

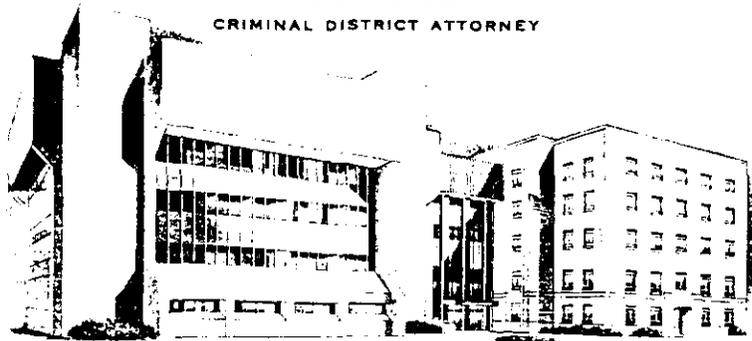
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MBJ 18972-91
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BRAZORIA COUNTY

ANGLETON, TEXAS 77515

RD-494

October 30, 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
RECEIPT NO. P 080 368 119

FILED
NOV 9 3 52
Opinion Committee

Ms. Madeleine B. Johnson
Chair, Opinion Committee
Office of the Attorney General
209 W. 14th Street
Austin, Texas 78701

RE: REQUEST FOR OPINION

Whether chapter 143 of the Texas Local Government Code applies to a municipality that has a volunteer fire department

Dear Ms. Johnson:

The City of Angleton Police Officers' Association has presented to the Angleton City Council a valid petition requesting an election on the issue of adoption of the police officers' civil service law. Angleton has a population of over 10,000; has a paid police department; but has a volunteer rather than a paid fire department.

ISSUE

FILED SEPARATELY

Does Angleton meet the requirements of chapter 143 of the Texas Local Government Code allowing the ordering of an election

on the issue of adoption of the police officers' civil service law?

LAW

Civil service for municipal police officers is provided under Vernon's Texas Codes Annotated, Local Government Code, chapter 143.

Subsection 143.002(2) provides that in order to qualify for civil service a municipality must have a paid fire department and police department. I have located no authority interpreting this subsection.

Texas Government Code Annotated section 312.002 (Vernon 1988) provides that words in statutes will be given their ordinary meaning.

In most circumstances the use of the word "and" is interpreted to be conjunctive. The Courts have held that "the words 'and' and 'or' are in no sense interchangeable terms, but on the contrary, are used in the structure of language for purposes entirely variant, the former being strictly of a conjunctive, the latter, of a disjunctive, nature." American National Ins. Co. v. Wilson State Bank, 480 S.W.2d 296 (Tex. Civ. App.-Amarillo 1972, no writ), citing Board of Insurance Commissioners of Texas v. Guardian Life Ins. Co. of Texas, 142 Tex. 630, 180 S.W.2d 906 (1944).

At least one Texas case indicates "and" may mean "or". In Neighborhood Committee on Lead Pollution, et. al. v. The Board of Adjustment of the City of Dallas, 728 S.W.2d 64 (Tex. App.-Dallas 1987) the Court held that the terms "and" and "or" are not

usually interchangeable but are interpreted as synonymous when context so requires in order to give effect to manifest intent.

Section 143.004(c) of the Local Government Code allows a city to have civil service for a police department only or a fire department only but does not indicate if both departments must be paid for either to qualify.

Thus, does the "and" in Section 143.002(2) mean "and" or does it mean "or"?

CONCLUSION

Without evidence that the intent of Subsection 143.002(2) was to allow a municipality to elect civil service if it had either a paid police department or a paid fire department, the ordinary interpretation of subsection 143.002(2) would result in the City of Angleton being disqualified from adopting a police civil service system under chapter 143 of the Local Government Code.

Enclosed is correspondence from the Texas Municipal League in support of this conclusion and from the Texas Municipal Police Association in dispute.

Respectfully submitted,


JIM MAPEL

Prepared by Keith Vaughan
City Attorney
City of Angleton