

Vinson & Elkins

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Mr. Jim Nabholz
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RECEIVED

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TCDRS



Re: Statutory Provisions Governing Employer Matching Rate

Dear Jim:

This letter is in response to the question of whether a participating subdivision is permitted under the statute governing the Texas County and District Retirement System ("TCDRS") to select different employer matching rates for different classes of employees – for example, a 200% employer matching rate for a certain class of employees for a particular calendar year and a 100% employer matching rate for all other employees for this same calendar year.

Under Title 8, Subtitle F of the Texas Government Code (the "TCDRS Act"), a subdivision participating in TCDRS has the ability to customize the level of TCDRS benefits for its employees by selecting certain options. One of these options is the amount of the employer matching rate. Specifically, under Section 844.704(a) of the TCDRS Act, the governing body of a participating subdivision may select an employer matching rate of between 100% and 250%.

The TCDRS Act also provides flexibility for a participating subdivision to change its employer matching rate. Under Section 844.704(a) of the TCDRS Act, a participating subdivision may, effective for the next calendar year, elect to increase or decrease the employer matching rate. If a participating subdivision decides to increase its employer matching rate, the TCDRS Act allows the subdivision the further option of deciding whether the increase will be retroactive or prospective only. A decrease in an employer matching rate, however, will be effective only on a prospective basis.

Like the other options available to a participating subdivision, the TCDRS Act contemplates that the employer matching rate for a particular calendar year applies to all of the subdivision's employees on a uniform basis. In other words, while there is flexibility for a participating subdivision to select certain options and customize its TCDRS plan, these options are for a single TCDRS plan that applies to all of the subdivision's employees on an equal basis.

We found no provision in the TCDRS Act or the Texas Administrative Code that supports an interpretation of allowing a subdivision to select different employer matching rates for different classes of employees. To the contrary, the language of the TCDRS Act consistently supports that a participating subdivision may select only one employer matching rate for a particular calendar year that applies to all of its employees.

The TCDRS Act consistently describes a participating subdivision's employer matching rate in the singular (that is, as only one rate). For example, in Section 844.704(a) of the TCDRS Act, the statute states that "[t]he governing of a subdivision shall select a percentage for determining multiple matching credits...." (emphasis added) Similarly, in discussing increases and decreases of the employer matching rate, the statute refers to "the percentage used in determining multiple matching credits...." (emphasis added) The idea of a subdivision's employer matching rate applying to all of its employees on a uniform and equal basis is consistent with other TCDRS Act provisions that apply to all of a subdivision's employees on a uniform and equal basis.¹ Moreover, when the statute specifically addresses changes to the employer matching rate and other options relating to such change (e.g., the choice of an increase in the employer matching rate being either retroactive or prospective only), the absence of any provision that even hints at allowing different employer matching rates for different classes of employees is indicative that this is neither contemplated nor permitted by the statute.

In sum, it is our opinion that a participating subdivision is not permitted under the TCDRS Act to select different employer matching rates for different classes of employees, but rather that the selected employer matching rate for a particular calendar year applies to all of the subdivision's employees on a uniform and equal basis.

Please let me know if you have any questions or comments or would like to discuss this matter further.

Sincerely,



Ronald F. Bradshaw

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¹ For example, under Section 844.702 of the TCDRS Act, the selected member contribution rate applies to all of a subdivision's employees on an equal and uniform basis.