

# TEXAS HOUSE OF REPRESENTATIVES

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**MIKE KRUSEE**  
CHAIRMAN, HOUSE COMMITTEE ON TRANSPORTATION

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AUG 08 2006

**OPINION COMMITTEE**

August 3, 2006

FILE # ML-44935-06  
I.D. # 44935

The Honorable Greg Abbott  
Texas Attorney General  
Attn: Opinions Department  
209 West 14th St.  
Austin, Texas 78701

Re: Question regarding Texas Local Government Code Section 617.002, *Collective Bargaining by Public Employees Prohibited*

Dear General Abbott:

Pursuant to Section 402.042 of the Texas Government Code, I hereby request your opinion regarding section 617.002, *Collective Bargaining by Public Employees Prohibited*, of the Texas Local Government Code, as it applies to municipalities.

Section 617.002 provides as follows:

- (a) An official of the state or of a political subdivision of the state may not enter into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of public employees.
- (b) A contract entered into in violation of Subsection (a) is void.
- (c) An official of the state or of a political subdivision of the state may not recognize a labor organization as the bargaining agent for a group of public employees.



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Although Chapter 617 defines a "labor organization,"<sup>1</sup> it does not define "collective bargaining" or otherwise describe what it means to "bargain" with a labor organization or to "recognize" a labor organization as the "bargaining agent" of a group of employees.

Previous Attorney General Opinions (JM-56 (1984) by Attorney General Jim Mattox and LO 97-038 by Attorney General Dan Morales) indicate that a political subdivision may meet with representatives of an employee union that does not claim the right to strike "to discuss matters affecting employee working conditions," but that the political subdivision cannot be obligated to implement anything discussed during those "consultations."

Various political subdivisions have created formal "consultation" processes which provide for scheduled meetings with a "consultation agent" representing particular groups of employees, to reach agreement regarding various employee working conditions. Agreements reached through the consultation meetings result in written agreements which are formally adopted by the public employer.

In some "consultation process" models, the employer meets with a group of representatives from various employee organizations to conduct consultations regarding employee working conditions. In other models, the employees are represented by a single employee organization but that organization is required to consult with and gain input from other employee organizations. The representative organization is the only organization that has input on behalf of employees during discussions with the employer.

Local 1624 of the American Federation of State, County, and Municipal Employees ("AF-SCME"), a labor organization, has requested that a municipality adopt an ordinance creating a process by which the municipality would "discuss and attempt to reach agreement" with AF-SCME on any subjects regarding wages, hours, and conditions of employment for a group of the municipality's employees.<sup>2</sup> A copy of the proposed draft ordinance is attached hereto.

The ordinance specifies that the city council may rescind the ordinance at any time, just as it may rescind any other ordinance. But, unless rescinded, the ordinance requires that the city<sup>3</sup> engage in a process that requires the following actions:

1. Recognize AFSCME as the sole representative of all of the municipality's "non-public safety" employees, for purposes of the process created by the ordinance.
2. Designate a team of supervisory, "non-public safety" employees, to represent the municipality's city manager in the process.

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<sup>1</sup> "In this chapter, "labor organization" means any organization in which employees participate and that exists in whole or in part to deal with one or more employers concerning grievances, labor disputes, wages, hours of employment, or working conditions. Section 617.001, Local Government Code.

<sup>2</sup> AFSCME defines this group as all "non-public safety employees" of the municipality.

<sup>3</sup> The city affected by this ordinance functions under the council-manager form of government. Some of the ordinance's provisions would require actions by the city manager rather than the city council.

