

February 18, 2000
OPINION NUMBER 2000-29

Hon. Herman Ray Hill
State Representative, District 32
529 Tramel Road
Dry Creek, Louisiana 70637

90-A-2 PUBLIC FUNDS – LOAN - PLEDGE OR GRANTS

Properly confected municipal plan for a one-time salary supplement for employees would be constitutional.

Dear Representative Hill:

Reference is made to your recent request for an opinion of this office regarding one-time salary supplements for municipal employees.

Based on your letter and telephone conversation with the undersigned, it is our understanding that certain municipalities within your District are the recipients of gaming revenues received pursuant to the terms and conditions of a compact entered into with an Indian tribe for operation of a casino. These municipalities have, or would like to utilize, a portion of these revenues to provide their employees and retirees with a one-time salary supplement.

Specifically, you ask:

“Is it permissible for a municipality to pay a one time salary supplement to employees and retirees of said municipality from gaming revenues derived from casino operations under the following conditions:

- a. a resolution to define and order distribution of a salary supplement from gaming revenue received is passed by the municipality (the gaming revenue is specifically designated for the salary supplement);
- b. supplement is funded exclusively from proceeds of said gaming revenue; and
- c. supplement excludes council members, part-time employees and substitute labor.”

Implicitly, your question must be addressed in light of La. Const. Article VII, Section 14, which provides, in pertinent part:

“Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.”

This office has written a number of opinions pertaining to employee compensation, and we have consistently opined that the payment of gratuitous, unearned payments to public employees is prohibited, as same would be tantamount to a donation. See: Attorney General’s Opinions Nos. 92-295, 92-282, 89-190, 88-344, 86-639, 83-940A, 81-1329 and 80-806. We note that various attempts to disguise constitutionally prohibited extra compensation for past services rendered and recompensed in the listed opinions were found to be constitutionally infirm.

On the other hand, this office does not consider Article VII, Section 14 to prohibit earned increases in compensation, or earned supplemental compensation, unless such supplemental compensation is specifically prohibited by law. Attorney General’s Opinions Nos. 99-137, 97-190, 94-241. In our opinion, whether a payment of money is a donation or earned compensation, is really a factual determination. We find support for this position in ***State v. Davis***, 359 So. 2d 803 (La. App. 3rd Cir. 1989), Writ Denied 541 So.2d 840. Therein, the Court held:

“We are presented with a factual determination: were the two payments ...which defendant paid to himself extra compensation for past services rendered...or...salaries for services rendered but for which no salary was drawn when services were rendered?”

Essentially, in accordance with the above cited opinions and the Davis case, the constitutionality of a particular payment to a public employee is determined by whether the payment is made out of a motive of beneficence solely to enrich the employee or whether the payment is deserved, and made as reasonable recompense for valuable performance or service for which the employee is not otherwise adequately compensated. Attorney General’s Opinion Nos. 97-190 and 95-323, 94-241.

In our opinion, in order for a municipality to constitutionally provide its employees with a one-time salary supplement, the municipality must do more than merely adopt a resolution authorizing the supplement and designating the source of funds from which it shall be paid. However, if the municipalities referred to in your letter keep the above principles and guidelines in mind, it is our opinion that a constitutionally sound plan for the issuance of one time salary supplements could be crafted. In order to assist them in that endeavor, I am enclosing copies of the opinions referred to herein.

We trust the foregoing to be of assistance. Should you or any of the municipalities in question need further assistance, please do not hesitate to contact this office.

Yours very truly,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY: _____
JEANNE-MARIE ZERINGUE BARHAM
Assistant Attorney General

RPI:JMZB:jv
Enclosures

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Date Received:

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Jeanne Marie Zeringue Barham
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