



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 21, 2018

The Honorable Roberto Serna
293rd Judicial District Attorney
458 Madison Street
Eagle Pass, Texas 78852

Opinion No. KP-0223

Re: Whether an employee of the Eagle Pass Water Works System is a municipal employee for purposes of section 392.031 of the Local Government Code, which prohibits a municipal officer or employee from being appointed a commissioner to a municipal housing authority (RQ-0224-KP)

Dear Mr. Serna:

You ask whether an employee of the Eagle Pass Water Works System is also a municipal employee who, under section 392.031 of the Local Government Code, may not serve as a commissioner of a municipal housing authority.¹ You tell us that the City of Eagle Pass (the “City”) created both a waterworks system and a municipal housing authority. Request Letter at 1. You state that the city charter, bond indentures, and ordinances vest the management of the waterworks system in a board of trustees. *Id.* at 1–2; *see also Bd. of Trs. of Eagle Pass Water Works Sys. v. Deer Run Props., Inc.*, 616 S.W.2d 337, 339 (Tex. Civ. App.—San Antonio 1981, no writ) (stating that the waterworks system governance is designed to remove its operations “from the influence and control of the city governing body”). You further state that the general manager of the waterworks system supervises its employees as authorized by a municipal ordinance. Request Letter at 2.

You tell us that the City established the municipal housing authority under chapter 392 of the Local Government Code, which creates a municipal housing authority as a unit of government for all purposes. *Id.* at 1; TEX. LOC. GOV’T CODE §§ 392.006, .011(a). The powers of a municipal housing authority are vested in its commissioners, who are appointed by the mayor or another presiding officer of the municipal governing body. TEX. LOC. GOV’T CODE §§ 392.031(a), .051(b). Section 392.031 prohibits a municipal employee from serving as a commissioner. *Id.* § 392.031(a) (“An appointed commissioner of the authority may not be an officer or employee of the municipality.”), (b) (reiterating that “[a] commissioner may not be an officer or employee of the municipality”). You tell us that the City is considering appointing an employee of the waterworks

¹See Letter from Honorable Roberto Serna, 293rd Jud. Dist. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Apr. 20, 2018), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

system as a commissioner of the housing authority. Request Letter at 1. You ask whether the employee of the waterworks system is also an “employee of the municipality” for purposes of the prohibition in section 392.031. *Id.*

Courts construing a statute attempt “to ascertain and give effect to the Legislature’s intent” as expressed in the statute’s language. *See Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm’n*, 518 S.W.3d 318, 325 (Tex. 2017) (quotation marks omitted). The only exclusion in section 392.031 is for “an officer or employee of *the* municipality.” TEX. LOC. GOV’T CODE § 392.031(a), (b) (emphasis added). Thus, the only employees prohibited by the statute are employees of the municipality that established the district. Chapter 392 does not define the word employee and gives few contextual clues. *See id.* § 392.002 (definitions); *see generally id.* §§ 392.001–.104 (chapter 392). However, section 392.031’s exclusion of officers and employees of a municipality comports with chapter 392’s overall statutory scheme to provide a housing authority with its own governing body, separate and largely independent of the municipal governing body. *Compare id.* § 392.031(a) (precluding officers and employees of municipality from serving as commissioners of the housing authority), *with id.* §§ 392.011(b) (creating housing authority as a public body corporate and politic), .051(b) (vesting housing authority’s powers in its commissioners).

For an undefined term such as “employee” in section 392.031(a), courts apply the term’s common, ordinary meaning unless a contrary meaning is apparent from the statute’s language. *Harris Cty. Appraisal Dist. v. Tex. Workforce Comm’n*, 519 S.W.3d 113, 121 (Tex. 2017). “Employee” is commonly defined broadly as “one employed by another,” usually for wages or salary. WEBSTER’S THIRD NEW INT’L DICTIONARY 743 (2002).² In *Harris County Appraisal District*, the Texas Supreme Court stated that “[u]nder the common law, the determination of whether a person is an employee is according to whether the employer has the right to control the progress, details, and methods of operations of the work.” *Harris Cty. Appraisal Dist.*, 519 S.W.3d at 121 (quotation marks omitted); BLACK’S LAW DICTIONARY 639 (10th ed. 2014). The court further stated that the common-law meaning of “an employee is one who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.” *Harris Cty. Appraisal Dist.*, 519 S.W.3d at 121 (quotation marks omitted). Although no judicial or administrative opinion interprets the meaning of “employee” in the context of section 392.031(a), a court would likely determine a person’s status as an employee of a municipality in accordance with any express or implied contract establishing the municipality’s right to control the person’s work.

Thus, whether a person is an employee of a municipality will depend on the particular facts and circumstances of the person’s employment. In the request letter, you characterize the specified person as an employee of the waterworks system. Request Letter at 1–3. You tell us that the waterworks system supervises and provides a paycheck to its employee, although the City includes

²*See also* WEBSTER’S THIRD NEW INT’L DICTIONARY 743 (2002) (defining “employ” as “to provide with a job that pays wages or salary or with a means of earning a living”); AM. HERITAGE COLL. DICTIONARY 460 (4th ed. 2002) (defining “employee” as a “person who works for another in return for compensation”); NEW OXFORD AM. DICTIONARY 569 (3d ed. 2010) (defining “employee” as “a person employed for wages or salary, esp. at nonexecutive level” and “employ” as “give work to (someone) and pay them for it”).

waterworks employees in its retirement system. *Id.* at 2. However, you do not address any other facts or circumstances bearing on the City's right to control the work of the employee of the waterworks system. *Id.* at 1-4. Absent facts and circumstances establishing such a work relationship, a court would likely determine that a person employed by the Eagle Pass Water Works System is not an employee of the City of Eagle Pass for purposes of section 392.031 of the Local Government Code.

S U M M A R Y

Absent facts and circumstances establishing that the City of Eagle Pass possesses an express or implied contractual right of control over the work of a person employed by the Eagle Pass Water Works System, a court would likely determine such a person is not an employee of the City of Eagle Pass for purposes of section 392.031 of the Local Government Code.

Very truly yours,



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