



HB 3015: A Violation of the Texas Constitution's Gift Clause

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HB 3015 is an attempt to statutorily validate “release time” for firefighter unions, a practice that violates Article III, §§ 50, 51, 52(a) and Article XVI §6(a) of the Texas Constitution (collectively the “gift clause”):

- The gift clause prohibits the use of public funds for private enterprises and activities and/or the allocation of public funds to private, special interests.
- A municipal expenditure violates the gift clause if a government payment is “gratuitously” granted to a private entity (lacks sufficient consideration) or the payment does not serve a legitimate public purpose and afford a clear public benefit in return (*Texas Mun. League Intergovernmental Risk Pool v. Texas Workers' Comp Comm'n*, 74 S.W.3d 377, 383-84 (Tex. 2002)).

HB 3015 proposes an end run around the gift clause by having union firefighters donate vacation hours to the union via a vacation leave time account, established and maintained by the municipality. The activity described in HB 3015 violates the gift clause:

- The municipality is giving the union free employee time, in the form of paid vacation leave instead of release time.
- An expenditure that primarily benefits a private entity is unconstitutional (*Tex. Mun.*, 74 S.W.3d at 384).

Additionally, government subsidizing a union's activity, whether with money, release time, or vacation time hours, violates the First Amendment:

- “First Amendment values [would be] at serious risk if the government [could] compel a particular citizen, or a discrete group of citizens, to pay special subsidies for speech on the side that [the government] favors” (*Knox v. SEIU Local 1000*, 132 S.Ct. 2277, 2295-6 (2012)).

Finally, HB 3015 harms both firefighters and the municipalities that employ them:

- The purpose of vacation time is for employees to rest, recharge, and spend time away from work. HB 3015 could rob firefighters of their much-needed vacation time.
- It is possible that municipalities will increase the amount of firefighter vacation time to compensate for the hours “donated” by firefighters to the union. Taxpayers will foot the bill for both the extra vacation time and the overtime for firefighters to cover those shifts. ★

