

The Senate of The State of Texas



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OPINION COMMITTEE

TROY FRASER

FILE # ML-43994-04

I.D. # 043994

October 25, 2004

The Honorable Gregg Abbott
Attorney General of the State of Texas
Attn: Nancy Fuller
Opinions Committee
P.O. Box 12548
Austin, Texas 78711

RQ-0282-GA

Re: Promotions under the Military Civil Service statutes for officers filling the position of officers away on military leaves of absence.

Dear General Abbott:

Please accept this letter as my request for an Attorney General Opinion on behalf of Senator Mike Jackson.

I have attached a detailed description of the question posed by the City of League City which asks for clarification on the issue of promotions among civil service classifications arising from military leaves of absence.

Thank you in advance for your attention to the this matter.

Sincerely,

A handwritten signature in black ink that reads "Troy Fraser".

Troy Fraser
State Senator

Enclosure



The Honorable Greg Abbott
Attorney General of the State of Texas
Attn: Nancy Fuller
Opinions Committee
P. O. Box 12548
Austin, Texas 78711

Re: Promotions under the Municipal Civil Service statutes for officers filling the position of officers away on military leaves of absence

Dear General Abbott:

I would appreciate an Attorney General's opinion regarding the following issue:

On or about September 18, 1973, the City of League City, Texas (the "City") adopted civil service status for its Police Department under Chapter 143 of the Texas Local Government Code (the "Code") and established a Firemen's and Policemen's Civil Service Commission (the "Commission"). The positions of members of the Police Department in the Classified Service are allocated among four (4) grades: Grade 1-Officer; Grade 2-Sergeant, Grade 3-Lieutenant and Grade 4-Captain.

A Lieutenant has been granted a military leave of absence in order to serve in Afghanistan. Per Section 143.072(c) of the Local Government Code, the Commission filled the Lieutenant's position by promoting a Sergeant to fill the Lieutenant's position in accordance with Section 143.036 of the Code by appointment from an existing eligibility list. Due to the vacancy in the Sergeant's position, the Chief of Police, in turn, designated an Officer to fill the Sergeant's position per Section 143.038 by appointment from an existing eligibility list.

Upon his return from military duty, the Lieutenant will be entitled to reinstatement to that position under Section 143.072(d) and the Sergeant previously promoted to fill the Lieutenant's position will be returned to his pre-existing grade and obtain a preferential right to a subsequent appointment or promotion to a Lieutenant position, all per Section 143.072(f) of the Code. In essence, the Lieutenant's return from military duty will effect an involuntary "demotion" of a member of the Classified Service from the Lieutenant position to the Sergeant position without the need for probable cause findings and public hearings required under Section 143.054 of the Code.

However, the "demotion" of this individual from the Lieutenant to Sergeant position will, in turn, require that the Officer previously promoted to the Sergeant position be "demoted" to his Officer position. The Officer takes the position that his appointment to Sergeant is a permanent appointment and that there is no authority for his demotion unless based on disciplinary reasons or a force reduction. May the Commission effect this Officer's "demotion" as incidental to the return of the Lieutenant away on a military leave of absence without violating the Officer's rights under Chapter 143 of the Code? If not, doesn't this inequitably vest in the Officer promotion rights which are, for the

Sergeant in a superior grade of Classified Service, circumscribed by virtue of Section 143.072(f) of the Code?

What effect, if any, does the language of Section 143.038(c) have on the Commission's ability to restore the Officer to his prior classification?

Your attention in this regard will be greatly appreciated.