

Texas Department of
Mental Health and Mental Retardation

Don A. Gilbert, M.B.A.
Commissioner

RECEIVED

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

OCT 06 1995

September 27, 1995

RO-856

Commission Committee



Central Office
P.O. Box 12668
Austin, TX
78711-2668
(512) 454-3761

The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548

FILE # ML-36318-95
I.D. # 36318

Dear General Morales:

Your advice and counsel are respectfully requested concerning the following question:

Does Section 657.007 of the Government Code entitle a veteran to an absolute preference over other employees in a workforce reduction, or is the veteran's preference available only when choosing between employees who are otherwise similarly qualified?

Prior to the passing of S.B. 646 of the 74th Texas Legislature, the Texas Department of Mental Health and Mental Retardation had a Reduction in Force (RIF) policy in which employees were ranked according to a number of factors. These included seniority, performance evaluations, training, experience, and job skills. Since the enactment of Section 657.007 of the Government Code, the Texas Department of Mental Health and Mental Retardation RIF policy has been amended to provide that qualified veterans have priority in retention over all other employees of a similar type or classification, regardless of seniority or other factors. The reason for this change was the opinion of our legal staff that Section 657.007 of the Government Code grants an unrestricted preference and that, being a statutory preference, it takes precedence over other factors which are created by agency policy.

Another possible interpretation is that the reduction in workforce preference established by Section 657.007 of the Government Code is similar to the veteran's employment preference in Section 657.003(a) of the Government Code. This section grants an employment preference "over other applicants for the same position who do not have a greater qualification." If this second interpretation is correct, then a veteran in a workforce reduction situation would have preference only over other employees who are equally qualified by other factors.

The Honorable Dan Morales
September 27, 1995
Page 2

In light of the fact that there are at least two possible interpretations of this statute, your opinion concerning this matter is respectfully requested.

Sincerely,

A handwritten signature in cursive script that reads "Don Gilbert". The signature is written in black ink and is positioned above the printed name and title.

Don Gilbert
Commissioner

P/1313