



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

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FILE NO. 97-020

TOWNSHIPS:  
Severance Pay for Township Employees

Honorable Marshall E. Douglas  
State's Attorney, Rock Island County  
Rock Island County Courthouse  
Rock Island, Illinois 61201

Dear Mr. Douglas:

I have your letter wherein you inquire whether a township having fewer than five employees may provide severance benefits, to be paid from public funds, to its employees. For the reasons hereinafter stated, it is my opinion that the payment of severance benefits in these circumstances is permissible if such benefits form part of an employment agreement or employment policy which has been agreed to by the township and the employees in advance.

Section 100-5 of the Township Code (60 ILCS 1/100-5  
(West 1996)) provides:

" \* \* \*

(a) The township board may employ  
and fix the compensation of township

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employees that the board deems necessary, excluding the employees of the offices of supervisor of general assistance, township collector, and township assessor. \* \* \*

(b) The board shall set and adopt rules concerning all benefits available to employees of the board if the board employs 5 or more employees. The rules shall include, without limitation, the following benefits to the extent they are applicable: insurance coverage, compensation, overtime pay, compensatory time off, holidays, vacations, sick leave, and maternity leave.  
\* \* \*"

Employment relationships are contractual in nature, so that the power to employ and fix the compensation of employees necessarily implies the authority to establish other terms and conditions of employment including hours, leave time, and the form, nature and time for payment of compensation. Although subsection 100-5(b) of the Code requires that a township employing at least five employees adopt rules for the consistent treatment of its employees, it does not limit the power of a township employing fewer persons to provide for the terms and conditions of employment of its employees, either individually or collectively.

Townships are granted the authority to provide certain types of employment benefits under specific statutes. For example, the provision of insurance benefits is governed by section 100-15 of the Township Code (60 ILCS 1/100-15 (West 1996)), and townships which elect to provide pension benefits

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must comply with article 7 of the Pension Code (40 ILCS 5/7-101 et seq. (West 1996)).

In addition to applicable statutory provisions, if any, compensation and benefits of public employees must also comply with the constitutional requirement that public funds and property be used only for public purposes. (Ill. Const. 1970, art. VIII, sec. 1(a).) Thus, it has been held that a payment or allowance in excess of that which was fixed by law or contract at the time when services were rendered, and when no further services are contemplated, is a gift for the private benefit of the individual, which serves no public purpose. (Porter v. Loehr (1928), 332 Ill. 353, 361.) Under this principle, it has been held that a terminated municipal employee could not recover monetary compensation for accumulated but unused leave time where no ordinance or contract provided for such compensation. (Koudelka v. Village of Woodridge (1980), 91 Ill. App. 3d 884, 888.) However, post-employment compensation has been permitted where it serves an identified public purpose. Thus, public pension programs generally have been upheld as a form of deferred compensation to insure long, continued service. People ex rel. Kroner v. Abbott (1916), 274 Ill. 380; McFarlane v. Hotz (1948), 401 Ill. 506.


In general, therefore, it is my opinion that severance benefits for public employees which form part of an employment agreement or policy agreed to in advance are not prohibited; in

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such circumstances, no additional compensation is to be paid, although the payment of compensation due under the terms of the agreement or policy is deferred until the employment relationship is completed. A gift or gratuity for the benefit of an employee who will render no further service, which has not been agreed to in advance by the parties, and to whom all compensation has been paid in accordance with an ordinance or agreement, however, would ordinarily not be permissible. Such a payment would constitute nothing more than a gift of public funds, unrelated to service, and would therefore be contrary to the purposes which the constitutional prohibition serves.

Whether any proposed employment benefit serves an appropriate purpose raises issues of fact and policy which the township and its electors must consider in determining whether to implement the benefit. Assuming that employees' severance benefits are agreed to in advance as part of an employment agreement or employment policy, however, it is my opinion that a township is not prohibited per se from providing such benefits to its employees.

Sincerely,

  
JAMES E. RYAN  
ATTORNEY GENERAL