



the implementing regulations violate both constitutional provisions. The court of appeals concluded that, because the provisions are analogous to custodial-escheat statutes, they are constitutional. 38 S.W.3d 591. The court of appeals thus reversed the trial court's judgment and rendered judgment in the Texas Workers' Compensation Commission's favor. 38 S.W.3d at 600. We agree the provisions are constitutional, but not for the reasons the court of appeals articulated. Accordingly, we affirm the court of appeals' judgment.

## **I. BACKGROUND**

The Texas Municipal League Risk Pool includes more than 1,600 Texas cities providing workers' compensation benefits to their employees through a joint-insurance fund. The cities formed the Risk Pool under the Labor Code, which requires all political subdivisions to provide their employees workers' compensation benefits by (1) becoming a self-insurer, (2) obtaining an insurance policy, or (3) joining with other political subdivisions to self-insure through a joint-insurance fund. TEX. LAB. CODE §§ 504.011, .016. According to its bylaws, the Risk Pool's objectives are to formulate, develop and administer a self-insurance program for its members, to obtain lower costs for workers' compensation coverage, and to develop a comprehensive safety program.

The Risk Pool charges its member cities contributions based on a "modifier system." Under this system, the Risk Pool's Board of Trustees requires its member cities to contribute a standard rate for each job classification. The cities' contributions go to a common fund, which the Risk Pool uses to pay for its member cities' workers' compensation claims and administrative expenses. The Risk Pool also invests its member cities' contributions and combines any investment returns with the existing funds available for

benefits.

Every eighteen months, the Risk Pool's Board analyzes each member city's five-year claims history to determine the future contributions the city must make. Depending on each city's claims history, the Board assigns a modifier to adjust each city's contributions. If the city's claims history is good, the Risk Pool offers a discount on contributions and returns money as "equity" to the eligible cities.

In 1997, the TWCC directed the Risk Pool to pay its unclaimed death benefits to the Subsequent Injury Fund, as Labor Code sections 403.007(a) and 408.184(c) require. The Risk Pool paid \$85,000 before halting its payments. The Risk Pool then sought declaratory relief that Labor Code sections 403.007(a) and 408.184(c), and the rules the TWCC promulgated under those sections, are unconstitutional. Specifically, the Risk Pool claimed the provisions, as applied to the Risk Pool, violate Texas Constitution article III, section 52(a), which prohibits the Legislature from authorizing any state political subdivision to lend its credit or to grant public money to any individual, association or corporation. The Risk Pool also alleged the provisions, as applied to the Risk Pool, violate Texas Constitution article VIII, section 1-e, which prohibits the State from levying an ad valorem tax on any property within the State.

The trial court determined that the provisions violated both sections of the Constitution. The court of appeals reversed and rendered in the TWCC's favor. It held that the provisions are not unconstitutional because they operate like custodial-escheat statutes. 38 S.W.3d at 598. The court of appeals reasoned that because the challenged provisions only transfer custody of, and not title to, the Risk Pool's funds, the "escheat" of the unclaimed death benefits can be neither a "lending of credit" that article III, section 52(a) prohibits nor a "recapture of local taxes" that article VIII, section 1-e prohibits. 38 S.W.3d at 598.

We granted the Risk Pool's petition for review to consider: (1) whether the challenged provisions operate like custodial-escheat statutes; (2) whether the challenged provisions violate Texas Constitution article III, § 52(a); and (3) whether the challenged provisions violate Texas Constitution article VIII, § 1-e.

## **II. THE SUBSEQUENT INJURY FUND**

### **A. THE SUBSEQUENT INJURY FUND**

The Fund, originally established in 1947 as the Second Injury Fund, is a special TWCC-administered account in the state treasury. TEX. LAB. CODE § 403.006(a). The Legislature established the Fund to pay lifetime workers' compensation benefits to injured employees and to encourage employers to hire people with disabilities or preexisting injuries. *Miears v. Industrial Accident Bd.*, 232 S.W.2d 671, 673 (Tex. 1950). Under Labor Code section 402.061, which authorizes the TWCC to adopt regulations to enforce the Texas Workers' Compensation Act, the TWCC has adopted regulations to implement the Fund. 28 TEX. ADMIN. CODE §§ 132.10-.12.

