



THE ATTORNEY GENERAL  
OF TEXAS

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AUSTIN, TEXAS 78711

January 26, 1972

Hon. Joe Resweber  
County Attorney  
Harris County Courthouse  
Houston, Texas 77002

Opinion No. M-1056

Re: Questions relating to powers  
of the Harris County Juvenile  
Board concerning budgets and  
salaries of the Probation  
Department and county institu-  
tions for the care of neglected,  
dependent and delinquent  
children, pursuant to Article  
5139VV, Vernon's Civil  
Statutes.

Dear Mr. Resweber:

Your recent letter requesting the opinion of this office  
concerning the referenced matter poses the following questions:

"(1) What are the powers of the Harris  
County Juvenile Board regarding the annual  
budgets of the Probation Department and of  
the County Institutions for the care of  
neglected, dependent and delinquent children?

"(2) What are the powers of the Harris  
County Juvenile Board to establish a general  
personnel policy for employees of the proba-  
tion department and the county institutions  
for the care of neglected, dependent and de-  
linquent children, including but not limited  
to employee classification system, duties of  
each employee position, qualifications of  
each employee position, and a compensation  
plan to insure equal pay for equal work?"

The Harris County Juvenile Board was established by  
Article 5139VV, Vernon's Civil Statutes, enacted and effective  
in 1965. Section 5(a) of that Article provides as follows:

"The Chief Probation Officer under the  
direction of the juvenile board shall prepare  
the annual budget of the probation department

and of the county institutions for the care of neglected, dependent, and delinquent children. The juvenile board then shall submit the budget it approves to the Commissioners Court for final approval in the same manner as prescribed by law for the other agencies and departments of Harris County." (Emphasis added).

Article 1666a, Vernon's Civil Statutes, enacted in 1939 dealing with certain county auditors, provides, in part, as follows:

"The County Auditor in all counties having a population in excess of two hundred and twenty-five thousand (225,000) as shown by the last preceding or any future United States Census shall serve as the budget officer for the Commissioners Courts in each county, and on or immediately after January 1st of each year he shall prepare a budget to cover all proposed expenditures of the county government for the current fiscal and calendar year." (Emphasis added).

We take judicial notice that Harris County falls within the population bracket set in Article 1666a, and is thus governed by its provisions.

A reading of the foregoing statutes indicates that there is an apparent inconsistent responsibility for the preparation of the budgets of the agencies under the Harris County Juvenile Board with Article 5139VV delegating such responsibility to the Board, on the one hand, and Article 1666a delegating such responsibility to the County Auditor, on the other.

We are of the opinion that the doctrine of implied repeal of the earlier Article 1666a by the later Article 5139VV is applicable to the foregoing inconsistency. Article 5139VV must govern in answering the question of who is responsible for preparing the budget of the institutions under the control of the Harris County Juvenile Board. That doctrine has been stated as follows:

"The doctrine of implied repeal rests on the principle that the last expression of the

lawmakers will be given effect. A statute does not, of course, abrogate or effect an earlier law when there is no conflict between the two. But an act that is later in point of time controls, repeals, or supersedes an earlier act, in so far as the two are inconsistent and irreconcilable and cannot both stand at the same time. . . ." 53 Tex.Jur.2d 149-50, Statutes, Sec. 101.

See also, Attorney General's Opinion No. M-472 (1969).

It is no objection to the application of the doctrine of implied repeal that a special act (Article 5139VV) is impliedly repealing inconsistent portions of a general act (Article 1666a). 53 Tex.Jur.2d 161-62, Sec. 111.

We, therefore, hold that Section 5(a) of Article 5139VV, empowering the Chief Probation Officer, under the direction of the Harris County Juvenile Board, to prepare the annual budgets of the probation department and the county institutions for the care of children set forth in that Section, impliedly repeals those portions of Article 1666a that are inconsistent therewith.

It should be noted that, pursuant to Section 5(a), the Commissioners Court of Harris County can modify, alter, or approve the budget submitted by the Chief Probation Officer, just as it can modify, alter, or approve the budget submitted by the County Auditor.

In the memorandum brief submitted with your letter, you also raise the point as to whether Sections 13 and 16 of Article 5139VV are in conflict with Articles 3912k and 3902f-5, Vernon's Civil Statutes, both latter Articles being enacted in 1971.

We find no conflict between those statutes, and feel that they can be harmonized when they are construed in pari materia. 53 Tex.Jur.2d 280-84, Sec. 186. Article 3912k authorizes the Commissioners Court to fix the amount of compensation, office expense, travel expense, and all other allowances for county employees who are paid wholly from county funds. Article 3902f-5 further empowers the Commissioners Court, under certain conditions, to increase the compensation of any subject employee in an amount not to exceed 35%. Both of those Articles would thus encompass employees under the control of the Juvenile Board.

Pursuant to Sections 13 and 16 of Article 5139VV, the Juvenile Board is given authority to prepare the budget for the salaries and expenses of the employees of the probation department and those of the county institutions for the care of neglected, dependent, and delinquent children. Both of those Sections explicitly require the approval of the Commissioners Court before said budgets shall become fixed by law.

Applying the rule of construction in pari materia, we are of the opinion that the initial responsibility of preparing the budgets set forth in Sections 13 and 16 of Article 5139VV rests with the Juvenile Board, but that such budgets are subject to the approval of the Commissioners Court, and to the exercise of the Commissioners Court's prerogatives set forth in Articles 3912 and 3902f-5. There is no conflict between these statutes, and, therefore, no occasion to apply the doctrine of implied repeal vis-a-vis Sections 13 and 16.

We are further of the opinion that your second question is answered in all respects by Section 5(d) of Article 5139VV, which provides, in full, as follows:

"The juvenile board subject to the approval of the Commissioners Court shall establish a general personnel policy for the employees of the probation department and the employees of the probation department and the county institutions for the care of neglected, dependent, and delinquent children. The board shall establish and maintain an employee classification system including:

"(1) an accurate statement of duties of each employee position;

"(2) stated qualifications of each employee position; and

"(3) a compensation plan which will insure equal pay for equal work."

You are therefore advised that the Harris County Juvenile Board, subject to the approval of the Commissioners Court, has the authority to do each of the acts set forth in your second question

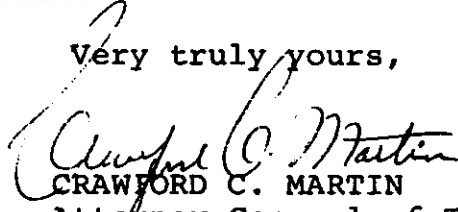
S U M M A R Y

(1) The Chief Probation Officer, under the direction of the Harris County Juvenile Board, rather than the County Auditor, has the power and duty to prepare the annual budgets of the probation department and of the county institutions for the care of neglected, dependent and delinquent children, pursuant to Section 5(a) of Article 5139VV, Vernon's Civil Statutes.

To the extent that any provisions of Article 1666a, Vernon's Civil Statutes, relating to the duties of the Harris County Auditor in the above respect, are in conflict with Section 5 (a), they are repealed by implication.

(2) The Harris County Juvenile Board has the power to establish a general personnel policy for employees of the probation department and the county institutions for the care of neglected, dependent and delinquent children, and to maintain an employee classification system including, but not limited to, a statement of duties of each employee position, qualifications of each employee position, and a compensation plan to insure equal pay for equal work.

Very truly yours,

  
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