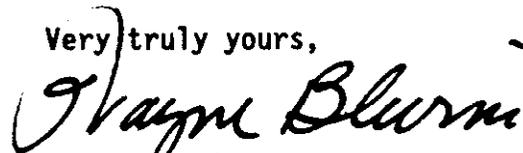
We have observed that the state career ladder for teachers generally involves the payment of lump sum amounts based upon performance evaluation of previous service and that the state appropriations acts have authorized certain bonus payments.

Accordingly, on behalf of the Board of Trustees I ask the following question:

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?

Please do not hesitate to call me if you need additional information.

Very truly yours,


Wayne Devins

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