



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 2, 1998

The Honorable Delwin Jones  
Chair, Redistricting Committee  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768

Letter Opinion No. 98-034

Re: Whether the executive director of the  
Lubbock Housing Authority may serve as a  
member of the City of Lubbock Civil Service  
Commission (RQ-1022)

Dear Representative Jones:

You have requested our opinion as to whether the executive director of the Lubbock Housing Authority may also serve as a member of the City of Lubbock Civil Service Commission.

The Fire Fighters' and Police Officers' Civil Service Commission was created under the terms of chapter 143 of the Local Government Code.<sup>1</sup> It "consists of three members appointed by the municipality's chief executive and confirmed by the governing body of the municipality."<sup>2</sup> Subsection 143.006(c) lists the qualifications for appointment to the commission. Among them is the requirement that an appointee "not have held a public office within the preceding three years." Consequently, you ask whether the position of executive director of a city housing authority constitutes such an "office" for purposes of subsection 143.006(c).

The Housing Authority of the City of Lubbock was established under the provisions of subsection 392.011 of the Local Government Code. Pursuant to subsection 392.031(a), the mayor "appoint[s] five persons to serve as commissioners of the authority." Section 392.038 provides:

A municipal or county housing authority may employ a secretary, who shall serve as executive director, and may employ technical experts and other officers, agents, and employees, permanent or temporary, the authority considers necessary. The authority shall determine the qualifications, duties, and compensation of the persons employed.

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<sup>1</sup>Applicable to municipalities: (1) with a population of 10,000 or more; (2) with a paid fire and police department; and (3) that have voted to adopt chapter 143. Local Gov't Code § 143.002.

<sup>2</sup>*Id.* § 143.006(b).

The plain language of section 392.038 makes clear that the executive director of a housing authority is an *employee*, rather than an *officer*, of the authority. As the Texas Supreme Court said in *Aldine Independent School District v. Standley*, 280 S.W.2d 578 (Tex. 1955), “the determining factor which distinguishes a public officer from an employee is whether any sovereign function of the government is conferred upon the individual to be exercised by him for the benefit of the public largely independent of the control of others.” *Id.* at 583. Section 392.051 of the Local Government Code states that “[t]he powers of an authority are vested in the commissioners of the authority,” and that the authority “may delegate a power or duty to an agent or employee as it considers proper.” As we said in Attorney General Opinion DM-163, in considering whether the executive director of a housing authority is an “officer” for purposes of the nepotism statutes:

As to those functions the authority delegates to the executive director, the authority does not “by such delegation abdicate [its] statutory authority or control.” *See Pena v. Rio Grande City Consol. Indep. Sch. Dist.*, 616 S.W.2d 658, 660 (Tex. Civ. App.--Eastland 1981, no writ). . . . Because the legislature has vested the power to hire in the authority and not in the executive director, the executive director cannot be subject to the nepotism statute.

Attorney General Opinion DM-163 (1992) at 2.

Since the executive director of the City of Lubbock Housing Authority is thus not an “officer,” subsection 143.006(c) presents no impediment to his appointment as a member of the City of Lubbock Civil Service Commission.

### S U M M A R Y

Because the executive director of the Housing Authority of the City of Lubbock is not an “officer” for purposes of subsection 143.006(c), Local Government Code, that provision presents no obstacle to his appointment as a member of the City of Lubbock Civil Service Commission.

Yours very truly,



Rick Gilpin  
Deputy Chair  
Opinion Committee