

DISTRICT ATTORNEY'S OFFICE

33rd & 424th Judicial Districts

COUNTIES OF

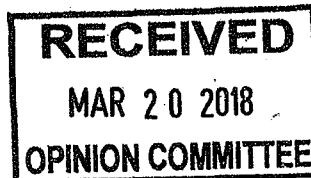
BLANCO • BURNET • LLANO • SAN SABA

Wiley B. McAfee

District Attorney

1701 E. Polk Street, Burnet, TX 78611 • P. O. Box 725, Llano, TX 78643

(325)247-5755 • (512)756-5449 • w.mcafee@co.llano.tx.us



March 30, 2018

Office of the Attorney General
Attention Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548
opinion.committee@oag.texas.gov

FILE # ML-48332-18

I.D. # 48332

RQ-0216-KP

Dear Attorney General Paxton:

I am writing to request an opinion from your office related to the following:

Does Texas Government Code Chapter 615, Subchapter D, impose an obligation on a municipality to provide benefits to survivors (surviving spouse and dependents) of a part-time public safety employee who died in the line of duty when part-time employees and part-time employees' spouses or dependents are not entitled to such benefits under the municipality's policies?

Facts:

The City of Burnet (City) hired a part-time firefighter/EMT. The firefighter/EMT was continuously employed on a part-time basis from the date of hire until his line of duty death while transporting a patient in a City emergency service vehicle.

The City's personnel policy manual categorizes firefighters as either a part-time or regular employee.¹ Part-time employees are entitled to no benefits other than worker's compensation insurance. Regular employees' medical and life insurance premiums are paid by the City. A regular employee may add dependent coverage at the regular employee's own expense. As part-time employees are not entitled to any medical or life insurance benefits under the personnel policy manual, a part-time employee is not entitled to insure his or her dependent's under the City's health care plan. See Exhibit A, Policy Manual.

After the firefighter/EMT's death, his widow filed for the statutory cash death benefit for surviving spouse and minors under Chapter 615 of the Texas Government Code. Those benefits were granted by the Employees Retirement System of Texas (ERS) on October 17, 2016. See Exhibit B, ERS Benefit letter. ERS further advised the widow to enroll in health, dental and/or vision coverage due to the decedent's

¹ City of Burnet Personnel Policy Definitions: Section 4.01- Employment Categories

Regular: A regular employee is one that has completed his/her training and evaluation period of 90 to 180 days and who works, on average, at least forty (40) hours per week. Only regular employees accrue benefits as described in these policies. A regular employee is employed in an authorized position that involves, on the average, at least forty (40) hours per week.

Part-time: A part-time employee is employed in an authorized position that involves, on the average, fewer than forty (40) work hours per week. All part-time employees will be covered by workman's compensation insurance, but accrue no other benefits.

employment with the City. However, ERS was unaware of his part-time employment status with the City at the time of their letter.

After the ERS granted the statutory cash benefit and up to the current date of this letter, the City has allowed the surviving spouse to purchase insurance for herself and her children at the same rate that full time employees pay for dependent coverage.

Brief:

The Texas Legislature enacted the health insurance coverage statute for eligible survivors to provide assistance for surviving family members of firefighters who die in the line of duty, as an additional death benefit aside from the monetary cash benefit provided by the state. See Tex. Gov't Code Ch. 615 *et. seq.* A prior Attorney General Opinion stated the statute implied the legislature intended to entitle a survivor to purchase benefits the survivor could have purchased before the death of their family member. AG Opinion LO97-040 (1997). The Opinion concluded if the ERS determines a survivor of a deceased public safety officer is entitled to receive a cash benefit under the statute, then the employee may purchase continued health benefits from the entity that employed the officer. *Id.* In 2009, the Legislature amended the statute with Senate Bill 872 to effectuate their legislative intent. That bill amended the statute to allow a spouse to maintain coverage regardless of employment status. See Act of April 7, 2009, 81st Leg., R.S., Ch. 55 §6, 2009 Tex. Gen. Laws 2475. Several surviving spouses applied for benefits but were denied because they were not enrolled in their spouse's insurance plan at the time of death. Senate Comm. on State Affairs, Bill Analysis, Tex. S.B. 872 81st Leg. R.S. (2009). To clarify this issue, in 2011, the Legislature amended the statute to add provisions about benefit eligibility during the life of the individual, but did not clarify the meaning of eligibility for benefits with a line of duty death employee's employer based on their employment status with their employer at the time of their passing.

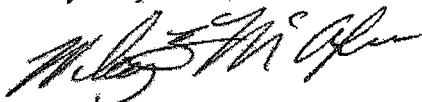
In this case, the ERS granted death benefits to the surviving spouse and indicated they were eligible for health insurance benefits pursuant to Government Code Section 615.073(a) and 615.074(a); as such, the City provides and charges for insurance benefits to the surviving spouse as though her husband was a full-time employee prior to his death.

Question Presented for Opinion:

- 1) Does Texas Government Code, Chapter 615, Subchapter D, the Health Insurance Coverage for Eligible Survivors statute, require the City to offer a surviving spouse or dependents of a part-time employee, who was not eligible for health insurance benefits at the time of the part-time employee's death, to purchase health insurance benefits from the City pursuant to Government Code §615.072(b-1)?

This issue is of great interest to the citizens of Burnet, Texas and any other eligible surviving spouses and dependents for the City and States' first responder families. Your opinion to resolve this issue is appreciated.

Very Truly Yours,



Wiley B. McAfee
District Attorney,
33rd & 424th Judicial Districts
Blanco, Burnet, Llano & San Saba Counties, Texas