



DALLAS COUNTY

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CIVIL DIVISION

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APR 12 2004

OPINION COMMITTEE

April 5, 2004

FILE # ML-43622-0A
I.D. # 43622

Honorable Greg Abbott
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

RQ-0208-GA

Re: Request for Attorney General's Opinion

Dear General Abbott:

The Dallas County District Attorney's Office requests your opinion regarding the scope and authority that Chapter 158 of the Texas Local Government Code bestows upon a Sheriff's Civil Service Commission.

BACKGROUND

Prior to 1998, the minimum requirement for the position of deputy sheriff recruit was having served one year as a detention service officer ("DSO") for the Dallas County Sheriff's Department. The criteria limited the hiring of deputy sheriffs from the pool of DSOs employed by the county for a year or more. On March 31, 1998, the minimum requirements were changed to permit external hiring of deputy sheriffs by adding an alternative criterion of 30 hours of college with no DSO experience. In September 2003, new criteria was proposed that the minimum requirements would be three years of service as a DSO or 45 college hours with a "C" or better and successful probationary period. Although the criteria already permitted the hiring of external applicants, the Dallas County Sheriff's Civil Service Commission voted to delay the implementation of the new criteria, and for one year, limit the hiring of applicants for deputy sheriff recruits to current employees only.

ISSUES

1. Do the powers bestowed upon a sheriff's civil service commission under § 158.035 of the Local Government Code include the power or authority to limit the hiring practices of the sheriff?
2. Does a sheriff's "sphere of authority" as an elected official prevent a sheriff's civil service commission from limiting his pool of candidates?

STATUTORY AUTHORITY

Texas Local Government Code §158.035 is entitled "Powers of Commission" and provides in pertinent part:

- (a) The commission shall adopt, publish, and enforce rules regarding:
 - (1) selection and classification of employees;
 - (2) competitive examinations;
 - (3) promotions, seniority, and tenure;
 - (4) layoffs and dismissals;
 - (5) disciplinary actions;
 - (6) grievance procedures;
 - (7) the rights of employees during an internal investigation; and
 - (8) other matters relating to the selection of employees and the procedural and substantive rights, advancement, benefits, and working conditions of employees.

Tex. Loc. Gov't Code Ann. § 158.035(a) (Vernon 1999).

DISCUSSION

Although the preceding statute grants a commission powers regarding the selection, classification and promotion of employees, the question is raised as to whether these powers permit a commission to set rules that would limit the hiring pool of a sheriff. We base this inquiry on a recent ruling by the attorney general.

In GA-0037, the opinion addressed a commissioners court's authority over hiring and budgetary matters concerning an elected county officer. *See* Tex. Att'y Gen. Op. No. GA-0037 (2003). The Jefferson County Commissioners Court wanted to impose a condition on the funding of a position in the sheriff's office, to wit: if the position became vacant, one of two circumstances would occur: (1) funds for the position would cease unless the officer obtained the *commissioners court's special permission to hire someone who is not currently a county employee*; or (2) the position's salary would be reduced to increase a promoted existing employee's salary no more than three percent. *Id.* at 3. (emphasis added) Because such a policy would interfere with an elected officer's authority to appoint, the attorney general concluded that a commissioners court may not condition the funds in that manner. *Id.*

The attorney general recognized that a commissioners court may determine whether a particular position in an elected officer's department is warranted each time it considers the annual budget and that it may set the compensation for the elected officer's employees in each annual budget process. *See* Tex. Att'y Gen. Op. No. GA-0037 at 3. However, an elected county officer, despite the commissioners court's control over the officer's budget, is free to select assistants of his or her "own choice." *Abbott v. Pollock*, 946 S.W.2d 513, 517 (Tex. App.--Austin 1997, writ denied). An elected county officer "occupies a sphere of authority, . . . within which another officer may not interfere or usurp." *Renken v. Harris County*, 808 S.W.2d 222, 226 (Tex. App.--Houston [14th Dist.] 1991, no writ). This "sphere of authority" consists of those duties the Texas

Constitution and statutes delegate to the officer. *See Renken* at 226; *Abbott* at 517. Thus, an elected county officer may "decide how to use the employees who work in his or her office to accomplish the officer's constitutional and statutory duties." Tex. Att'y Gen. Op. No. JC-0239 (2000) at 4.

Jefferson County's proposed policy interfered with an elected officer's authority to appoint an employee of his or her choice to a position that the commissioners court had approved and for which the court had set compensation. Tex. Att'y Gen. Op. No. GA-0037 at 3. A commissioners court may not tell an elected officer whom he or she may appoint to an approved position. *See Abbott*, 946 S.W.2d at 517. By requiring the officer to promote an existing employee, unless the officer obtained the commissioners court's special approval to hire someone else, the court impermissibly intruded upon the officer's sphere of authority to select any person he or she chose (providing that the appointment doesn't violate any other laws, e.g., chapter 573 of the Government Code, relating to nepotism). Tex. Att'y Gen. Op. No. GA-0037 at 4.

This opinion is analogous to our situation. We believe it is clear that the commission may establish rules and criteria regarding the qualifications and educational standards necessary for positions within the sheriff's department. However, is its statutory authority limited in the same respect as the commissioners court's budgetary authority? The Commission, by the exercise of its statutory authority, may limit the persons who qualify for the positions in the sheriff's office. As the Commission did in 1998, it limited the persons qualified for the position of deputy to those with the required number of college credits or one year's experience as a DSO. In this case, the Commission's rule limited the pool of qualified candidates. Does such a rule intrude upon the sheriff's sphere of authority to hire persons to assist him in carrying out his constitutional and statutory duties?

It appears that if the Commission limits the pool of applicants to internal employees only, the Sheriff contends it would result in limiting the pool of applicants to a group that would not be representative of the local labor pool. Based on federal law in this area, if an employer limits the hiring of employees so that it has a disparate impact upon a group protected by Title VII, it is a violation of Title VII of the Civil Rights Act of 1964. *See 42 USC § 2000e. Paige v. State of California*, 291 F.3d 1141 (9th Cir. 2002).

We appreciate your consideration of these issues and look forward to an opinion. Please contact me if you have any questions or need additional information.

Sincerely,



Bob Schell
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Assistant District Attorney
Dallas County, Texas

Prepared by: Melanie Barton, Assistant District Attorney