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TEXAS SENATE COMMITTEE ON ML-46568-10
OPINION COMMITTEE INTERGOVERNMENTAL RELATIONS# 46568



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August 24, 2010

RQ-0912-GA

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Opinion
Interpretation of Civil Service Examination Procedure

Dear General Abbott:

The purpose of this letter is to request an opinion concerning the promotional testing provisions of the Fire Fighter and Police Officer Civil Service Act, Texas Local Government Code, Chapter 143 (the Civil Service Act). All statutory references in this letter are to the Local Government Code unless otherwise noted.

Cities with a population of 10,000 or more may adopt the Civil Service Act for their fire departments in an election held for that purpose. Once adopted, the Civil Service Act provides that entrance into the civil service fire department is governed primarily by competitive entrance examinations. Under §143.025(a), the commission must "provide for open, competitive, and free entrance examinations to provide eligibility lists for beginning positions in the fire and police departments."

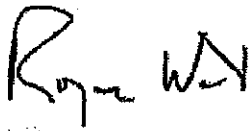
The Civil Service Act likewise requires a municipality's governing body to provide for the classification of all fire fighters, and for the number of positions in each classification. See §143.021(a). When a vacancy occurs in a non-entry level classification, the vacancy "may be filled only from an eligibility list that results from an examination held in accordance with this chapter."

The Civil Service Act's promotional procedures are set forth at §143.028-.036. Under §143.030(b), "[e]ach promotional examination is open to each fire fighter who at any time has continuously held for at least two years a position in the classification that is immediately below, in salary, the classification for which the examination is to be held." The succeeding sections of the Civil Service Act set forth a detailed competitive examination procedure that results in the creation of an eligibility list from which selectees generally will be taken in rank order. The local civil service commission is responsible to adopt rules governing promotions and must conduct examinations according to the procedures thus adopted and the statutory requirements. See §143.032(a).

A question has arisen regarding a rule adopted by a local civil service commission covered by the Act. The commission proposes to adopt a rule that would require each candidate signing up to take the promotional examination to pay a fee equal to one-half the cost of providing the examination for that applicant. A promotional candidate who otherwise meets the requirements for promotional eligibility under the Civil Service Act will not be allowed to take the examination if the candidate is unable or unwilling to pay this fee. Nowhere within the Act is authority granted to a local civil service commission to add requirements in addition to the statutory requirements such as charging a fee, for those wishing to have equal access to the promotional process. Does the requirement that promotional applicants pay a fee in order to sit for the promotional examination violate the requirement of §143.030(b) that promotional examinations be "open to each fire fighter" who meets the eligibility requirements specified in the statute? I would appreciate an opinion on this question.

Thank you in advance for your time and consideration of this matter. Should you require additional information in order to render your opinion, please do not hesitate to contact me at (512) 463-2527.

Sincerely,

A handwritten signature in black ink, appearing to read "Royce West". The signature is written in a cursive, somewhat stylized font.

Royce West, Chair
Senate Committee on Intergovernmental Relations

RW/jf