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OPINION COMMITTEE DALLAS COUNTY



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May 9, 2014

Honorable Greg Abbott
Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Via registered mail, RRR and email: Opinion_committee@texasattorneygeneral.gov

Re: Request for an opinion regarding the Dallas County Juvenile Board's hiring authority

Dear Attorney General Abbott,

I respectfully request your opinion regarding the hiring authority of the Dallas County Juvenile Board.

Question Presented

The Dallas County Juvenile Board ("the Board") is a statutory creation, established by Texas Human Resource Code section 152.0631. The Board has expressed an interest in hiring an attorney as in-house counsel to provide legal services to the Board, the Juvenile Department and the Charter School Board. Texas Human Resources Code section 142.002(a) provides a list of personnel that may be employed by the Board. Specifically, the statute states that a juvenile board may, "with the advice and consent of the commissioners court, employ probation officers and administrative, supervisory, stenographic, and other clerical personnel necessary to provide juvenile probation services." In-house lawyers are not included in the list of personnel. Does the Board have the authority to hire an attorney, as a full-time employee, to provide in-house legal services to the Board, the Juvenile Department and the Charter School Board?

Background

The Civil Division of my office provides the Board, Juvenile Department, and Charter School Board with legal counsel by, *inter alia*, offering legal advice, rendering legal opinions, negotiating contracts, consulting and assisting with human resource matters and disciplinary actions. Recently, the Director of Juvenile Services expressed interest in hiring an attorney to work full-time for the Board, the Juvenile Department and the Charter School Board. The attorney would report to the Director of Juvenile Services. My office raised concerns regarding whether Texas law authorizes the Board to hire an in-house attorney.

Legal Authorities

The Board is established by a Dallas County-specific statute. Texas Human Resource Code section 152.0631. "As a general rule, juvenile boards of this state are statutorily created entities comprised of members designated by statute and are entities with an existence separate and apart from their counties and commissioners courts." Tex. Att'y Gen. Op. No. JC-0209 (2000) at 2 (citation omitted).

We found no case that specifically addressed the Board's authority to hire an in-house lawyer as a full-time staff member. Your office, however, has addressed the issue of a juvenile board's (Potter County's) authority to contract counsel to represent it determining, "Given that the Juvenile Board is a separate entity with the authority to contract independent of the Commissioners Court and no statute precludes it from retaining private counsel, we conclude that the Juvenile Board possesses the implied authority to contract with private counsel to represent the Board in litigation filed against it by the Commissioners Court." Id. It thus appears that this Board possesses the necessary authority to contract counsel to handle discrete legal matters in certain circumstances.

Here, however, the Board does not seek to engage an attorney for a discrete matter. Instead, it has inquired about hiring an attorney to work in-house as a full-time staff member. Statutory law appears to limit the Board's authority to hire employees.¹ A juvenile board may, "with the advice and consent of the commissioners court, employ probation officers and administrative, supervisory, stenographic, and other clerical personnel necessary to provide juvenile probation services." Texas Human Resource Code section 142.002. "Juvenile probation services" means: (a) services provided by or under the direction of a juvenile probation officer in response to an order issued by a juvenile court and under the court's direction, including: protective services, prevention of delinquent conduct and conduct indicating a need for supervision, diversion, deferred prosecution, foster care, counseling, supervision, and diagnostic, correctional, and educational services, and (b) services provided by a juvenile probation department that are related to the operation of a preadjudication or post-adjudication juvenile facility. Id. at § 142.001. Texas Human Resource Code section 152.0008, the general statute governing personnel hired by the chief juvenile probation officer, enables the chief juvenile probation officer to employ assistant officers and "other necessary personnel." Texas Human Resources Code section 152.0008 expands on the hiring authority provided for in Texas Human Resources Code section 142.002 for counties subject to this statute. The Board, however, is specifically excluded from the provision allowing for the hiring of "other necessary personnel." Texas Human Resources Code section 152.0631(l) ("Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Dallas County").

If the Board were to hire an attorney as a full-time employee, my office believes that the Board would be acting outside the scope of its express statutorily-granted hiring authority. Specifically, this office does not believe that the attorney services currently provided and contemplated to be provided in the future to the Board, Juvenile Department, and Charter School Board are of a nature as to be defined as "administrative," "supervisory," "stenographic," or "clerical" services. The Chairman of the Board, however, was advised by the Legal Help Desk of the Texas Juvenile Justice Department that "...the term administrative conceivably includes all management and support positions (including legal counsel, information technology, finance, and other skilled

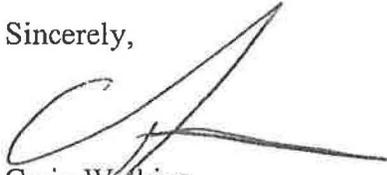
¹Indisputably, the creation of an employer/employee relationship gives rise to liability issues generally absent in the context of a contract for services. Tex. Tort Claims Act §101.001(2).

professional positions) that support the work of the department.”² My office believes that this interpretation is at odds with Tex. Hum. Res. Code Ann. § 142.002 and Tex. Hum. Res. Code § 152.0008. That is, if the limited categories set forth in Texas Human Resource Code section 142.002 were meant to provide for the expansive hiring of personnel, then Texas Human Resource Code section 152.0008 would be unnecessary.

Conclusion

The applicable statutes appear to limit the Dallas County Juvenile Board’s hiring authority in a way that prevents it from hiring an in-house attorney. I respectfully request that you review the issues at hand and issue an expedited opinion at your earliest convenience.

Sincerely,



Craig Watkins
Dallas County District Attorney

Enclosures

² The Legal Help Desk advisor further noted that several other departments have hired “direct legal counsel” for their juvenile probation departments; however, two of the counties cited as examples, Travis and El Paso, are granted broader authority specifically not given to Dallas County, and the circumstances involving the hiring made by the other county, Bexar, is unknown. *See* Tex. Hum. Res. Code § 152.0772(b) (allows the juvenile board of El Paso to appoint the head of each facility who can hire employees the board determines are necessary); Tex. Hum. Res. Code § 152.2331(e) (Section 152.0008, which allows for the hiring of “other necessary personnel,” applies to Travis County).