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February 19, 2008

RQ-0678-GA

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

Re: Request for Opinion - Texas Local Government Code §143.014

Dear General Abbott:

This is a request for an opinion by the Attorney General concerning the correct interpretation of Texas Local Government Code §143.014. The statute is part of the Fire Fighter and Police Officer Civil Service Act, Texas Local Government Code Chapter 143. The Civil Service Act applies only to cities with a population in excess of 10,000 whose voters have adopted the Act in a local election held for that purpose. Section 143.014 provides an appointment procedure which the municipality may use to appoint persons to a position immediately below that of the department head (e.g., Assistant Fire Chief).

The sentence of §143.014 requiring interpretation is the final sentence of Subsection (c). That sentence reads: This subsection does not apply to a municipality that has adopted The Fire and Police Employee Relations Act (Article 5154c-1, Vernon's Texas Civil Statutes) unless the municipality specifically adopts the appointment procedure prescribed by this subsection through the collective bargaining process.

The Fire and Police Employee Relations Act (FPERA) referenced in the above-quoted language is the local adoption collective bargaining statute for fire fighters and police officers now found at Texas Local Government Code Chapter 174. The intent of the above-quoted language from §143.014(c) obviously is to place some limitation on the applicability of §143.014 to cities which have adopted the collective bargaining statute.

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Voters of the City of Fort Worth adopted the FPERA for its fire department in an election held in November 2007. Under Local Government Code §174.052, the adoption of the FPERA by the voters mandates that Fort Worth's City Council "shall place this chapter in effect not later than the 30th day after the beginning of the first fiscal year of the political subdivision after the election." Fort Worth's first fiscal year after the November 2007 election begins October 1, 2008. As of the date of this opinion request, the City Council has not yet put the FPERA in effect in Fort Worth and is not required to prior to October 30, 2008. This situation raises two questions regarding the impact of the above-quoted language from Local Government Code §143.014(c).

First, does the last sentence of §143.014(c) nullify Assistant Fire Chief appointments made prior to the date of the adoption election unless the appointment procedure is adopted by the municipality through the collective bargaining process? While it seems apparent that the appointment procedure may not be used as to future appointments, it is unclear whether adoption of the FPERA renders prior appointments ineffective in the absence of a collectively bargained appointment procedure.

Second, if appointments made prior to adoption of the FPERA by voters remain effective, at what point does Fort Worth's ability to continue appointing Assistant Fire Chiefs under §143.014 cease (absent adoption of a collectively bargained procedure)? The quoted language from §143.014(c) renders the statutory appointment procedure inapplicable to a municipality "that has adopted" the FPERA. Is the FPERA considered "adopted" at the time the successful adoption election is certified by the City Council, or on the later date when the City Council places the FPERA in effect following the successful adoption election?

In *City of Kingsville v. International Association of Firefighters, Local Union No. 2390*, 568 S.W.2d 397 (Tex. Civ. App. - Corpus Christi 1978, no writ), the court considered a related but different question. In Kingsville, the voters had adopted the FPERA in an election held in June 1975, but the City Council placed the statute into effect on October 31, 1975. The question presented was whether a repeal election held in August 1976 was conducted in violation of the uncodified predecessor of Local Government Code §174.053(a), which allows repeal elections in cities "in which the collective bargaining provisions of this chapter have been in effect for at least one year." The court held the repeal election was premature because it was held less than one year after the FPERA "went into effect" through action by the City Council. *Id.* at 400. However, the operative statutory language in §143.014(c) makes the appointment procedure inapplicable after the city "has adopted" the FPERA without regard to whether the city council has taken the further step to "place the chapter in effect." Thus, Kingsville implicitly recognizes a distinction between adopting the FPERA and placing it in effect. However, Kingsville did not directly address what constitutes adoption of the FPERA.

Obviously, the interpretation given the statute may affect prior appointments and will determine whether additional appointments can be made during the period between Fort Worth's adoption election and the date the FPERA is placed in effect by Fort Worth's City Council. Since there are no cases directly addressing the questions presented, your guidance therefore is requested.

Thank you for your kind assistance with this matter.

Sincerely,



Tony Goolsby
State Representative
District 102