

MEMORANDUM OF LAW

DATE: February 28, 1990

TO: Dan Teague, Long Term Disability
Administrator, Risk Management Department
FROM: City Attorney
SUBJECT: Municipal Employees Association Supplemental
Benefit Plan

The Municipal Employees Association (MEA) has submitted a proposal to provide MEA members with supplemental disability insurance. The proposed insurance would be in addition to, as opposed to in lieu of, the Long Term Disability (LTD) benefits currently provided to employees by the City. The proposal has been reviewed by the City's independent consultant, The Wyatt Company, and The Wyatt Company has recommended that the proposal be rejected. Nevertheless, you have asked if the City can expect reimbursement from Colonial Life for amounts paid to employees through the LTD plan should the proposal be accepted.

Under the usual circumstances no offset would be due to the City. The Colonial Life plan is an independent supplemental benefit plan that will be paid for by the employee. Additionally, the Colonial Life literature specifically states that benefits will be paid regardless of any other benefits available. The doctrine of subrogation, as discussed in the Memorandum of Law dated February 9, 1990, is not applicable to an independent privately paid benefit plan like Colonial Life.

However, the City's LTD plan makes specific provisions for supplemental policies that are paid through payroll deductions. Section 5.04(a) defines "other income benefits" as "any group policy of accident and health insurance providing benefits for loss of time from employment because of disability which has been provided by the City or any other employer or with respect to which the City or any other employer shall have made payroll deductions" (emphasis added).

The basic structure of the LTD plan is that an employee will receive 70 percent of his or her salary less all other income

benefits. MEA's proposal indicates that the supplemental insurance will be paid for through a payroll deduction. Therefore, any amounts an employee receives from the Colonial Life policy will be offset before LTD benefits are distributed.

Should MEA choose to do their own accounting, no offset to the LTD plan would be due to the City. However, the plan, should MEA provide its own accounting services, is fraught with the

danger of seriously undermining the City's LTD, light duty and rehabilitation plans. With the supplemental insurance and LTD, injured employees could receive up to one hundred and fifty percent (150 percent) of their salaries. Such provisions would discourage an expeditious return to work and there would be little incentive for an employee to participate in the light duty or rehabilitation programs. Such benefits clearly have the potential to encourage malingering. In view of the potential pitfalls of a supplemental insurance program, The Wyatt Company's advice should be accepted and MEA's proposal should not be encouraged by the City. In light of the above, you may desire to reevaluate the current LTD plan to see if changes may be made which might eliminate the demand for supplemental insurance.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:mrh:341.1(x043.2)

cc Sam Gray

D. Cruz Gonzalez

Bruce Herring

ML-90-30