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Committee on Nominations

ID#14344
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November 18, 1991

The Honorable Dan C. Morales
Attorney General for
the State of Texas
P. O. Box 12548
Austin, Texas 78711

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Legal Committee

RE: Request for Opinion

Dear Attorney General Morales:

I hereby request an Attorney General's opinion concerning an issue which I believe affects the public interest.

Specifically, my inquiry involves the ability of a municipality to create a "sick leave pool" by which municipal employees may presently and in the future contribute previously acquired sick leave time and from which other employees may draw if they are ill but have no sick time left. This mechanism would enable sick employees to continue to receive remuneration while out on an illness only.

The question has been raised whether contribution of one's previously accrued sick time to this "sick leave pool" and the use by another of these contributed hours is a violation of Article III Section 53 of the Texas Constitution which prohibits a municipality from granting extra compensation to employees after the rendition of services.

The question presented is: whether a municipality may create a "sick leave pool" to which employees contribute previously earned sick leave time and from which employees who have no remaining sick time may draw while unable to work due to illness or injury without offending Article III, Section 53 of the Texas Constitution.

To the extent that previous Attorney General opinions may be of aid in addressing this question, I draw your attention to Opinion H-1303. The proposed sick leave bank would constitute the same "special, separate program to make payments to an employee on account of sickness, such payments not being a continuation of wages." The sick leave plan would be strictly limited to "make provision for the

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employees on account of sickness or accident disability" alone. (p. 1531). Because of the similarities between the proposed "sick leave bank" and the program addressed in Attorney General Opinion 1303 I believe the reasoning is persuasive. In that opinion, of course, Attorney General Hill found that Section 53 of Article III did "not prohibit the state or a political subdivision from establishing a plan or system for sick leave payments for its employees." (p. 5132).

I look forward to your reply.

Very truly yours,

A handwritten signature in cursive script that reads "Gonzalo Barrientos". The signature is written in black ink and has a long, sweeping horizontal line extending to the right.

Gonzalo Barrientos
State Senator

GB/RH/pdw