



TARRANT COUNTY
OFFICE OF THE
CRIMINAL DISTRICT ATTORNEY

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JUSTICE CENTER
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February 7, 2000

Honorable John Cornyn
Texas Attorney General
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RQ-0186-gc

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C.M./R.R.R. # Z 270 256 180

OPINION COMMITTEE

FILE # ML-41270-00
I.D. # 41270

Re: Opinion Request: Are CSCD officers covered under a county's civil service system in a populous county that has elected an expanded system under Section 158.007(a) of the Texas Local Government Code?

Dear General Cornyn:

This Office requests an opinion on the following question: Do the Tarrant County Civil Service Rules apply to Tarrant County Supervision and Corrections Department employees? Based on a review of past Attorney General and court rulings, and the nature of the TCSCD entity, this Office believes that the answer is "no." However, this view may conflict with Section 158.007 of the Texas Local Government Code, which purports to have extended the county civil service system to include adult probation officers in counties where voters elected to expand the system.

In H-619 and H-672, your Office determined that allowing probation officers to be covered under a county's civil service system was inconsistent with the statutory purpose of vesting supervision of probationers within the control of the district and county judges. *See also Shore v. Howard*, 414 F.Supp. 379, 390 (N.D. Tex. 1976) (holding that probation department employees were not within purview of Tarrant County Civil Service Act).

Since these administrative and judicial rulings, the Legislature passed a statute providing a method for voters of populous counties to expand or dissolve their civil service systems. Section 158.007 of the Texas Local Government Code states:

(A) In a county that has a population of more than 800,000 and a civil service system created under this subchapter, the qualified voters of the county, voting at an election called for that purpose, may determine whether the system will be dissolved or expanded to cover the employees, except licensed attorneys, of the office of district or criminal district attorney, the adult and juvenile probation officers and their

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assistants, personnel in the county auditor's office including all assistant county auditors, and all other employees of the county not included in the coverage of the system and not specifically exempted by Section 158.013 or Subchapter B.

Tarrant County voters chose to expand this county's system, apparently extending the protection of the Tarrant County Civil Service Act to officers of the Tarrant County Community Supervision and Corrections Department.

Whether this election changed the determinations (that probation officers were not covered under the county's civil service system) made in H-619, H-672, and *Shore* has not been addressed, although your Office cited *Shore* for its holding as recently as 1997 in LO 97-090. Further, the election of an expanded system did not change the reasoning behind these rulings. The purpose of the Tarrant County Civil Service Act is to develop and enforce "rules regarding the selection of employees and their advancement, rights, benefits, and working conditions." (Tarrant County Civil Service Act § 1.00) (emphasis added). TCSCD officers are NOT Tarrant County employees,¹ and TCSCD employment issues are reserved to the Tarrant County judges and their designees.² Because Tarrant County neither employs nor supervises TCSCD officers, providing grievance protection under civil service rules which protect only employees is fundamentally illogical. Finally, while

¹ *Randall v. Jefferson County*, 771 F. Supp. 173 (E.D. Tex. 1991) (holding county was not probation officer's employer for purposes of discrimination suit because probation department was not a county agency); *Clark v. Tarrant County, Tex.*, 608 F.Supp. 209, 211 (N.D. Tex. 1985) (holding that probation department employees were not county employees).

² The Texas Legislature established Community Supervision and Correction Departments ("CSCDs") to serve the district and statutory county court judges trying criminal cases in this state. See TEX. GOVT. CODE ANN. § 76.002 (Vernon 1998). The criminal judges in each judicial district establish CSCDs to conduct presentence investigations, supervise and rehabilitate defendants placed on community supervision, enforce the conditions of community supervision, and staff community corrections facilities, *id.* at 76.002(b), and the judges appoint a department director, *id.* at 76.004(a), who hires necessary personnel. *Id.* at 76.004(b); see also Op. Tex. Att'y Gen. No. DM-208 (1993) (judicial district is responsible for compensating CSCD personnel but director responsible for actual hiring). Further, CSCD personnel are paid by the judicial districts they serve but are considered state — not county — employees for purposes of the Tort Claims Act and workers' compensation. See TEX. GOV'T. CODE ANN. § 76.006(b-c) (Vernon 1998). Counties have a only limited financial obligation to support CSCDs, aimed toward providing physical space and utilities, see *id.* at 76.008, and holding, depositing, disbursing, investing, and otherwise caring for CSCD funds "on behalf of [CSCDs] as the [CSCD] directs." See TEX. LOCAL GOV'T. CODE ANN. § 140.003(a) & (f) (Vernon 1999); cf. TEX. CODE CRIM. PROC. ANN. art. 42.12 § 19 (Vernon Supp. 1999) (authorizing collection of probation fees to fund CSCDs).

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TCSCD officers are not county employees, according to section 76.006(a) of the Texas Government Code, these employees are “governed by personnel policies and benefits equal to personnel policies for and benefits of other employees of that county.” The plain language of this statute implies that CSCD officers will have access to *equal but separate* benefit schemes and personnel policies.

For the reasons stated above, the Tarrant County District Attorney’s Office respectfully requests that your office revisit the issue of whether TCSCD employees are covered under the Tarrant County Civil Service Act.

Sincerely,



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