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STATE OF ALABAMA

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90-00240

Honorable Lee J. Wood
Mayor
P. O. Box 480
Wetumpka, AL 36092

Municipalities - Municipal
Employees - Municipal Funds -
Compensation

Correction of errors in
computation of compensatory
time discussed.

Dear Mayor Wood:

This opinion is issued in response to the request of the
City of Wetumpka for an opinion of the Attorney General.

QUESTION 1

- (a) Is the City required under Sections 68 and 94 of Article IV of the Constitution of 1901 to seek reimbursement from its former employees for money that has been overpaid?
- (b) Is there any obligation or rule that requires the City to initiate legal action to gain reimbursement from its former employees if the expected costs of the litigation outweighs the potential recovery?

FACTS, ANALYSIS AND CONCLUSION

Your request presents the following facts:

The City of Wetumpka recently discovered that the employee responsible for calculating the compensatory time of various city employees had been miscalculating this time for approximately a year and a half. This miscalculation has resulted in several different situations. These situations are as follows:

1. Some former employees of the City of Wetumpka have been underpaid.
2. Some former employees of the City of Wetumpka have been overpaid.
3. Numerous present employees of the City of Wetumpka now show a substantial amount of compensatory time to which they are not entitled. The amount of compensatory time to which they are legally entitled under the personnel policies and their employment agreement is substantially less than that which the records now indicate.
4. At least one present employee was asked to take time off rather than to accrue additional compensatory time. This was in accordance with the personnel policy of the City of Wetumpka. In fact, it has turned out that this employee did not have any compensatory time accumulated. Thus, this employee has received benefits for which she was not entitled.

We turn now to your first question. It is the opinion of this office that the City should seek reimbursement from former employees who were overpaid. However, there is no law that would require you to file suit against these employees where there was no wrongdoing on the part of said employees and where the expected costs of the litigation would outweigh the potential recovery.

QUESTION 2

- (a) May the City legally and ethically now pay the former employees which have been underpaid?

- (b) In the event that the City can now pay its underpaid former employees, should these funds be paid from the funds of the department from which the former employee worked or from some other fund?

FACTS, ANALYSIS AND CONCLUSION

The answer to the first part of your question is yes, if these claims are not barred by the applicable statute of limitations. The question of the source of these funds is a factual one and must be decided by the municipal governing body.

QUESTION 3

- (a) Is the City required by Sections 68 and 94 of the Alabama Constitution of 1901 to deduct or recalculate the amount of compensatory hours due the employees and to deduct from their time sheets all hours which were not actually earned?
- (b) May the City make some appropriate adjustment to the number of hours, without reducing the hours by the actual amount of unearned hours, i.e., can the City give the employee a few extra hours of time to compensate them for the inconvenience and the problems that this miscalculation has caused them?

FACTS, ANALYSIS AND CONCLUSION

The answer to the first part of your question is yes. The giving of extra hours as outlined in the second part of question three could be done only if all employees who are similarly situated were treated equally and giving them hours could, in fact, be considered compensation.

QUESTION 4

- (a) What is the proper procedure to follow in correcting the miscalculation error

for the present employee of the City who has been requested to take time off when, in actuality, she did not have any accumulated compensatory time?

- (b) Is the City obligated to require this employee to pay the City for any unearned compensatory time? If this employee is required to reimburse the City, should the City require the employee to reimburse it in cash, or can the City make deductions from the employee's future pay checks or future compensatory pay?

FACTS, ANALYSIS AND CONCLUSION

In most instances, deductions from future pay checks or future compensatory pay would violate the Constitution of Alabama 1901, § 94, as amended. Since, however, the problem here was caused by the city, in this limited instance the reimbursement can be made in any way in which the city and the employee agree it can be made. This includes cash or deductions from future pay checks or future compensatory pay.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General

By:



CAROL JEAN SMITH
Assistant Attorney General

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