

**RYAN GUILLEN**★
TEXAS STATE REPRESENTATIVE

August 1, 2025

Hon. Ken Paxton

Attorney General of Texas
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Attorney General Opinion Regarding the interplay of Chapters 143 and 147 of the Texas Local Government Code on Aircraft Rescue and Firefighter (ARFF) positions at Valley International Airport.

Dear Attorney General Paxton,

I am writing to formally request an emergency opinion from your office under Section 402.042 of the Texas Government Code. Specifically, I seek your opinion regarding the legal questions that have arisen surrounding the possible removal and transfer of civil service firefighters currently assigned as Aircraft Rescue and Firefighter (ARFF) personnel at Valley International Airport in Harlingen, Texas.

The urgency of this request is well-founded, as the operations of ARFF units are integral to the safety and welfare of the public, particularly in light of the statutory obligations outlined in the Texas Transportation Code, Section 22.001, which mandates the provision of adequate emergency response services at airports. Given the critical nature of these positions and their direct impact on public safety, I believe it is imperative to resolve any outstanding legal questions at the earliest opportunity.

Your prompt attention to this matter would not only provide clarity but also ensure that the City of Harlingen adheres to its legal responsibilities in maintaining a secure operational environment at this vital transportation hub.

I. Legal Questions Presented

- 1. Whether a municipality governed by Chapter 143 of the Texas Local Government Code may eliminate civil service-classified firefighter positions assigned to federally mandated ARFF duties at a municipal airport and replace those positions with non-civil service employees or third-party contractors.*
- 2. Whether a municipality governed by Chapter 143 of the Texas Local Government Code may transfer civil service-classified firefighters from ARFF assignments to other civil service positions within the Fire Department and thereafter fill the vacated ARFF positions with either non-civil service personnel or third-party contractors.*

3. *Whether Chapter 143 of the Texas Local Government Code prohibits a municipal department such as the Valley International Airport, assuming reassignment of civil service firefighters by the Fire Department, from filling ARFF vacancies with non-civil service personnel or through private contracting.*
4. *Whether the Airport Director of a municipal airport, as opposed to the Department Head of the Fire Department, has the statutory authority to remove classified firefighters from ARFF positions and fill them with non-civil service employees or third-party contractors?*

II. Municipal Framework and Operational Jurisdiction

The City of Harlingen is a *home-rule municipality* organized under Article XI, Section 5 of the **Texas Constitution**, which grants broad legislative authority to cities that adopt home-rule charters. According to its charter, Harlingen is governed by a City Commission composed of a mayor and five City Commissioners. Within this framework, the City operates the Valley International Airport (“VIA”) under a certificate issued by the Federal Aviation Administration (FAA), by the regulatory requirements outlined in **14 C.F.R. Part 139**.¹

Although VIA functions as a department of the city, its operational oversight is semi-autonomous, as delineated in the *Harlingen City Charter*. The Charter delegates substantial managerial authority to the Valley International Airport Board (“Airport Board”), whose members are appointed—and may be removed without cause—by the Mayor and City Commission. Nevertheless, VIA remains a legal and administrative subdivision of the City of Harlingen; it is not a distinct legal entity. The Airport Board’s authority is circumscribed in several material respects: (1) Harlingen’s city charter provide that the Harlingen Airport Board shall take title to any real property it acquires as follows; “Valley International Airport, a Department of the City of Harlingen, a municipal corporation; (2) the City’s personnel policies are binding on all airport employees; and (3) the hiring or termination of the Airport Director is subject to the approval of the City Commission.”²

Under federal law, specifically **14 C.F.R. § 139.319**, certified airports such as VIA are required to maintain Aircraft Rescue and Firefighting (ARFF) capabilities during commercial air carrier operations. Currently, the City of Harlingen satisfies this federal mandate by assigning municipal firefighters—employees of the Harlingen Fire Department—to provide ARFF services at VIA. These firefighters are classified as civil service employees governed by **Chapter 143 of the Texas Local Government Code**, which the city adopted on March 20th, 1990. The City of Harlingen has consistently filled the ARFF positions with classified Harlingen Firefighters since adopting civil service in 1990.

Additionally, the City has adopted the provisions of the **Fire and Police Employee Relations Act**, codified at **Tex. Loc. Gov’t Code §§ 174.001 et seq.**, and has entered into a collective bargaining agreement with the Professional Firefighters Association, IAFF Local 3404. That agreement includes a “maintenance of standards” clause, which provides:

“Subject to the foregoing management rights clause, the CITY agrees that any standard, privilege, and working conditions enjoyed by the employees at the effective date of this

¹ The certificate holder of VIA is the City of Harlingen and not the VIA Board of Directors.

² See Article IX, Sections 1(b)–(c) of the **Harlingen City Charter**.

Agreement, which is not specifically included in this Agreement, and as to which the CITY would be subject to a mandatory duty of bargaining, as determined by law, will not be changed without the consent of the ASSOCIATION.”

