



TEXAS EDUCATION AGENCY

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OPINION COMMITTEE

April 6, 2004

The Honorable Greg Abbott
Attorney General of Texas
Price Daniel Building
P.O. Box 12548
Austin, Texas 78711

FILE # ML-43611-04
I.D. # 43611

ATTENTION: Opinion Committee

Re: Request for Opinion regarding complaints about School District Police

Dear General Cornyn:

At the request of New Caney I.S.D., I am seeking your opinion regarding the relationship of Section 37.081(f) of the Education Code and certain sections in Chapter 614 of the Government Code. I am enclosing correspondence from the school district superintendent presenting a possible conflict between those statutes as applied to complaints about school district police officers.

The question presented regards whether a complaint against a school district police office must be presented in writing before a school superintendent may take an action regarding the complaint. The question affects any school district that commissions peace officers under Section 37.081.

If you have any questions, please contact David Anderson, General Counsel, at 463-9720.

Sincerely,

Shirley Neeley
Commissioner of Education



ENTERED

NEW CANEY INDEPENDENT SCHOOL DISTRICT

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LEGAL SERVICES

Richard Cowan
Superintendent of Schools

March 11, 2004

Shirley J. Neeley, E.I. D.
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Dear Dr. Neeley:

I am Superintendent of the New Caney Independent School District. I am writing to ask that you request an opinion from the Attorney General regarding a legal question that is causing considerable difficulty and uncertainty in New Caney ISD.

The legal question involves the proper construction of statutory provisions concerning police officers as set forth in both the Texas Education Code and the Texas Government Code. Texas Education Code, Section 37.081(f) provides as follows:

The chief of police of the school district police department shall be accountable to the superintendent and shall report to the superintendent or the superintendent's designee. School district police officers shall be supervised by the chief of police of the school district or the chief of police's designee and shall be licensed by the Commission on Law Enforcement Office Standards and Education.

Texas Government Code, Section 614.022, addresses complaints against police officers, as follows:

To be considered by the head of a state agency or by the head of a fire or police department, the complaint must be:
(1) **In writing; and**
(2) **signed by the person making the complaint.**

Texas Government Code, Section 614.023, adds the following:

(a) **A copy of a signed complaint against a law enforcement officer, firefighter, or police officer shall be given to the officer or employer within a reasonable time after the complaint is filed.**

- (b) **Disciplinary action may not be taken against the officer or employee unless a copy of the signed complaint is given to the officer or employee.**

The specific question upon which we need the Attorney General's opinion is as follows: **Do Sections 614.022 and 614.023 of the Texas Government Code apply to, limit or otherwise constrain the authority of a superintendent of schools to address complaints, whether written or unwritten, against school district police officers and, when necessary, to discipline such officers?**

The question is important to any school district which employs police officers, and unfortunately no answer is to be found in the sparse litigation involving these sections. The purpose of Sections 614.022 and 614.023 is clearly to establish rules for the head of a police department in the handling of complaints against a police officer. The original statute dates back to 1969, and it is reasonable to assume that the Legislature did not have public school districts in mind when it passed this legislation. Whatever merits these sections may have regarding limitations upon the conduct of the chief of police, they have no applicability to public school superintendents. In the interest of the safety of students, employees, and property, the superintendent must administer appropriate discipline whether with or without a written complaint. Young children do not provide written complaints; frightened parents may not provide written complaints. The basic premise of these sections of the Government Code, as applied to the chief of police, is that if it is not written down, it did not happen—at least not for purposes of discipline administered by the chief. To apply that premise to the authority of the superintendent of school is both unworkable and unsafe. The premise is, moreover, contrary to Texas Education Code, Section 11.201(d), which places upon a superintendent the ultimate responsibility to evaluate the conduct of all personnel and to initiate the termination or suspension of employees.

For the foregoing reasons, I ask that you request an opinion from the Attorney General. Please give me a call if you have any questions regarding my request.

Sincerely,



Richard Cowan
Superintendent of Schools

RC/je