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OPINION COMMITTEE

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March 2nd, 2004

FILE # ML-43596-05
I.D. # 43596

The Honorable Greg Abbott
Attorney General of Texas
Opinions Division
P.O. Box 12548
Austin, TX 78711-2548

RQ-0201-GA

Re: Request for Attorney General Opinion

I respectfully request an opinion regarding the issue of whether a Civil Service Commissioner of a city governed by Chapter 143 of the Texas Local Government Code ("TLGC") may be appointed to two or more consecutive terms, and whether the reappointment of a commissioner may constitute a criminal offense.

Section 143.006 (c) sets forth the qualifications of a person to be appointed to a municipality's Fire Fighters' and Police Officers' Civil Service Commission ("commission"), as follows:

(c) A person appointed to the commission must:

1. be of good moral character;
2. be a United States citizen;
3. be a resident of the municipality who has resided in the municipality more than three years;
4. be over 25 years of age; and
5. *not have held a public office within the preceding three years* [emphasis added].

Once a municipality properly has established its commission, the municipality's chief executive must appoint three commissioners, whom the municipal governing body must confirm. Commissioners serve staggered three year terms with the term of one member expiring each year. Op. Atty. Gen. LO 97-070. An individual is ineligible to be appointed to the commission if he or she has "held a public office within three years preceding the date of appointment. TLGC § 143.006(c)(5). I assume, as the attorney general did in Op. Atty. Gen. LO 97-070, that a commissioner holds a public office. Thus, it seems that the clear language of TLGC § 143.006(c)(5) would prohibit a civil service commissioner from being reappointed to the commission until at least three years have passed.

The final question concerns another provision of TLGC § 143.006. TLGC § 143.006(h) provides,

“The chief executive of a municipality or a municipal official commits an offense if the person knowingly or intentionally refuses to implement this chapter or attempts to obstruct the enforcement of this chapter. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$100 nor more than \$200.”

Would a chief executive of a municipality who reappoints a civil service commissioner or a member of the municipal governing body who confirms such a reappointment be subject to prosecution for such a misdemeanor offense?

Thank you for your attention to this matter.

Sincerely,


Bruce Isaacks
Criminal District Attorney
Denton County

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OPINION COMMITTEE



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March 8, 2004

Nancy S. Fuller
Chair, Opinion Committee
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

Re: ID#43556

Dear Ms. Fuller:

I have enclosed the requested brief in response to the issues raised in our March 2, 2004 letter regarding the whether the reappointment of a Civil Service Commissioner may constitute a criminal offense.

Thank you for your attention in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee Ann Breading".

Lee Ann Breading
First Assistant Criminal District Attorney

LAB/lab
Encl.

BRIEF

Facts

The term of a Commissioner serving on The Fire Fighters' and Police Officers' Civil Service Commission ("Commission") of the City of Carrollton, Texas ("City") will expire this year. That Commissioner has expressed a willingness to serve another three-year term with the Commission, and the City's Chief Executive has expressed willingness to re-appoint the Commissioner. However, the Chief Executive is concerned that appointing a Commissioner to a second consecutive term as a Civil Service Commissioner may subject him to criminal penalties.

Authorities

Section 143.006 (b) of the Texas Local Government Code ("TLGC") provides that each Commissioner will serve a staggered three-year term.

Section 143.006 (b) of the TLGC provides that the term of one member of the Commission will expire each year.

Section 143.006 (c) (5) of the TLGC provides that a person appointed to the Commission must not have held a public office within the preceding three years.

Section 143.006 (h) of the TLGC provides that the Chief Executive of the City, or any City Official, commits an offense by knowingly or intentionally refusing to implement Chapter 143 of the TLGC, or attempts to obstruct the enforcement of Chapter 143 of the TLGC.

Section 143.008 of the TLGC sets out the authority of a Commission to adopt rules necessary for the proper conduct of Commission business, and vests authority to adopt rules that prescribe cause for removal or suspension.

