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RD-403

May 28, 1992

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Opinion Committee

The Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711-2548

Dear General Morales:

Section 24.01 of H.B. 62, Acts of the 72nd Texas Legislature, 2nd Called Session, 1991, amended Title 117, Revised Statutes, by adding a new Article 6813g.

The new Article authorizes deductions from the salary or wage payment of a state employee to pay for coverage of the employee under supplemental optional benefit programs approved and designated by the Employees Retirement System of Texas (ERS).

Although there is no specific definition of the word "program" in the new Article, the word appears to be a broad description of types of insurance coverage as opposed to individual vendors of such coverage.

Further, it appears that the responsibility of the ERS under the new Article ends with its designation, if any, of eligible supplemental benefit programs and excludes any continuing administrative duties. The ERS is granted no rule-making authority, nor is there any provision for a bidding process. All administrative duties relating to the prescription of the form and manner for accomplishing the payroll deduction and notice of change or revocation as well as the deduction of fees appear to fall within the responsibilities of the Comptroller of Public Accounts or the appropriate financial officer of an institution of higher education.

Based upon this information, your advice is respectfully requested with regard to the following questions:

1. Does Article 6813g, V.T.C.S., require the ERS to designate one or more supplemental benefit programs?

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2. Does the word "programs" mean broad types of coverage as listed in Section 2 of Article 6813g, V.T.C.S., or does it mean individual vendors?

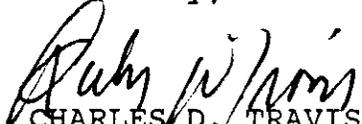
3. If any such designation is made, would the ERS be authorized or required to take any action beyond the designation, e.g., setting requirements for the product itself and/or the companies that would offer the product; setting the conditions under which the products would be offered; soliciting bids; or approving the individual vendor or vendors, including limiting the number of vendors?

4. If any such designation is made, would the ERS have any continuing administrative responsibilities such as monitoring or regulating the designated programs?

5. If your answer to question number 4 is in the affirmative, may the ERS assess fees to pay for administrative costs?

6. If your answer to question number 5 is in the affirmative, against whom may such fees be assessed?

Sincerely,


CHARLES D. TRAVIS
Executive Director

CDT/KJ/lh