The Fund pays workers' compensation benefits when an injured employee suffers a compensable injury that, when combined with a previous injury's effects, results in a condition that entitles the employee to lifetime benefits. *See* TEX. LAB. CODE § 408.162(a). Thus, if an employee suffers a subsequent compensable injury, the employer must pay benefits for that injury only to the extent that the injury would have entitled the employee to benefits had the previous injury not occurred. TEX. LAB. CODE § 408.162(a). Then, the Fund pays for the claimant's remaining lifetime benefits. TEX. LAB. CODE § 408.162(b).

To subsidize the Fund, Labor Code sections 403.007(a) and 408.184(c) require insurance carriers to contribute to the Fund any unclaimed death benefits not distributed under Labor Code section 408.182. *See also* 28 TEX. ADMIN. CODE § 132.10(a). Section 408.182 lists the beneficiaries eligible to receive benefits if an employee suffers a compensable injury that results in a death. TEX. LAB. CODE § 408.182; *see also* 28 TEX. ADMIN. CODE § 132.10(a). If a beneficiary on the list does not exist or does not timely claim the benefits, a workers' compensation carrier must then contribute those benefits to the Fund. TEX. LAB. CODE §§ 403.007(a); 408.182(e); *see also* 28 TEX. ADMIN. CODE § 132.10(a).

Ordinarily, a beneficiary must file a claim for death benefits within one year of an eligible employee's death. TEX. LAB. CODE § 409.007(a). If the beneficiary does not file a claim within one year, the claim is barred unless the beneficiary is a minor or incompetent or good cause exists for the beneficiary's failing to file a claim. TEX. LAB. CODE § 409.007(b). But, for purposes of financing the Fund, the Labor Code presumes that no legal beneficiary survives the employee if a death-benefits claim is not filed with the TWCC within one year of the employee's death. TEX. LAB. CODE § 403.007(c); *see also* TEX. ADMIN CODE § 132.10(h). This presumption applies unless the beneficiary is a minor or an incompetent lacking an appointed guardian. TEX. LAB. CODE § 403.007(c); *see also* TEX. ADMIN CODE § 132.10(i).

## **B. STATUTORY CONSTRUCTION**

If possible, we construe a statute in a manner that renders it constitutional and gives effect to the Legislature's intent. *See Quick v. City of Austin*, 7 S.W.3d 109, 115 (Tex. 1998); *Liberty Mut. Ins. Co.*

*v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 484 (Tex. 1998). We presume that the Legislature intended for the law to comply with the United States and Texas Constitutions, to achieve a just and reasonable result, and to advance a public rather than a private interest. TEX. GOV'T CODE § 311.021; *Spence v. Fenchler*, 180 S.W. 597, 605 (Tex. 1915). Nevertheless, the Legislature may not authorize an action that our Constitution prohibits. See *Maher v. Lasater*, 354 S.W.2d 923, 925 (Tex. 1962); *Travelers' Ins. Co. v. Marshall*, 76 S.W.2d 1007, 1009 (Tex. 1934). The burden is on the party attacking the statute to show that it is unconstitutional. See *Texas Pub. Bldg. Auth. v. Mattox*, 686 S.W.2d 924, 927 (Tex. 1985).

In an as-applied constitutional challenge, we must evaluate the statute as it operates in practice against the particular plaintiff. See *Texas Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 518 n.16 (Tex. 1995). In construing the statute and its effect, we consider several factors, including: the statute's purpose; the circumstances of the statute's enactment; the legislative history; common-law or former statutory provisions, including laws on the same or similar subjects; a particular construction's consequences; administrative construction of the statute; and the title, preamble and emergency provision. TEX. GOV'T CODE § 311.023; *Ken Petroleum Corp. v. Questor Drilling Corp.*, 24 S.W.3d 344, 350 (Tex. 2000).

### **III. CUSTODIAL ESCHEAT**

The Risk Pool argues that Labor Code sections 403.007(a) and 408.184(c) are unconstitutional. It contends the challenged provisions are not analogous to a custodial-escheat statute, because the State

acquires permanent control over the unclaimed benefits and does not have to return the benefits to rightful claimants whenever they appear. Moreover, the Risk Pool asserts, the challenged provisions do not require that the TWCC publish notice to potential claimants that the State has assumed temporary custody over the benefits.

