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OPINION COMMITTEE



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May 20, 2010

**RQ-0889-GA**

Honorable Greg Abbott  
Texas Attorney General's Office  
Post Office Box 12548  
Austin, Texas 78711-2548

CMRRR #7009 0080 0002 2629 7853

Re: Request for Attorney General Opinion  
Concerning Whether a Court Investigator  
Appointed by the Judge of Tarrant County  
Probate Court No. Two is Covered by the  
Tarrant County Civil Service System

Dear General Abbott:

Tarrant County Probate Court No. Two is in the process of appointing a court investigator, a position provided for by section 25.0025 of the Texas Government Code. The question has arisen as to whether a court investigator would be considered an at-will employee or an employee covered by the Tarrant County Civil Service System. Within Tarrant County there is a split of opinion among government officials on this issue.

In 1988 Tarrant County voters approved the expansion of a civil service system applicable to Tarrant County government employees pursuant to section 158.007 of the Texas Local Government Code. The purpose of the system is for "developing and enforcing rules regarding the selection of employees and their advancement, rights, benefits and working conditions." See *attached Civil Service Rules* § 1.00, Tarrant County Civil Service Commission, Fort Worth, Texas 1998 (hereinafter referred to as "the Rules").

The system applies to all Tarrant County "employees of all departments that are not specifically exempted under Chapter 158 of the local [sic] Government Code." See *Civil Service Rules* 1.13. Those employees that Chapter 158 exempts are (1) assistant district attorneys, investigators, or other employees of a district or criminal district attorney; (2) the official shorthand report of a court; or (3) an elected or appointed officer under the constitution. TEX. LOCAL GOV'T CODE ANN. § 158.013 (b) (Vernon 2008).

Although the list of exempt employees are clearly set out in section 158.013 (b) and "court investigator" is not included on the list, the language in the statute establishing probate court investigators raises a question as to whether a probate court investigator is exempt. This statute—section 25.0025 of the Texas Government Code—provides that the "judge of a statutory probate court *shall appoint* a court investigator. . . ." TEX. GOV'T CODE ANN. § 25.0025 (Vernon 2004)

(emphasis added). Because the probate judge is statutorily authorized to “appoint” a court investigator, it makes sense to conclude that a probate judge may also “terminate” a court investigator at the judge’s sole discretion, thus exempting court investigators from any civil service system. Admittedly, however, the statute does not expressly provide for this.

Whether a particular employee is covered by the civil service system or is an at-will employee becomes a significant issue when a decision concerning termination of employment must be made. Employees who are part of the “classified service” are covered by the Tarrant County Civil Service System and may only be terminated pursuant to the “Progressive Discipline/Termination” provisions found in Chapter VII of the Rules. Under these provisions a covered employee may only be terminated for cause when the severity of the offense makes this level of discipline appropriate. Otherwise, Tarrant County must follow a progressive discipline system, typically beginning with a “Verbal Reprimand,” followed by a “First Level Discipline,” and then a “Second Level Discipline.” Lastly, a “Third Level Discipline” may be issued. Within the Third Level itself there are several progressive forms of discipline: demotion, suspension with pay, suspension without pay, and ultimately termination. See § 7.03 – 7.04 of the Rules.

Only employees who are in the “classified service” are covered by the civil service system. “Classified service” employees are “all regular, non-temporary full-time employees, including Deputy Constables, of the County except those who are specifically exempted by Chapter 158 of the Local Government Code, Attorney General’s opinion, or a decision made by a court having jurisdiction in such matters.” See § 2.07 of the Rules. Again, “court investigator” is not included in the list of exempt positions under Chapter 158. But just because a position is not exempted in section 158.013 (b) does not necessarily mean that it is automatically covered by the civil service system. There is one case and one attorney general opinion that have held certain employees to be exempt and considered “at-will” employees even though they are not included in the exemption list of section 158.013 (b). These opinions are:

- *Clark v. Young*, 787 S.W.2d 166 (Tex. App.—1990 Fort Worth, writ denied)—the Fort Worth Court of Appeals held that court coordinators are not subject to civil service systems because the statute establishing the court coordinator system—section 74.101 of the Government Code—provides that each court coordinator is to serve at the pleasure of the judge who appointed him. 787 S.W.2d at 169.
- Op. Tex. Att’y Gen. No. GA-0243 (2004)—the Attorney General opined that deputy district clerks who serve at the pleasure of the Hidalgo County District Clerk are not covered by county civil service system.

In addition to the holding in *Clark* and GA-0243, the Austin Court of Appeals held in *Abbott v. Pollock*, 946 S.W.2d 513 (Tex. App.—Austin 1997, writ denied) that because “deputy sheriffs ‘serve at the pleasure of the sheriff,’” this creates an at-will relationship, and that county personnel policies implemented by county commissioners court could not change that status. *Id.* at 516-17.

In all of these opinions the common theme was that all of the statutes creating the employment positions in question—court coordinators, deputy district clerks, and deputy sheriffs—

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provided that the employees in these positions could be terminated at the discretion of the judges, district clerks (in the applicable counties), and sheriffs, respectively. Admittedly, section 74.101 of the Government Code creating the court investigator position does not provide for court investigators to be terminated at the discretion of the probate judge. Additionally, the statute states that the "commissioners court shall set the salary of a court investigator." TEX. GOV'T CODE ANN. § 25.0025 (b) (Vernon 2004). But did the legislature really intend for probate judges to have the authority and discretion to "appoint" court investigators, but not have that same authority and discretion to "terminate" those same court investigators?

If court investigators in Tarrant County are not considered "at-will" employees but instead are covered by the Tarrant County Civil Service System, then newly elected probate judges could not appoint court investigators of their choosing. The Progressive Discipline/Termination rules would prohibit the new judges from terminating without cause court investigators previously appointed by predecessor judges. Furthermore, probate judges in counties without civil service systems could presumably terminate court investigators at-will, whereas those probate judges serving in Tarrant County and other counties with civil service systems could not.

Accordingly, we respectfully ask for your opinion regarding whether a court investigator appointed by the Judge of Tarrant County Probate Court No. Two is covered by the Tarrant County Civil Service System.

Sincerely,

  
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JS/WTH/gb

Enclosure

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