



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 21, 1994

Honorable Daniel C. Rice
District Attorney
9th Judicial District
301 North Thompson, Suite 106
Conroe, Texas 77301-2824

Letter Opinion No. 94-005

Re: Whether the composition of a board established pursuant to section 262.011 of the Local Government Code for the purpose of appointing a county purchasing agent must change in accordance with that section if the county's population moves above or below 150,000 (ID# 20997)

Dear Mr. Rice:

You have asked us whether the board established pursuant to section 262.011 of the Local Government Code for the purpose of appointing a county purchasing agent must be composed according to the population of the county (1) at the present time or (2) only at the time the board originally came into existence, so long as the board remains in continuous existence.

Section 262.011 provides in pertinent part as follows:

(a) *A board composed as provided by this subsection, by a majority vote, may appoint a suitable person to act as the county purchasing agent.*

In a county with a population of 150,000 or less, the board is composed of the judges of the district courts in the county and the county judge.

In any other county, the board is composed of three judges of the district courts in the county and two members of the commissioners court of the county unless the county has fewer than three district court judges, in which case the board is composed of one district court judge and one member of the commissioners court. . . .

The term of the county purchasing agent is two years.

(b) The board may remove the county purchasing agent from office.

....

(i) On July 1 of each year, the county purchasing agent shall file with the county auditor and each of the members of *the board that appoints the county purchasing agent* an inventory of all the property on hand and belonging to the county and each subdivision, officer, and employee of the county. . . .

. . . .

(k) *The board that appoints the county purchasing agent* shall set the salary of the agent

(l) The county purchasing agent may have assistants to aid in the performance of the agent's duties. The county purchasing agent and assistants may have any help, equipment, supplies, and traveling expenses that are approved and considered advisable by *the board that appointed the agent*. [Emphasis added.]

Section 311.005 of the Government Code defines *population* as generally used in codified statutes to mean "the population shown by the most recent federal decennial census." Gov't Code § 311.005(3).

You have informed us that the population of Montgomery County, the county about which you are concerned, first exceeded 150,000 in the 1990 census. We also assume as fact that the last time a purchasing agent was appointed for Montgomery County was before the 1990 census results were certified but after a 1989 amendment to section 262.011, Acts 1989, 71st Leg., ch. 1250, § 5, at 5048, which contained substantially the same relevant language as the current statute, became effective.

You enclosed with your request letter a memorandum arguing that a board's composition is determined for all time according to the population of the county at the time it was established. Following this argument, the population at the time Montgomery County's board was established¹ was the 1980 census population, which was not more than 150,000; therefore, the 1980 population figure is controlling and the board should continue to be constituted as provided in subsection (a) of section 262.011 for counties of no more than 150,000 residents. (That is, the board should continue to be composed of the judges of the district courts in the county and the county judge.)

The opposing contention is that the board should be reconstituted as provided by section 262.011 according to the population of the county at the present time. The result of the latter argument, for Montgomery County, is that any appointment after the 1990 census was certified should be made by a board composed as provided in subsection (a) of section 262.011 for counties of more than 150,000 residents. (That is, the board's

¹You have not informed us of the date of the board's establishment. We assume for the purposes of this opinion that the board was established at the same time as the last (and, according to this assumption, the only) county purchasing agent was appointed.

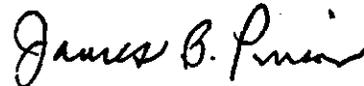
composition should change so that two county commissioners, rather than solely the county judge, would serve with the district judges, or so that only one district judge and one county commissioner would serve if the county has fewer than three district judges.)

We assume that the legislature had good and sufficient reasons for deciding, as it apparently did, that the smaller counties ought to have one scheme of board composition and the larger ones another. Therefore, we believe that a construction of the statute that would permit a board to change as the county changes is more consistent with the statute's distinction between larger and smaller counties than a construction based on the one-time event of the board's establishment. Consequently, we conclude that the composition of a board that appoints a county purchasing agent under section 262.011 of the Local Government Code must change in accordance with that section if the county's population moves above or below 150,000.²

S U M M A R Y

The composition of a board that appoints a county purchasing agent under section 262.011 of the Local Government Code must change in accordance with that section if the county's population moves above or below 150,000.

Yours very truly,



James B. Pinson
Assistant Attorney General
Opinion Committee

²You do not ask and we do not decide whether section 262.011 requires the board's composition to remain the same until the next appointment or to change immediately when a county's population shifts above or below 150,000 during an interim period between appointments.