The TWCC, on the other hand, argues that the challenged provisions operate like certain Insurance Code provisions that, in requiring the State to remit unclaimed life-insurance benefits to rightful claimants, operate as custodial-escheat statutes. *Cf.* TEX. INS. CODE art. 4.08, §§ 7, 10. The TWCC asserts that Labor Code sections 403.007(a) and 408.184(c) give the State temporary custody, not absolute title, over unclaimed benefits until beneficiaries try to recover those benefits. Therefore, the TWCC argues, these provisions do not violate the Texas Constitution.

#### **A. APPLICABLE LAW**

Escheat is a procedure by which a sovereign state acquires title to abandoned property if no rightful owner appears after a specified time period. *Anderson Nat'l Bank v. Lueckett*, 321 U.S. 233, 240 (1944). Escheat statutes can be either absolute or custodial. *See* Comment, *Escheat in Texas: A Current Look at the Intangible Issue*, 29 Sw. L.J. 575, 577 (1975). Under absolute-escheat statutes, the state acquires title to property through operation of law or a judicial proceeding. *See Ellis v. State*, 21 S.W. 66, 66 (Tex. Civ. App. 1893) (operation of law); TEX. PROP. CODE § 71.001(b) (judicial proceeding). In contrast, custodial-escheat statutes give the state only temporary custody over personal property until the state identifies a true owner. *See Travelers Express Co. v. Minnesota*, 506 F. Supp.

1379, 1380 n.1 (D. Minn. 1981); *TXO Prod. Corp. v. Oklahoma Corp. Comm'n*, 829 P.2d 964, 971-72 (Okla. 1992). Escheat statutes, whether absolute or custodial, are constitutional if they give potential claimants notice after the state acquires the funds and an administrative and judicial hearing to adjudicate claims. *See Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541, 547 (1948). A state must also use reasonable diligence to discover the potential claimants to the property. *See Robinson v. State*, 87 S.W.2d 297, 298 (Tex. Civ. App.–El Paso 1935, writ dismissed).

## B. ANALYSIS

The court of appeals concluded that Labor Code sections 403.007(a) and 408.184(c) are constitutional because they permit the State to take custody of unclaimed property through an “escheat-like – or ‘custodial taking’ – procedure.” 38 S.W.3d at 598. The court of appeals determined that the challenged provisions are analogous to article 4.08 of the Insurance Code, which, the court of appeals recognized, operates as a true custodial-escheat statute. 38 S.W.3d at 598. We disagree with this analysis.

Article 4.08 of the Insurance Code does have custodial-escheat characteristics. This provision requires the State to assume custody over unclaimed life-insurance funds for future eligible claimants’ benefits, and it contains detailed notice provisions. *See TEX. INS. CODE art. 4.08, §§ 4-7, 10*. However, Labor Code sections 403.007 and 408.184 do not share these characteristics. These provisions’ underlying purpose is not for the State to return unclaimed or abandoned property to any rightful claimant at any time, as a true custodial-escheat statute requires. *See Travelers Express*, 506 F. Supp. at 1380

n.1. Instead, these provisions' purpose is to provide a means for financing the Fund so that lifetime benefits to workers with multiple injuries are available but individual employers do not have to bear this cost. TEX. LAB. CODE § 408.162. Additionally, unlike a custodial-escheat statute that requires the State to maintain custody for an eventual rightful owner, the Labor Code presumes that no legal beneficiaries of the death benefits exist after one year. *Compare Travelers Express*, 506 F. Supp. at 1380 n.1, with TEX. LAB. CODE § 403.007(c), and *Industrial Accident Bd. v. Texas Employers' Ins. Ass'n*, 345 S.W.2d 718, 722 (Tex. 1961). For all practical purposes, the State acquires title to unclaimed death benefits after one year and is not a temporary custodian for a future eligible claimant.

Accordingly, we conclude that the challenged provisions are not analogous to a custodial-escheat statute. Therefore, we disagree with the court of appeals' conclusion that the provisions are constitutional on this ground.

#### **IV. ARTICLE III, SECTION 52(A)**

The Risk Pool argues that Labor Code sections 403.007(a) and 408.184(c) require it to grant public money to the Fund, which is an individual, association, or corporation. Therefore, the Risk Pool contends, the provisions violate article III, section 52(a) of our Constitution. Furthermore, the Risk Pool contends that the challenged provisions also violate this section because the Fund is not required to pay the Risk Pool's member cities the same benefits as the cities must contribute to the Fund. *See City of Tyler v. Texas Employers' Ins. Ass'n*, 288 S.W. 409 (Tex. Comm'n App. 1926, judgment adopted). The Risk

Pool asserts that the Fund is constitutional only if the public money is spent for the benefit of the specific locality from which the funds originated.

