

State of Texas
House of Representatives



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MAY 23 2011

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May 18, 2011

OPINION COMMITTEE

The Honorable Greg Abbott
Attorney General of Texas
Attn: Nancy Fuller
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FILE # ML-46751-11
I.D. # 46751

RQ-0972-GA

RE: Request for Attorney General Opinion asking whether cities that have adopted civil service rules for police officers under Chapter 143 of the Texas Local Government Code may also maintain a reserve police force under Chapter 341 of the Texas Local Government Code and, if not, whether Fort Worth can execute a meet and confer agreement to authorize a reserve police force?

Dear General Abbott:

As one of the State Representatives covering the City of Fort Worth and as Chairman of the Committee on House Administration, I respectfully request that you issue an opinion in the above-referenced matter. Fort Worth adopted civil service rules for its police department in 1947 and for the past thirty years has maintained an unpaid police reserve force. Additionally, Fort Worth adopted Chapter 143 Subchapter I on November 16, 2006 for its police department, and has engaged in meet and confer negotiations with an employee association on behalf of the police officers, culminating in a meet and confer agreement, effective September 30, 2010. Based on these facts, I respectfully request that your office issue a legal opinion on the following questions:

May a city that has adopted Chapter 143 of the Texas Local Government Code use Chapter 341 of the Texas Local Government Code to create and maintain a reserve police force?

If not, may a Chapter 143 Subchapter I city use the meet and confer process and execute an agreement to authorize a supplemental reserve police force?

Facts

Fort Worth adopted Chapter 143 of the Texas Local Government Code, which requires Fort Worth to appoint officers exclusively from an eligibility list that results from a competitive examination held in accordance with the chapter. Tex. Local Gov't Code § 143.021(b)(c) (Vernon 2008). Fort Worth also adopted ordinances under Chapter 341 of the Texas Local Government Code, which states that a governing body of a municipality may create and maintain a police reserve force. Tex. Local Gov't Code § 341.012(a) (Vernon 2008). Under Fort Worth's current ordinance, reserve officers are not required to take a competitive examination and be appointed according to Chapter 143. The reserve



officers are certified as peace officers under Article 2.12 of the Code of Criminal Procedure. They are authorized by the police chief to carry weapons and act as peace officers when performing their official duties. Additionally, Fort Worth adopted Chapter 143 Subchapter I of the Texas Local Government Code, which authorizes the City to enter into negotiations with the police officers regarding their pay and conditions of employment. The parties reached an agreement in September 2010, but the agreement does not include a provision regarding reserve police officers.

Analysis

The enabling statute for a reserve police force does not explicitly state whether it applies to Chapter 143 cities, and Chapter 143 does not explicitly prohibit a city from maintaining a reserve force. Chapter 143 requires a city to hold a competitive entrance examination for all applicants to the police force, rank the examinees in order of their scores, and appoint them in order of their rank. The statute says that police officer positions may only be filled through this process. Tex. Local Gov't Code §§ 143.021(c), 143.025(b) (Vernon 2008). This requirement appears to prohibit reserve police officers by implication, since reserve officers do not take competitive examinations to be appointed. However, Chapter 341 specifically authorizes a city's governing body to establish a police reserve force, apparently without requiring them to take a competitive examination, or otherwise qualify with Chapter 143 rules. Tex. Local Gov't Code, § 341.012 (Vernon 2008).

Texas case law does not directly address this question. According to the Texas Supreme Court, "If a particular position requires substantial knowledge of 'police work and work in the police department,' then it must be classified." *Lee v. City of Houston*, 807 S.W.2d 290, 294 (Tex. 1991), citing Tex. Local Gov't Code § 143.025(b). Based on the *Lee* case, it would appear that reserve officers are prohibited in civil service cities because they are not classified under civil service law and they serve in the police department. However, the *Lee* case did not address the question of police reserves, which are specifically allowed under Chapter 341.

Other cases have allowed non-civil service peace officers and fire suppression personnel to work for the cities, but these positions were not in police or fire departments. The Texas Supreme court allowed non-civil service park rangers to work as municipal peace officers because they were employed by the parks department, not the police department; therefore, they were not police officers within the definition of civil service law. *Hernandez v. City of Fort Worth*, 617 S.W.2d 923, 924, (Tex. 1981). Aircraft rescue personnel were employed by the city's aviation department, not the fire department; therefore, the aircraft rescue personnel were not civil service. *Wright v. City of Fort Worth*, 497 S.W.2d 88, 90-91 (Tex. App. – Fort Worth 1973, writ ref'd n.r.e.). Park rangers were not members of the police department and, therefore, were not entitled to protections of civil service law. *City of Fort Worth v. Harty*, 862 S.W.2d 776, 777 (Tex. App. – Fort Worth 1993, writ denied). These cases support a conclusion that some fire fighters and peace officers in a Chapter 143 city are not entitled to civil service protection, but the cases do not specifically apply to police reserve officers.

Previously, the Attorney General's Office determined that Fort Worth was prohibited from supplementing its civil service fire workforce with non-civil service firefighters, some hired by a private corporation, and some volunteer firefighters from neighboring communities. Fort Worth was required to use only civil service fire fighters for firefighting duties at events at the Texas Motor Speedway. Op. Tex. Att'y Gen. No. DM-012 (1998). The opinion is very clear that a civil service city "may not circumvent the civil service statute by appointing volunteers to positions ordinarily filled by



classified fire fighters.” *Id.* The reasoning of this opinion appears to prohibit the appointment of reserve police forces as well.

However, Chapter 341 specifically allows cities to supplement police departments with reserve officers, and does not clearly state whether the appointment of reserve officers is prohibited under Chapter 143. In contrast, the Texas statute allowing appointment of volunteer firefighters clearly states that it does not affect a city’s obligations under Chapter 143. Tex. Gov’t Code §§ 419.024, 419.072(a) (Vernon 2005).

Need for Opinion

Without direct statutory or case law, I am seeking guidance on the legality of establishing a reserve police force in a Chapter 143 city. If Fort Worth is prohibited from authorizing a supplemental reserve police force, may it use a meet and confer process to execute an agreement to do so? An agreement executed under Subchapter I preempts any contrary statute. Tex. Local Gov’t Code § 143.307(b) (Vernon 2008). Therefore, it appears that Fort Worth and the bargaining unit for the officers would be able to agree to allow a reserve police force if they chose to do so.

Conclusion

Please issue an opinion in response to the two questions raised: whether a Chapter 143 city may legally authorize a reserve police force and, if not; whether a city may authorize a reserve police force pursuant to a meet and confer agreement.

As always, thank you for your dedicated service to the State. Please contact me if I may be of service or provide additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Charlie Geren".

Charlie Geren