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RQ-136

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Opinion Committee

August 1, 1991

Ms. Madeleine Johnson
Chair of the Opinion Committee
Office of the Attorney General
P.O. Box 12548
Austin, Texas 77871-12548

Dear Ms. Johnson:

I am writing to request an opinion on the following question:

Does a juvenile board created under Chapter 152 of the State Human Resources Code have the power to hire and discharge members of a juvenile probation department established by the board after it has employed a chief juvenile probation officer?

Attached is a brief of the applicable sections of Chapter 152 as we believe they apply to the question.

Sincerely,

Bill Turner
District Attorney

By: James W. Locke
Assistant District Attorney

JWL/lat

Enclosure

Question: Does a juvenile board created under Chapter 152 of the State Human Resources Code have power to hire and discharge individual members of a juvenile probation department established by the board after it has employed a chief juvenile probation officer?

Within the last year a Brazos County Juvenile Probation Department detention center employee was allowed to resign following allegations of improper conduct by the employee. One or more members of the juvenile board felt that discharge of the employee would have been more appropriate and that the board should take a more direct role in personnel decisions, including hiring and firing.

The pertinent sections of Chapter 152 of the Human Resource Code contain conflicting indications of where this responsibility lies.

Section 152.007 of the Human Resources Code says that the juvenile board shall "establish a juvenile probation department and employ personnel to conduct probation services, including a chief probation officer and, if more than one officer is necessary, assistant officers . . . "

Section 152.008 of the Code says that the chief probation officer may appoint necessary personnel with the approval of the board. It further provides that juvenile probation officers serve at the pleasure of the appointing authority.

Several uses of language within these two sections of Chapter 152 indicate that the juvenile board may have any level of involvement with the employment of personnel it deems desirable. 152.007 (1) says specifically that the juvenile board "shall . . . employ personnel to conduct probation services including a chief probation officer and . . . assistant officers."

Even more direct is the language of the following subsection, (2), which says that the board shall "operate or supervise" juvenile services in the county. If the board chooses to operate rather than merely supervise, it would seem that they may exercise any level or degree of management that they choose, presumably including both the hiring and firing of personnel.

They of course may delegate other hiring responsibilities to the chief probation officer who "may appoint necessary personnel with the approval of the board."

The "may" language of Section 152.008 does allow an interpretation that the chief juvenile probation officer is to appoint his subordinates. It is clear from the previous section that in some counties the juvenile board may decide that no other officer is necessary. If the statute said that the chief officer "shall appoint necessary personnel", the unintended implication would be given that assistant officers or other personnel must always be appointed.

Language that the juvenile board shall "employ personnel" also leaves open the possibility that while the board is the employer, it does not necessarily interview and hire personnel other than the chief probation officer, who then appoints the remaining "necessary personnel with the approval of the board."

The direct responsibility of other employees of the department to the chief probation officer is increased by Section 152.0271 relating specifically to Brazos County, in which subsection (e) provides that the chief juvenile probation officer may set the salaries and allowances of the remaining personnel with the approval of the board.

While section 152.007 specifically mentions the hiring of assistant probation officers, it makes no specific mention of other necessary members of the department such as detention center staff, clerical employees, paid interns, or others necessary for the efficient operation of the department. The responsibility of interviewing, hiring and supervising every employee of a department could become quite burdensome for the juvenile board.

The legislative intent which is most clear is that what ever individual or body employs juvenile probation officers may also discharge them since they "serve at the pleasure of the appointing authority." Section 152.008 (b). If the juvenile board is able and chooses to employ each individual member of the department, it seems that it may discharge those members, within the limitations which apply to any State employer.

Obviously the prerogative of the juvenile board to fire the chief probation officer gives the board ultimate control over who is employed by the department. On a day to day basis, however, it is not clear whether the board or chief probation officer is required to employ other members of the department, or if that duty may vary at the juvenile board's discretion.