In response, the TWCC argues that the Fund is a TWCC-administered special account and not an individual, association, or corporation within section 52(a)'s meaning. *See Martinez v. Second Injury Fund*, 789 S.W.2d 267, 269 (Tex. 1990). Furthermore, the TWCC argues that the Risk Pool's contributions to the Fund are not gratuitous grants of public money, because the Risk Pool's member cities receive a return benefit whenever their employees qualify for benefits from the Fund.

#### A. APPLICABLE LAW

Article III, section 52(a) provides:

[T]he Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever. . . .

TEX. CONST. art. III, § 52(a).

We have held that section 52(a)'s prohibiting the Legislature from authorizing a political subdivision "to grant public money" means that the Legislature cannot require *gratuitous* payments to individuals, associations, or corporations. *See, e.g., Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 740 (Tex. 1995) (Edgewood IV); *Bexar County Hosp. Dist. v. Crosby*, 327 S.W.2d 445, 447 (Tex. 1959); *Davis v. City of Lubbock*, 326 S.W.2d 699, 709 (Tex. 1959); *Byrd v. City of Dallas*, 6 S.W.2d 738, 740 (Tex. 1928). A political subdivision's paying public money is not "gratuitous" if the political subdivision

receives return consideration. *Key v. Commissioners Ct. of Marion County*, 727 S.W.2d 667, 668 (Tex. App.–Texarkana 1987, no writ).

Moreover, we have determined that section 52(a) does not prohibit payments to individuals, corporations, or associations so long as the statute requiring such payments: (1) serves a legitimate public purpose; and (2) affords a clear public benefit received in return. *See Edgewood IV*, 917 S.W.2d at 740; *Bullock v. Calvert*, 480 S.W.2d 367, 370 (Tex. 1972) (citing *Davis v. City of Lubbock*, 326 S.W.2d 699 (Tex. 1959)); *Brazos River Auth. v. Carr*, 405 S.W.2d 689, 694 (Tex. 1966); *Byrd*, 6 S.W.2d at 740. A three-part test determines if a statute accomplishes a public purpose consistent with section 52(a). Specifically, the Legislature must: (1) ensure that the statute’s predominant purpose is to accomplish a public purpose, not to benefit private parties; (2) retain public control over the funds to ensure that the public purpose is accomplished and to protect the public’s investment; and (3) ensure that the political subdivision receives a return benefit. *See Atkinson v. City of Dallas*, 353 S.W.2d 275, 279 (Tex. Civ. App.–Dallas 1961, writ ref’d n.r.e.); *Gillham v. City of Dallas*, 207 S.W.2d 978, 983 (Tex. Civ. App.–Dallas 1948, writ ref’d n.r.e.). *See generally* Mike Willatt, *Constitutional Restrictions on Use of Public Money and Public Credit*, 38 TEX. B.J. 413, 421 (1975).

## **B. ANALYSIS**

Under article III, section 52(a), the Legislature may not authorize a county, city, town or political subdivision of the State to lend credit or grant public funds. By its terms, section 52(a)’s scope includes each Risk Pool member city, and the TWCC does not dispute that Risk Pool itself qualifies as a political

subdivision within section 52(a)'s meaning.

For Labor Code sections 403.007(a) and 408.184(c) to violate section 52(a), these provisions must require the Risk Pool to grant public money to “individuals, associations, or corporations.” We agree with the TWCC that neither the Fund nor the TWCC qualify as an individual, association or corporation under section 52(a). The Fund is not an association; it is an account in the State treasury. *See Martinez*, 789 S.W.2d at 269. And, while section 52(a) prohibits granting public money to private individuals or commercial enterprises, it does not prohibit transfers to a state agency like the TWCC. *See Edgewood IV*, 917 S.W.2d at 740 (citing *Byrd*, 6 S.W.2d at 740).

