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Hon. Greg Abbott
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0699-GA

Re: Request for Attorney General's Opinion

Dear General Abbott:

I am requesting an opinion as to the constitutionality of two sections of Chapter 143, Texas Local Government Code ("Municipal Civil Service for Firefighters and Police Officers").

Section 143.088 makes it a Class A Misdemeanor to accept money or anything of value from another person in return for retiring or resigning from the person's civil service position, or to give the same to another person in return for that person's resignation or retirement from a civil service position. The problem is that the statute does not apply to a municipality with a population of 1.5 million or more (i.e., Houston). Subchapter G of Chapter 143, which is applicable only to municipalities of 1.5 million or more, does not have a comparable prohibition. Thus, Houston constitutes a sanctuary for what is otherwise criminal conduct in the rest of the state.

Section 143.025 directs how entrance examinations for firefighters and police officers are to be conducted. In 2007, the 80th Legislature enacted Senate Bill 339, which provided a different qualification solely for municipalities of 1.5 million or more (see Section 143.1041 and Subchapter J). Under 143.025, such examinations are to constitute open testing for all proper applicants; Section 143.1041 provides that police officer applicants in the larger community must already be admitted to a training academy before taking the eligibility examination, suggesting that there may be police applicants rejected without testing. Otherwise, the procedure remains the same under both statutes.

Both of these statutes differ solely because of a population bracket determination. Article 3, Section 56 of the Texas Constitution prohibits the state legislature from passing any "local" or "special" law that authorizes "regulating the affairs of counties, cities, towns, wards, or school districts." According to the Interpretive Commentary to Section 56, the constitutional framers believed that such restrictions on the passage of local and special bills would prevent the granting of special privileges, secure uniformity of law throughout the state, decrease the passage of courtesy bills, and encourage the legislature to devote more of its time to interests of the state at large. It would prevent lawmakers from engaging in the "reprehensible practice" of trading votes for the advancement of personal rather than public interests. *Miller v. El Paso County*, 136 Tex. 370, 150 S.W.2d 1000,

1001 (1941).

A "local law" is one limited to a specific geographic region of the state, while a "special law" is limited to a particular class of persons distinguished by some characteristic other than geography. *Maple Run at Austin Municipal Utility District v. Monaghan*, 931 S.W.2d 941, 945 (Tex. 1996).

> "...[T]he courts recognize in the legislature a rather broad power to make classifications for legislative purposes and to enact laws for the regulation thereof, even though such legislation may be applicable only to a particular class or, in fact, affect only the inhabitants of a particular locality; but such legislation must be intended to apply uniformly to all who may come within the classification designated in the [particular statute], and the classification must be broad enough to include a substantial class and must be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished by the proposed legislation. In other words, there must be a substantial reason for the classification. It must not be a mere arbitrary device resorted to for the purpose of giving what is, in fact, a local law the appearance of a general law...The rule is that a classification cannot be adopted arbitrarily upon a ground which has no foundation in difference of situation or circumstances of the municipalities placed in the different classes. There must be some reasonable relation between the situation of municipalities classified and the purposes and object to be attained. There must be something...which in some reasonable degree accounts for the division into classes.

Miller v. El Paso County, 150 S.W.2d at 1001-1002.

In passing upon the constitutionality of a statute, the courts are to begin with a presumption of validity. *Smith v. Davis*, 426 S.W.2d 827, 831 (Tex. 1968). Among factors to consider are whether the statute involved is permanently applicable to only one county, or if it applied to only one county at the time of its enactment. *Id* at 832. The significance of the subject matter and the number of persons affected by the legislation are merely factors, albeit important ones, in determining reasonableness: Where the operation or enforcement of a statute is confined to a restricted area, the question of whether it deals with a matter of general rather than purely local interest is an important consideration in determining its constitutionality. When a statute grants powers to or imposes duties upon a class of counties, the primary and ultimate test is whether there is a reasonable basis for the classification and whether the law operates equally on all within the class. *Maple Run*, 931 S.W.2d at 947; see also *Rodriguez v. Gonzales*, 148 Tex. 537, 227 S.W.2d 791, 793 (1950).

> "...[A] statute is not local or special within the meaning of the constitution, even though its enforcement or operation is confined to a restricted area, if persons or things throughout the State are affected thereby or if it operates upon a subject in which the people at large are interested.

Smith v. Davis, 426 S.W.2d at 832.

Chapters 142 and 143 of the Local Government Code are replete with provisions restricted to or differentiated from specific population brackets. Twenty-one of the sixty-four sections of Chapter 143 are specifically inapplicable to any city of a population of 1.5 million or more. Subchapters G through J (Sections 143,101 through 143.363) are applicable solely to a municipality with a population of 1.5 million or more, although they contain provisions very similar to those in Subchapters A through F, differentiated only by the fact of a greater population. Very frankly, all of these deserve scrutiny as to their constitutionality.[1]

There is no legitimate rationale to justify excepting the City of Houston from what is criminal conduct in all other Texas municipalities under Chapter 143. Clearly, it is both an unconstitutional local and special law.

As to Sections 143.025 and 143.1041, there is likewise no bona fide justification advanced for distinguishing solely on the basis of population the status of who is to take an entrance eligibility examination for the position of police officer. Absent some legitimate rationale to support that distinction, the requirements of section 143.025 should apply to all police agencies subject to Chapter 143. Excepting the City of Houston from those requirements only because of population violates the Texas Constitution.

Your addressing this request will be greatly appreciated.

Yours very truly,

Rick Miller
Bell County Attorney

[1]To a jaundiced eye, these statutes differentiated by population only seem to indicate that certain legislators through the years have ignored the observation by the Texas Supreme Court in *Miller v. El Paso County* that it is a "reprehensible practice" to trade votes for the advancement of personal than public interests.

024-OPN/PO
4/11/08

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT
CHILD SUPPORT DIVISION

To Elizabeth Buhmann:

This appears to be requesting an opinion regarding the constitutionality of a municipal ordinance.

Thanks
Ellen Hiromymous

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