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COMMITTEE ON ECONOMIC DEVELOPMENT
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The Honorable John Cornyn
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OPINION COMMITTEE

RE: Interpretation of Texas Government Code §143.031 as it applies to the City of San Benito's classification of Police Officer II and Police Officer III.

Dear General Cornyn:

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

Whether a Police Officer II in the City of San Benito is eligible to take the promotional examination, and thereafter be promoted to the position of sergeant, under Texas Government Code §143.031?

The question on the issue has arisen because of a dispute as to whether a Police Officer II would be eligible for promotion to the rank of sergeant, or whether only Police Officers III are eligible for such promotion. Although it would appear that both Police Officers II and III are eligible for such a promotion because these classifications were established solely as a salary schedule for employees, the language of Texas Government Code §143.031 makes the determination somewhat unclear. As set out in the attached brief, however, it is my belief that Police Officers II and III should both be eligible for promotion to the position of sergeant.

Thank you for your time and attention to this request. Should you need any additional information to render your Opinion, please do not hesitate to contact me.

Sincerely,

Jim Solis
Chairman
House Committee on Economic Development

enclosure

Leticia Van de Putte - Vice Chair
Members: Joe Deshotel, Mark Homer, Jim Keffer, Vilma Luna
Ruth Jones McClendon, Gene Seaman, Ken Yarbrough

Brief in Support of Attorney General Opinion Regarding Interpretation of
Texas Government Code §143.031

Texas Government Code §143.031 provides as follows

(a) Each promotional examination is open to each police officer who for at least 2 years immediately before the examination date has continuously held a position in the classification that is immediately below, in salary, the classification for which the examination is to be held.

(b) If the department has adopted a classification plan to classify positions on the basis of similarity in duties and responsibilities, each promotional examination is open to each police officer who has continuously held for at least 2 years immediately before the examination date a position at the next lower pay grade, if it exists, in the classification for which the examination is to be held.

The classification immediately below the position of sergeant is for the classification of Police Officer (with salary steps I, II and III). Attached hereto as Exhibits 1 and 2 are true and correct copies of City of San Benito Job Descriptions for Police Patrol Officer and Police Investigator Officer. Neither of those job descriptions establish a classification plan classifying positions on the basis of similarity in duties and responsibilities. Rather, all officers in the classification of "Police Officer" are eligible to be Patrol or Investigative Officers. Attached hereto as Exhibit 3 is a true and correct copy of City of San Benito Ordinance No. 2204, which establishes pay classifications for Police Officers I, II and III, as well as for other officers. The characterization of Police Officers II and III are strictly for purposes of determining salary rates. The only difference between P/O II's and III's is that III's have at least five (5) years of continuous service, and therefore receive a higher pay rate. As set out in Exhibits 1 and 2, the job descriptions for Patrol and Investigator Officers apply to both Police Officer II's and III's, and there is no competitive exam

necessary for a P/O II to qualify to become a P/O III. As set out above, §143.031 allows for police departments to adopt a classification plan based on similarities in duties, such as patrol and investigator, and it would appear to allow for all officers at the next lower pay grade, including Police Officer IIs, to take the promotional exam for the position of sergeant.

The Attorney General's office has previously reviewed a similar issue as it related to firefighters, concluding that the lower salaried officer was eligible for promotion. *See* Tex.Att. Gen. Op. JM-582 (1986). In that circumstance, the issue presented was

whether only firemen in the highest salary step in the classification immediately below a classification with a vacant position are eligible to take the promotion examination that is required for filling the vacancy, or whether all firemen with at least 2 years of continuous service in the next lower classification qualify to take the promotional test.

As in the present circumstance, the Attorney General discussed the City of Cleburne Fire Department's classification system that provided for longevity steps and salary increases, much like that of the City of San Benito. In determining whether only "firefighters" in the highest longevity pay step qualify as the classification that is "immediately below, in salary," to the classification of "firefighter engineer," as set out in §143.031, the Attorney General explained that "the legislature intended the words 'immediately below, in salary' to be a description of the classification, rather than a description of individual firemen within the classification." *Id.* This should allow each promotional exam to be open to each "Police Officer" who has continuously held a position in that classification for at least two (2) years "regardless of whether the person's longevity pay is the highest within the classification...." *Id.* "[I]f the legislature had intended only [officers] in the highest

salary step within a classification to qualify to take a promotion examination, it would have expressly so provided in the statute." *Id.* A copy of this opinion is attached as Exhibit 4.

It would appear, therefore, consistent with Texas Attorney General Opinion JM-582, that Police Officer II's and Police Officer III's are eligible to take the exam for, and thereafter be promoted to, the position of sergeant, which is the next classification above the classification of Police Officer.