Although the Fund and TWCC are not individuals, associations, or corporations, the challenged provisions require the Risk Pool to indirectly transfer public funds to individuals. Specifically, the Risk Pool must transfer unclaimed death benefits to the Fund, which then pays lifetime benefits to eligible individuals. TEX. LAB. CODE § 408.162. The money does not flow to a general account, and the State Comptroller does not administer the account or treat these funds as general revenue. Rather, the TWCC's Executive Director appoints the Fund's administrator. TEX. LAB. CODE § 403.006(c). Thus, under this scheme, the Fund is a conduit through which the Risk Pool transfers public funds to individuals — subsequent-injury claimants. Accordingly, we conclude that sections 403.007(a) and 408.184(c) require the Risk Pool to pay public money to individuals within section 52(a)'s meaning.

However, we cannot conclude that the challenged provisions require the Risk Pool to “gratuitously” transfer public funds as section 52(a) prohibits. Because the Risk Pool receives consideration for its unclaimed death benefits payments to the Fund, that consideration renders the provisions constitutional

because the payments are nongratuitous. *See Edgewood IV*, 917 S.W.2d at 740. The Risk Pool reads *Key v. Commissioners Court of Marion County* to require that its member cities receive equal consideration for the unclaimed death benefits they pay to the Fund. 727 S.W.2d at 669. But *Key* requires only sufficient — not equal — return consideration to render a political subdivision’s paying public funds constitutional. 727 S.W.2d at 669. Here, we conclude the Risk Pool receives enough consideration for its member cities’ paying unclaimed death benefits to the Fund. Specifically, the TWCC’s statutory obligation to pay lifetime benefits from the Fund to any Risk Pool member city’s employee who suffers a subsequent injury and qualifies for these benefits is consideration. Consequently, the Risk Pool member cities’ unclaimed death benefits payments to the Fund are not gratuitous.

Additionally, paying unclaimed death benefits to the Fund accomplishes a legitimate public purpose. *See Edgewood IV*, 917 S.W.2d at 740; *Bullock*, 480 S.W.2d at 370. In determining that the Fund accomplishes a legitimate public purpose, we apply the three-part test. *See Atkinson*, 353 S.W.2d at 279; *Gillham*, 207 S.W.2d at 983. *See generally* Willatt, 38 TEX. B.J. at 421. First, the challenged provisions’ predominant purpose is to provide lifetime workers’ compensation benefits for Texas employees with subsequent compensable injuries. Thus, employers would not have to pay higher workers’ compensation rates for hiring disabled employees and would not be discouraged from hiring such employees. *Miears*, 232 S.W.2d at 673. Second, the TWCC retains exclusive control over the unclaimed death benefits to fulfill the Fund’s objectives. *See* TEX. LAB. CODE 408.162. Third, as we already concluded, the Risk Pool’s member cities receive a direct reciprocal benefit from the Fund.

Paying unclaimed death benefits to the Fund also provides a clear public benefit. *See Edgewood*

*IV*, 917 S.W.2d at 740; *Bullock*, 480 S.W.2d at 370. The Fund ensures that employers do not deny employment to individuals with preexisting injuries because they fear that later injuries will expose them to greater liability. *See Mears*, 232 S.W.2d at 673. The Fund — by expanding Texas’ workforce, placing disabled workers on a more equal plane as compared to other workers, and lowering workers’ compensation rates — benefits the public as a whole, and not merely a particular private interest. Therefore, we conclude that Labor Code sections 403.007(a) and 408.184(c) accomplish a legitimate public purpose with a clear public benefit received in return. We disagree with the Risk Pool’s argument that the Fund is analogous to mutual assessable insurance programs that the Attorney General has opined, and a Texas court has held, to be unconstitutional under section 52(a). *See City of Tyler*, 288 S.W. at 412; Op. Tex. Atty. Gen. No. DM-326. In AG Opinion DM-326, the Attorney General discussed whether proposed legislation creating an association that would pay workers’ compensation claims for political subdivisions was constitutional. Op. Tex. Atty. Gen. No. DM-326 at 3424. Because political subdivisions’ membership would be mandatory, and the association would derive its funding through assessments imposed on its members, the Attorney General concluded that the proposed association would violate section 52(a). Op. Tex. Atty. Gen. No. DM-326 at 3424-26.

In reaching this conclusion, the Attorney General noted that the proposed association would operate like a mutual assessable insurance program in which subscribers contribute payments for all subscribers’ losses and expenses. Op. Tex. Atty. Gen. No. DM-326 at 3425. Such programs do not calculate payments based on each subscriber’s actual expense and loss experience, because each subscriber acts as both an insured and insurer for the other subscribers. Op. Tex. Atty. Gen. No. DM-326

at 3426. The Attorney General suggested that if the proposed association calculated payments based on the subscribers' actual claims history, the association would have self-insurance characteristics and, therefore, would be constitutional under section 52(a). Op. Tex. Atty. Gen. No. DM-326 at 3426.