3. Engage in regularly scheduled meetings with AFSCME, to attempt to reach agreement on issues presented by AFSCME related to "wages, hours, and other conditions of employment" of the employees represented by AFSCME.
4. Seek the assistance of a mediator regarding all "disputed issues" upon which AFSCME and the city's team did not reach agreement.
5. Prepare a written agreement on all subjects upon which the municipality's team and AFSCME reach agreement through the prescribed process.
6. Present to the city council for "consideration, acceptance, rejection or modification" a written agreement regarding wages, hours, and other conditions of employment for the employees represented by AFSCME which will "govern all subjects addressed therein for the fiscal year that follows." Once ratified by the city council, the terms of the agreement could be modified only by official action of the city council. The ordinance commits the city council to receiving input from AFSCME before it modifies the agreement.

Although this proposed process specifically states that it does not require any form of collective bargaining and provides a process by which the city council could renounce any written agreement, it prescribes a bilateral process that incorporates characteristics of a traditional collective bargaining process whereby a group of employees is represented by a labor organization for the purpose of negotiating with their employer over wages, hours, and conditions of employment for those employees.

While it seems clear that a public employer may "discuss" and "consult" with any group, including a labor organization, regarding employee wages, hours, and conditions of employment, municipalities need guidance in determining when such a process becomes a form of collective bargaining or results in the unlawful recognition of a bargaining agent under section 617.002.

I respectfully request your opinion on the following question:

Does a municipality violate any provision of section 617.002 of the Government Code if it adopts and engages in a required process by which it:

1. recognizes a labor organization as the sole representative of a designated group of employees for purposes of the process created by the proposed ordinance;
2. regularly engages in formal meetings with the labor organization for the purpose of reaching agreement over wages, hours, terms, and conditions of employment for that group of employees; and

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3. adopts, by city council action, a written agreement resulting from the formal meetings, even though the city council may renounce the agreement at any time during its term?

Thank you for your consideration of these questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Krusee". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Representative Mike Krusee

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ESTABLISHING RECOGNITION OF AN EMPLOYEE ASSOCIATION AND CONSULTATION RIGHTS FOR NON-PUBLIC SAFETY EMPLOYEES WHILE MAINTAINING THE GENERAL PROHIBITION AGAINST PUBLIC EMPLOYEE COLLECTIVE BARGAINING.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

**PART I.**

Texas Government Code §617.002 prohibits collective bargaining between the state or a political subdivision of the state and public employees, with exceptions not relevant herein.

The City of Austin hereby establishes a process whereby the City shall seek advice and input from an employee association representing non-public safety employees with regards to wages, hours, and other conditions of employment.

The City of Austin hereby recognizes the American Federation of State, County, and Municipal Employees (AFSCME) Local 1624, herein referred to as the Union, as the Consultation Agent for the purposes specified herein.

**PART II. PURPOSE**

The purpose of consultation is to set forth a process whereby the Union, the City Council, and the City Manager may work together in developing policies and procedures regarding the wages, hours, and conditions of employment of non-public safety employees of the City. The consultation process established must not limit the prerogative of the City's governing body to make final decisions regarding the wages, hours, and other conditions of employment of its non-public safety employees. Consultation is not collective bargaining.

**PART III.**

The City Council, under law, has the final authority for establishing the policies that govern the City.

The City Manager, as the chief administrator, has all duties conferred upon her/him by law and the City Charter. Those duties include the responsibility of the City Manager, as the chief administrator for the City, to be responsible for carrying out the policies established by the City Council.

The Union has the responsibility of representing the employment interests of non-public safety employees of the City.

All parties to the consultation process assure their continuing good faith in their communications related to identified problems of mutual concern.

The parties to the consultation process are the City Council, the City Manager, and the Union as representative of non-public safety employees of the City.

The designation of the Union as the representative of COA non-public safety employees confers the right to engage in a Consultation Agreement process and the unabridged right of the Union's staff and/or designees to represent their members in any work-related matter.

**PART IV. DEFINITIONS**

The following definitions shall apply to the construction of this resolution:

- A. **Consultation.** Consultation means advice, counsel, and exchange of information on matters pertaining to wages, hours, and other conditions of employment of non-public safety employees or other organizational issues.