Section 143.009 of the TLGC authority to investigate and report on all matters relating to the enforcement and effect of Chapter 143 of the TLGC. It also provides that the Commission may administer oaths, issue subpoenas, and cause depositions to be taken.

Section 143.023 of the TLGC gives the Commission authority to set the age and physical requirements for applicants to beginning and promotional positions in the Civil Service.

Section 143.025 of the TLGC gives the Commission authority to provide for competitive entrance examinations.

Section 143.029 of the TLGC provides that the Commission has the responsibility to post notice of promotional examinations, and list the sources from which the questions on the test are selected.

Section 143.032 of the TLGC gives the Commission the duty of adopting rules for promotions, and for holding promotional examinations.

Section 143.035 of the TLGC gives the Commission the authority to adopt an alternative promotional system in police departments.

Section 143.074 of the TLGC gives the Commission the authority to approve the reinstatement of a fire fighter or police officer who has recovered from a disability.

Section 143.034 of the TLGC gives the Commission the authority to hear and decide appeals of applicants for promotional positions.

Section 143.053 of the TLGC gives the Commission the authority to conduct a hearing and make a determination of appeals of disciplinary suspensions.

Section 143.054 of the TLGC gives the Commission the authority to conduct a hearing and make a determination of involuntary demotions.

Section 143.015 of the TLGC provides that any appeal of the Commission is to district court.

Section 312.002 of the Texas Government Code (TGC) provides that words should be given their ordinary meaning, unless the word is used as a "word of art," or in reference to a particular trade or subject matter.

In *Commissioners Court of Titus County v. Agan*, 940 S.W.2d 77, 80 (Tex. 1997), the Texas Supreme Court held that common everyday meaning is to be given to clear and unambiguous statutory language.

In *Aldine Indep. Sch. Dist. V. Standley*, 280 S.W. 2d 578,583 (Tex. 1955), the Texas Supreme Court set forth the test for a public officer as an officer who exercises any sovereign function of the government for the benefit of the public largely independent of the control of others.

In Op. Atty. Gen. LO 97-070, the Attorney General assumed that a civil service commissioner holds a public office.

Issues

1. Whether a Commissioner is eligible to serve a second consecutive term on the same Commission; and
2. Whether the Chief Executive of the City commits an offense by appointing a Commissioner to a second consecutive term on the Commission.

Arguments

Because § 143.006 clearly and unambiguously provides that a person appointed to the Commission may not have held a public office within the last three years, and the Commissioners are public officers, a Commissioner may not be appointed to two or more consecutive terms. Consider all of the powers that the Commission may exercise, independent of any other body than the district court:

1. The authority to adopt rules necessary for conducting Commission business;
2. The authority to adopt rules that prescribe cause for removal or suspension;
3. The authority to investigate and report on all matters relating to the enforcement and effect of Chapter 143 of the TLGC;
4. The authority to administer oaths;
5. The authority to issue subpoenas;
6. The authority to cause depositions to be taken;
7. The authority to set the age and physical requirements for applicants to beginning and promotional positions in the Civil Service;
8. The authority to provide for competitive entrance examinations;

9. The duty of posting notice of promotional examinations, and to list the sources from which the questions on the test will be taken;
10. The authority to adopt rules for promotions;
11. The authority to hold promotional examinations;
12. The authority to provide for an alternative promotional system in police departments;
13. The authority to approve the reinstatement of a fire fighter or police officer who has recovered from a disability;
14. The authority to hear and decide appeals of dissatisfied applicants for promotional positions;
15. The authority to conduct a hearing and make a determination on appeals of disciplinary suspensions; and
16. The authority to conduct a hearing and make a determination on involuntary demotions.

Not only is the Commission given statutory authority to exercise these sovereign functions of government for the benefit of others, but is only subject of judicial review. Even the Attorney General has assumed that a Commissioner holds a public office, no Commissioner may serve on the Commission for two consecutive terms.

Because the Chief Executive of a city is obligated to appoint a different person to an expired position on the Commission, he may be subjected to criminal penalties for appointing a Commissioner to a second consecutive term.