In *City of Tyler*, the court considered whether a statute that authorized public employers to subscribe to the Texas Employers' Insurance Association was constitutional. 288 S.W. at 409. The court concluded that the TEIA was a mutual assessable insurance program, because every TEIA subscriber had to pay a proportionate part of any assessment the TEIA levied to finance all the subscribers' losses and expenses. *City of Tyler*, 288 S.W. at 411-12. The court held that this scheme was unconstitutional as applied to political subdivisions because their obligation to pay assessments to cover the TEIA's losses required them to "lend their credit" within section 52(a)'s meaning. *City of Tyler*, 288 S.W. at 412. Moreover, the court held that the TEIA unconstitutionally required political subdivisions to become "stockholders in a corporation, association, or company," which section 52(a) also prohibits. *City of Tyler*, 288 S.W. at 412.

Both AG Opinion DM-326 and *City of Tyler* determined that the insurance programs in those cases operated as mutual assessable insurance programs. Essentially, these programs require their subscribers to pay assessments to the association to insure other subscribers' losses, while at the same time, the subscribers can make claims against the association's funds for their own losses. *See also* TEX. INS. CODE art. 14.11; *Hutchins Mut. Ins. Co. v. Hazen*, 105 F.2d 53, 57 (D.C. Cir. 1939); COUCH ON INSURANCE 3D § 39:17, at 39-21. Each subscriber is charged the same assessment for insurance coverage; thus, each subscriber's policy is to some extent a coverage contract with every other subscriber.

*See Johnson v. Central Mut. Ins. Ass'n*, 143 S.W.2d 257, 262 (Mo. 1940). Moreover, each subscriber participates equally in the association's profits and losses. *See Ohio Farmers Indem. Co. v. Commissioner*, 108 F.2d 665, 667 (6th Cir. 1940); *Equitable Life Assurance Soc. v. Bowers*, 87 F.2d 687, 689 (2d Cir. 1937).

Here, unlike mutual assessable insurance programs, the Fund is an account under the TWCC's control financed with unclaimed death benefits. The Fund does not impose assessments on the Risk Pool's member cities. *Cf. Op. Tex. Atty. Gen. No. DM-326* at 3424-26. The member cities do not pay a proportional share of the Fund's losses and expenses, and they do not have to make equal payments to the Fund under an insurance policy. *Cf. City of Tyler*, 288 S.W. at 411-12. Indeed, if a member city has no unclaimed death benefits in a particular year, it contributes no money whatsoever to the Fund. Moreover, the Fund is not a company or association and does not enroll policyholders. *Cf. Ohio Farmers*, 108 F.2d at 667; *Equitable Life*, 87 F.2d at 689. In fact, the Fund has no "members" at all. Therefore, we conclude that the Fund is not an unconstitutional mutual assessable insurance program.

We conclude that the challenged provisions do not require the Risk Pool to gratuitously grant public money, because the Risk Pool's member cities receive consideration from the Fund, and the provisions serve a legitimate public purpose with a clear public benefit. *See Edgewood IV*, 917 S.W.2d at 740. Accordingly, we hold that Labor Code sections 403.007(a) and 408.184(c), as applied to the Risk Pool, do not violate article III, section 52(a).

## **V. ARTICLE VIII, SECTION 1-e**

The Risk Pool argues that Labor Code sections 403.007(a) and 408.184(c) violate the Texas Constitution, article VIII, section 1-e, because the provisions effectively levy a 100% ad valorem tax on property – in this case unclaimed death benefits. The Risk Pool also argues that the challenged provisions unconstitutionally authorize the State to recapture local tax dollars and redistribute them statewide.

The TWCC, on the other hand, contends that the payments to the Fund are not “taxes” at all. Thus, the TWCC argues, the challenged provisions do not authorize the State to levy ad valorem taxes within section 1-e’s meaning. Moreover, the TWCC contends that the challenged provisions do not require the State to unconstitutionally recapture local ad valorem tax revenues for statewide use.

