Requests for Opinions

RQ-0304-KP

Requestor:
The Honorable Isidro R. Alaniz
District Attorney
49th Judicial District
Post Office Box 1343
Laredo, Texas 78042

The Honorable Marco A. Montemayor
Webb County Attorney
1110 Washington Street, Suite 301
Laredo, Texas 78040

Re: Whether a school district may purchase real property outside its boundaries for the purpose of constructing and operating a school (RQ-0304-KP)

Briefs requested by October 10, 2019

RQ-0305-KP

Requestor:
The Honorable Lisa L. Peterson
Nolan County Attorney
100 East 3rd Street, Suite 106A
Sweetwater, Texas 79556

Re: Authority to establish salaries of the staff of a multicounty court at law (RQ-0305-KP)

Briefs requested by October 11, 2019

RQ-0306-KP

Requestor:
The Honorable Rodney W. Anderson
Brazos County Attorney
300 East 26th Street, Suite 1300
Bryan, Texas 77803-5359

Re: Whether the Texas Pawnshop Act preempts municipal regulation of dealers in secondhand personal property who also transact business as a pawnshop (RQ-0306-KP)

Briefs requested by October 14, 2019

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

Opinions

Opinion No. KP-0267
The Honorable James White
Chair, Committee on Corrections
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Protections against excessive fines under the U.S. and Texas Constitutions (RQ-0277-KP)

SUMMARY

Courts following U.S. Supreme Court precedent would conclude that the Due Process Clause of the Fourteenth Amendment incorporates the Eighth Amendment protection against excessive fines.

Courts recognize article I, section 13 of the Texas Constitution as a constitutional protection against excessive fines. A court would not enforce an unconstitutionally excessive fine. Depending on the statute, a Texas court would be obligated to follow Texas law that requires it to separate the unconstitutional fine and uphold the portion of the statute that is constitutional, if possible.

A Texas court would likely conclude that the Excessive Fines Clause of the Eighth Amendment of the U.S. Constitution is binding on the State, and federal jurisprudence is instructive about, if not determinative of, excessive fines issues under article I, section 13 of the Texas Constitution.

Opinion No. KP-0268
Dr. Austin A. Lane  
President  
Texas Southern University  
3100 Cleburne Street  
Houston, Texas 77004  
Re: Payment for unused vacation leave after employee separation (RQ-0279-KP)  

SUMMARY  

Government Code subsection 661.063(b) provides that vacation leave pay for an employee who separates from state employment while holding a position that does not accrue vacation time is computed using the "employee's final rate of compensation in the last position held that accrues vacation." In the hypothetical scenario you describe, the administrative position is the last position held that accrues vacation, so the compensation used for the calculation for payment of vacation leave is only the compensation paid for the administrative position.

Subsection 661.062(b)(5) entitles an employee to payment for vacation leave upon the occurrence of the described change in employment circumstances and "if the agency agrees to pay the employee for the accrued balance of the employee's vacation time." Thus, the entitlement arises on the fulfillment of both prerequisites, which will depend on particular facts.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201903324  
Ryan L. Bangert  
Deputy Attorney General for Legal Counsel  
Office of the Attorney General  
Filed: September 16, 2019

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