



RQ-0176-JC

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OPINION COMMITTEE

State of Texas  
House of Representatives

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Tarrant County Delegation

**BILL G. CARTER**

DISTRICT 91

January 20, 2000

The Honorable John Cornyn  
Attorney General of Texas  
P.O. Box 12548  
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FILE # <sup>ML-</sup> 41245-00  
I.D. # 41245

RE: Request for Opinion

Dear General Cornyn:

As chairman of the House Committee on Urban Affairs, I am requesting from your office an opinion on issues involving appeal rights of employees pursuant to Chapter 143 of the Texas Local Government Code (Chapter 143).

Questions Presented

Fire and police chiefs frequently issue written reprimands as discipline to civil service employees. Although Chapter 143 allows employees to appeal disciplinary action involving suspensions (days off without pay) and involuntary demotions, Chapter 143 is not specific about written reprimands. By this letter, I am requesting an opinion on two questions about written reprimands to civil service employees under Chapter 143:

1. Does a civil service commission have jurisdiction to hear an appeal of a written reprimand that does not include a suspension or involuntary demotion? In other words, is a written reprimand a disciplinary action pursuant to Chapter 143?
2. Must a written reprimand be included in the public civil service commission file, or is it part of the confidential departmental file?

Applicable Law

1. Appeal of Written Reprimand

Chapter 143 does not include a written reprimand as a disciplinary action in Subchapter D. Chapter 143 allows the chief to impose a disciplinary suspension (Section 143.052) and an involuntary demotion (Section 143.054), but it does not include written reprimands in Subchapter D. This would imply that a written reprimand is not "discipline" under Chapter 143. Based on Subchapter D alone, a written reprimand is not the proper subject of an appeal because it is not discipline imposed pursuant to Chapter 143. However, as discussed below,

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Bill Carter - City of Fort Worth 2

other language in Section 143.089 confuses the issue.

2. Inclusion of Written Reprimand in Civil Service Commission File or Confidential Departmental File

Section 143.089 deals with the personnel file maintained by the civil service director and what documents go into that file. All documents relating to discipline go into that file (Section 143.089(a)(2)). According to Section 143.089(c), a letter, memorandum or document relating to disciplinary action must be removed from the commission file if the commission finds that the discipline was taken without just cause or it was not supported by sufficient evidence.

According to Section 143.089(d), a civil service employee may make a written response to a negative letter placed in the commission's public file. The statute does not state whether these documents include all written forms of discipline, or only those covered by Subchapter D. However, the fact that Section 143.089(d) starts with the word "if" implies that this Section refers to negative documents that are not related to discipline.

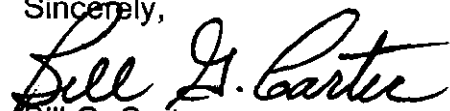
City of Fort Worth's Position

The City of Fort Worth takes the position that written reprimands cannot be the subject of appeal. Section 143.089(c) refers to "disciplinary action." The City interprets this term to mean disciplinary action that is imposed pursuant to Subchapter D, which only includes suspensions and involuntary demotions. The language in Section 143.089(a)(2) supports this position because it requires the civil service director to maintain a file of documents relating to disciplinary actions taken "in accordance with this chapter." When taken in context, a written reprimand is not Chapter 143 discipline because it is not a suspension or involuntary demotion. According to the City's position, the commission must not hear appeals of written reprimands because it does not have jurisdiction to do so. Furthermore, according to the City's position, written reprimand belongs in the confidential department file under Section 143.089(g).

Conclusion

The Firefighters' and Police Officers' Civil Service Commission of the City of Fort Worth is in the position of deciding whether it has jurisdiction to hear appeals of written reprimands and whether it must place written reprimands in its public files. The City has an interpretation that is in conflict with interpretations presented by the police and fire associations. Therefore, I am requesting an opinion in order to receive guidance in resolving this controversy.

Sincerely,

  
Bill G. Carter

Bill Carter - City of Fort Worth 3

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