#### **A. APPLICABLE LAW**

The Texas Constitution generally authorizes taxes on property in proportion to the property’s value. TEX. CONST. art. VIII, § 1(b). However, our Constitution prohibits the State from levying an ad valorem tax on any property within the State. TEX. CONST. art. VIII, § 1-e. The Legislature defines a state “tax” as “a tax, fee, assessment, charge, or other amount that the comptroller is authorized to administer.” TEX. TAX CODE § 101.003(13); *see also Conlen Grain & Mercantile, Inc. v. Texas Grain Sorghum Producers Bd.*, 519 S.W.2d 620, 623 (1975) (“A tax is a burden or charge imposed by the legislative power of the state upon persons or property to raise money for public purposes.”). The Risk Pool alleges that the TWCC, through the Subsequent Injury Fund, imposes a state “tax.”

Moreover, an “ad valorem” tax is a tax on property at a certain rate based on the property’s value. *See generally* 71 AM. JUR. 2D *State & Local Taxation* § 20 (1973). An ad valorem tax is a prohibited

tax under section 1-e when the State directly imposes it, or when a political subdivision imposes it but the State indirectly controls the tax revenues' levy, assessment, and disbursement so that the political subdivision lacks any meaningful discretion over these factors. *See Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489, 502 (Tex. 1992) (Edgewood III).

## B. ANALYSIS

We agree with the Risk Pool's argument that the unclaimed death benefits are "property" under article VIII, section 1-e. The Tax Code defines "property" as "any matter or thing capable of private ownership." TEX. TAX CODE § 1.04(1). Additionally, "intangible personal property" means a claim, right, or interest that has value but cannot be measured or perceived by the senses and includes an insurance policy, annuity, or pension. TEX. TAX CODE § 1.04(6). Here, the unclaimed death benefits are capable of private ownership, because there may be beneficiaries who can claim title to the funds. *See* TEX. LAB. CODE § 408.182; TEX. TAX CODE § 1.04(1). Furthermore, the Tax Code expressly includes an insurance policy, annuity or pension as intangible personal property. TEX. TAX CODE § 1.04(6); *see also Brown v. Lee*, 371 S.W.2d 694, 696 (Tex. 1963). Workers' compensation death benefits are analogous to life-insurance proceeds, because an employee's beneficiaries receive those benefits upon an employee's compensable death. *Compare* TEX. LAB. CODE § 408.182, *with Supreme Council of Am. Legion of Honor v. Larmour*, 16 S.W. 633, 634 (Tex. 1891) (life insurance beneficiaries receive money "upon the destruction or injury of something in which the assured has an interest.>"). Therefore, the unclaimed death benefits are "property" within section 1-e's meaning.

However, the challenged provisions are not a “tax” on the unclaimed death benefits. First, the challenged provisions are not a state “tax” as the Tax Code defines that term, because they do not authorize the comptroller to impose a fee, assessment, or charge. TEX. TAX CODE § 101.003(13). Second, the challenged provisions do not mandate that the Risk Pool or its member cities collect charges from property-owners to generate revenue. *See Conlen Grain*, 519 S.W.2d at 622-23 (holding that the statute at issue imposed a “tax” because it mandated that grain sorghum processors collect fees from producers for every .5 ton of grain produced). Rather, the challenged provisions only transfer unclaimed benefits that the Risk Pool’s member cities have already committed to paying workers’ compensation claims. *See* TEX. LAB. CODE §§ 408.181, 408.182.

Finally, the challenged provisions do not permit the State to indirectly control the levy, assessment, and disbursement of the Risk Pool member cities’ tax revenues. *Edgewood III*, 826 S.W.2d at 502. Indeed, the challenged provisions do not enable the State to participate in any way in the cities’ local taxing decisions. Therefore, we conclude that the State does not impose a tax to subsidize the Fund.

Because we conclude that the challenged provisions do not authorize a “tax,” article VIII, section 1-e is not implicated. Consequently, we hold that the challenged provisions, as applied to the Risk Pool, do not violate article VIII, section 1-e.

## VI. CONCLUSION

We hold that Labor Code sections 403.007(a) and 408.184(c), and the TWCC regulations

implementing these provisions, are not analogous to custodial-escheat statutes. We further hold that these provisions, as applied to the Risk Pool, do not violate article III, section 52(a), or article VIII, section 1-e of the Texas Constitution. Accordingly, we affirm the court of appeals' judgment.

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James Baker, Justice

OPINION DELIVERED: April 4, 2002