—*Collective Bargaining Agreement between the City of Harlingen and IAFF Local 3404*, Art. 6, § 2.

The City’s position is that the five ARFF firefighter positions at VIA are civil service positions governed by Chapter 143 and may not be reclassified or eliminated absent compliance with the applicable civil service procedures. Further, under the collective bargaining agreement, the City is of the view that any attempt to reassign or reclassify these positions, or to replace the civil service personnel with non-civil service employees or third-party contractors, would require the consent of the Association under the maintenance of standards provision of the collective bargaining agreement.

In contrast, the Valley International Airport Board and Airport Director have expressed interest in outsourcing the provision of ARFF services—either by hiring non-civil service airport employees or by contracting with a private third-party provider. Under this proposal, the current firefighters assigned to VIA would either be reassigned elsewhere within the Fire Department or subject to a reduction in force. The Firefighter’s Association has not consented to such action.

III. Legal Authority and Analysis

A. Chapter 143 and the Elimination of Classified Firefighter Positions for ARFF Duties

Texas Local Government Code Chapter 143 governs civil service for fire and police personnel in municipalities that have adopted it. Section 143.021 requires municipalities to establish classified positions by ordinance, and Section 143.022 provides that no classified position may be abolished “except as provided by this chapter.”

Most critically, **Tex. Loc. Gov’t Code § 143.085(b)** expressly prohibits the elimination of a classified position with the intent to circumvent the civil service protections afforded by Chapter 143:

“A municipality may not remove any position from the civil service classification unless the position is abolished in good faith and not as a subterfuge for avoiding the purpose of this chapter.”

Thus, any attempt by the city or the VIA Board to eliminate the five ARFF firefighter positions and replace them with non-civil service employees or private contractors would be subject to scrutiny under this good-faith requirement. Texas courts have interpreted this provision to mean that a position may not be eliminated solely to remove the incumbent from civil service protection or to contract out a function historically performed by civil service personnel. See *City of Galveston v. Firefighters’ Local Union No. 571*, 233 S.W.3d 527, 532 (Tex. App.—Houston [14th Dist.] 2007, pet. denied). Indeed, courts have invalidated actions that functionally achieve the same result as a prohibited demotion, discharge, or reassignment without affording due process protections. See *Nuchia v. Woodruff*, 956 S.W.2d 612, 616–17 (Tex. App.—Houston [14th Dist.] 1997, pet. denied).

A municipality governed by Chapter 143 may not abolish classified firefighter positions assigned to ARFF duties at a municipal airport with the purpose or effect of circumventing civil service protections. Absent clear evidence of a bona fide organizational need—such as budget constraints or

departmental restructuring made in good faith—the substitution of non-civil service or contract personnel for civil service firefighters would likely violate § 143.085(b) and be subject to challenge.

B. Transfer of Civil Service Firefighters and Replacement with Non-Civil Service or Contract Workers

Under **Tex. Loc. Gov't Code § 143.026**, the Fire Chief may reassign firefighters within the department, but such reassignments may not be pretextual or designed to undermine civil service status. Additionally, transfers that substantially alter a firefighter's duties or location may implicate the firefighter's right to notice and appeal under § 143.010 (disciplinary demotion) or § 143.054 (indefinite suspension), particularly if the result is a functional demotion or diminution of responsibility. See *Lee vs the City of Houston*, 801SW2d 290 (Tex 1991). Assuming, arguendo, the city understands that even if the transfers were administratively permissible, the follow-up decision to refill those ARFF roles with non-classified employees would still trigger scrutiny under both Chapter 143 and the collective bargaining agreement. The City has historically provided ARFF services using civil service firefighters, and that longstanding practice constitutes a "working condition" within the meaning of **Tex. Loc. Gov't Code § 174.002** and the "maintenance of standards" clause of the CBA. Texas courts have held that changes in core terms and conditions of employment that affect safety, job security, or traditional job functions require bargaining. See *City of San Antonio v. Int'l Assn of Firefighters, Local 624*, 163 S.W.3d 532, 540–41 (Tex. App.—San Antonio 2005, no pet.). While the City acknowledges that the intra-departmental reassignment of civil service firefighters is not *per se* unlawful, it believes that the replacement of firefighters vacated ARFF roles with non-civil service personnel may contravene both Chapter 143 and the collective bargaining agreement. Any such action undertaken without Association consent would likely violate both state civil service protections and the statutory duty to bargain over mandatory subjects under Chapter 174.