B. **City Manager's Team.** The City Manager's Team shall be the persons designated by the City Manager to represent the City in the consultation process. All members of the City Manager's Team shall be supervisory, non-public safety employees. The City Manager's Team shall consist of no fewer than two and no more than five members.

C. **Consultation Agent.** Consultation Agent shall mean the Union representing non-public safety employees in the consultation process.

D. **Union's Team.** The Union's Team shall be the persons designated by the Union to represent non-public safety employees of the City in the consultation process. The Union's Team shall consist of no fewer than two and no more than five members.

E. **Consultation Council.** The Consultation Council shall mean the City Manager's Team representing the City administration and the Union's Team representing the City's non-public safety employees.

F. **Non-Public Safety Employees.** The non-public safety employees of the City are all City employees except classified employees of the Austin Police Department, the Austin Fire Department, and the Emergency Medical Services Department.

G. **Union.** The Union referred to herein is AFSCME Local 1624.

#### PART V. CONSULTATION PROCEDURES

##### A. Subjects for Consultation.

Matters considered to be subjects for the consultation process are those affecting the wages, hours, and other conditions of employment of non-public safety employees of the City of Austin, and the operational needs and requirements of the City and/or the Union.

##### B. Requirements of the Consultation Agent.

The Union shall, on a regular basis:

1. Obtain and analyze input from all non-public safety employees regarding subjects for consultation; and
2. Provide feedback to the City administration regarding the input obtained from non-public safety employees regarding subjects for consultation.

**C. Consultation Meetings.**

1. **Meeting Dates.** Except by mutual agreement of the City Manager's Team and the Union's Team, the Consultation Council shall meet on the first month following the adoption of this Ordinance, and meet each month thereafter at a time and place mutually agreed upon between the City Manager's Team and the Union.

2. **Consultation Process.** During the consultation meetings, the Consultation Council will discuss and attempt to reach agreement on any subjects for consultation raised either by members of the City Manager's Team, the Union, or both. All matters agreed upon will be reduced to writing and placed in the resulting Consultation Agreement.

**D. Consultation Agreement.**

When the Consultation Council has reached agreement on all subjects for consultation, the agreements reached will become a part of the Consultation Agreement.

**E. Consensus.**

1. **Consensus.** If the City Manager's Team and the Union's Team are unable to reach consensus as to all subjects of consultation raised at the consultation meetings, those items upon which agreement is reached will be reduced to writing and set aside for placement in



the Consultation Agreement. Those subjects upon which consensus is not reached will be referred to the FMCS mediation process.

2. **Decision on Disputed Issues.** After receiving such information as it deems necessary from the Consultation Council, the Mediator shall attempt to resolve all impasses reached. The Consultation Agreement then will be comprised of all agreed items. The resulting Consultation Agreement shall be forwarded to the City Council for its consideration, acceptance, rejection, or modification.

**F. Council Action Final.**

The Consultation Agreement presented to the City Council is a recommended agreement only until final action by the Council. The Council is free to accept, reject or modify the Consultation Agreement or any items contained therein. However, once approved by the City Council, in its sole discretion, the resulting Consultation Agreement shall govern all subjects addressed therein for the fiscal year that follows. Thereafter, the Consultation Agreement may be modified only by official Council action taken after receiving input from the City Manager and the Union regarding the advisability of any proposed changes. Nothing in the agreement is intended to remove any rights reserved to the City Manager within the City Charter. The City Council retains the unilateral right to accept, reject, or modify any Consultation Agreement at any time. The City Council retains the unilateral right to suspend or eliminate the entire Consultation process/agreement at their sole discretion.

**VI. EFFECTIVE DATE.**

This ordinance takes effect \_\_\_\_\_, 2005.

11/2/2005

PASSED AND APPROVED

\_\_\_\_\_, 2005

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Mayor

APPROVED: \_\_\_\_\_  
City Attorney

ATTEST: \_\_\_\_\_  
City Clerk