C. Authority of the Valley International Airport Board to Fill ARFF Vacancies Outside Civil Service

Even assuming, hypothetically, that the Harlingen Fire Department lawfully reassigns the five civil service firefighters from VIA, the Valley International Airport remains a department of the City of Harlingen and is thus subject to the same civil service framework. The Harlingen City Charter explicitly provides that VIA is not a distinct legal entity and that all hiring decisions are subject to the personnel policies of the City. Accordingly, the Airport Board may not unilaterally hire employees for public safety roles—such as ARFF services—outside the bounds of civil service unless expressly authorized by ordinance and in conformity with Chapter 143. Moreover, as the Texas Supreme Court held in *City of Pasadena v. Smith*, 292 S.W.3d 14, 21 (Tex. 2009), where a municipal department attempts to circumvent civil service rules through indirect means, courts will look to substance over form in enforcing the statute.

IV. Authority of the Airport Director to Remove Civil Service Firefighters and Fill ARFF Positions with Non-Civil Service or Contract Personnel

At issue is whether the Airport Director—who serves as the chief administrative officer of the Valley International Airport—possesses the legal authority to remove civil service firefighters from their ARFF assignments and replace them with non-civil service employees or third-party contractors.

A. The Airport Director Has No Statutory Authority over Civil Service Personnel in the Fire Department

Under **Tex. Loc. Gov't Code § 143.003(4)**, “department head” means the chief or head of a fire or police department appointed under the civil service system. The authority to supervise, reassign, or discipline classified civil service firefighters rests solely with the **Fire Chief** as department head, not with other city officials or administrators of other departments. See also *City of Houston v. Clark*, 197 S.W.3d 314, 319 (Tex. 2006) (interpreting “department head” to mean the one individual vested with managerial authority over classified personnel).

The Airport Director is not the department head of the fire department, nor does he exercise command authority over classified firefighters. The firefighters assigned to ARFF functions at VIA remain employees of the Harlingen Fire Department. Their appointments, classifications, and assignments must therefore be managed exclusively within the chain of command of the Fire Department. Furthermore, under **Tex. Loc. Gov't Code § 143.006(a)**, the City Commission retains authority to prescribe the duties and organization of its departments by ordinance—but it may not subdelegate the power to reclassify or remove civil service employees to unelected administrative officials acting outside the civil service framework.

B. The Airport Director Lacks Authority over Civil Service Positions

The Airport Director also lacks independent authority over any classified civil service positions. Under **Tex. Loc. Gov't Code § 143.021(a)**, new positions in the fire department must be created by ordinance and filled from an eligibility list under a competitive civil service examination. Any bypass of this process violates the plain language of Chapter 143. See *City of DeSoto v. White*, 288 S.W.3d 389, 399 (Tex. 2009). Even assuming, arguendo, that the ARFF function could be transferred out of the Fire Department, neither the Airport Board nor the Airport Director may unilaterally establish alternative staffing structures without the express authorization of the City Commission and compliance with civil service and collective bargaining obligations.

C. The Airport Director's Contracting Authority is Subordinate to Civil Service Protections

The Airport Director may, in certain limited contexts, have the authority to enter into vendor or operational contracts for airport services. However, such contracting authority does **not** include the ability to supplant civil service positions with private contractors when those positions are established and protected by state law. As a municipal department head, the Airport Director is bound by the City Charter and by City-wide personnel policies. Per the *Harlingen City Charter*, Art. IX, § 1(c), real property, hiring, and employment decisions are subject to approval or supervision by the City Commission. There is no delegation of authority—express or implied—that empowers the Airport Director to remove or reclassify civil service positions created under Chapter 143. Moreover, to the extent the Director sought to eliminate or bypass civil service ARFF positions by contracting with a third party, such action would almost certainly constitute a violation of **Tex. Loc. Gov't Code § 143.085(b)** (prohibiting removal of positions to circumvent the civil service system) and could trigger liability under the City's collective bargaining agreement.

Conclusion

The City of Harlingen seeks clarification regarding its understanding of the following legal issues:

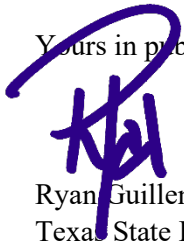
1. First, whether the City of Harlingen may, under Chapter 143, eliminate, or transfer Harlingen Firefighters currently assigned to federally mandated ARFF duties at Valley International Airport, and fill those positions with non-civil service employees or third-party contractors.
2. Second, whether the City of Harlingen is legally required by the maintenance of standards clause of the collective bargaining agreement to obtain the consent of the Fire Association before

assigning non-civil service personnel to ARFF positions, given the city's longstanding practice of assigning civil service firefighters at Valley International Airport to provide ARFF services.

3. Third, whether the Valley International Airport, as a municipal department, has legal autonomy to hire or contract for ARFF services in contravention of the City's civil service framework, given that those positions have been filled by classified firefighters since Harlingen adopted civil service.

Finally, whether either the Airport **Director or the Valley International Airport Board has the authority to** remove classified firefighters from ARFF assignments or to replace those positions with private contractors, or would that power rest exclusively with the **Fire Chief**, subject to the procedural and substantive constraints imposed by Chapter 143.

Yours in public service,



Ryan Guillen
Texas State Representative