

TEXAS HOUSE OF REPRESENTATIVES



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OPINION COMMITTEE

CAROL ALVARADO
DISTRICT 145

FILE # ML-47747-14
I.D. # 47747

RQ-0029-KP

June 16, 2015

The Honorable Ken Paxton
Texas Attorney General
PO Box 12548
Austin, Texas 78711

Dear Attorney General Paxton,

I have received a request from State Representative Chris Turner requesting an attorney general opinion to clarify a state statute dealing with the certification of certain elections.

It is my understanding that Texas law only authorizes certain officials to request an opinion from the Attorney General. As Chair of the House Committee on Urban Affairs, I am submitting State Representative Turner's request on his behalf. Please find the formal request attached.

This is a local issue that involves the City of Arlington, the Arlington Police Association, and the Arlington Municipal Patrolman's Association, I have no position on this matter; nor do I intend on taking any subsequent action.

Please do not hesitate to contact my office if you need any additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carol Alvarado".

Carol Alvarado
State Representative, District 145

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TEXAS HOUSE *of* REPRESENTATIVES

Chris Turner

State Representative, District 101

June 16, 2016

The Honorable Ken Paxton
Texas Attorney General
PO Box 12548
Austin, Texas 78711

RE: Request for Opinion regarding Tex. Loc. Gov't Code 142, Subchapter B concerning Certification Elections

Dear Mr. Attorney General:

Last week, I received a letter from Arlington City Councilmember Robert Rivera requesting clarification of state statute regarding the certification of certain elections. In response and to address the questions raised, I am submitting a formal request for an Attorney General Opinion regarding Texas Local Gov't Code 142, Subchapter B.

Texas Labor Laws have often been analogized to the Federal National Labor Relations Act ("NLRA") for guidance in interpretation of similar Texas statutes pertaining to matters concerning Texas public employees when the NLRA addresses the same for private sector employees. *See, e.g., Sayre v. Mullins*, 681 S.W.2d 25, 28 (Tex. 1984) (citation to U.S. Supreme Court case decided under NLRA to interpret term "condition of work" used in state labor law); *Corpus Christi Fire Fighters Association v. City of Corpus Christi*, 10 S.W.3d 723, 726 (Tex. App. – Corpus Christi 1999, pet. denied) ("The statutory duty imposed by the FPERA is the same duty imposed by the National Labor Relations Act (NLRA) on private sector employers and labor units.")

Texas Local Gov't Code Chapter 142, Subchapter B, entitled "*Local Control of Police Officer Employment Matters in Certain Municipalities*" (colloquially referred to as "Meet and Confer") provides that covered Texas Municipalities may enter into "Meet and Confer" agreements with statutorily recognized "Police Officer Associations." The statute provides limited bargaining rights that are similar in some respects to the right of collective bargaining provided to private sector employees by the NLRA. For several years, the recognized exclusive representative of Arlington police officers for "Meet and Confer" purposes has been the Arlington Police Association (APA).

Recently, the City of Arlington received a petition from the Arlington Municipal Police Association (AMPA) challenging the continued majority status of the APA. In February 2015, The City therefore conducted an election under Texas Local Gov't Code §142.056 to determine if Arlington police officers desired to change their previously designated bargaining representative from APA to the AMPA for purposes of meeting and conferring with the City under Subchapter B. Because a majority of police

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officers did not choose to change representatives, that election resulted in the APA remaining the exclusive representative for bargaining purposes.


Despite the result of this election, the AMPA began a petition the very next day. Now, AMPA has submitted a new petition seeking a second election under §142.056. That statute contains no language stating how often a city must conduct elections based on such petitions, and the City therefore is contemplating conducting another election despite having just conducted one only four months ago.

The National Labor Relations Act contains a provision referred to as the "Election Bar Rule" which prohibits the holding of a certification election in any bargaining unit when there has been a valid election during the preceding twelve (12) month period. *See* 29 U.S.C. Sec. 159(c)(3). This provision of the NLRA, would, if applied, suggest an election before February of 2016 would be premature. On the other hand, failing to apply such rule by analogy would mean that cities arguably could be compelled to conduct election after election as long as the losing Association can produce another petition.

I therefore respectfully request your opinion regarding whether Texas Local Gov't Code §142.056 should be interpreted to include a 12-month election bar rule. In this regard, I note that one Texas court has applied the federal 6-month statute of limitations for private sector "duty of fair representation" claims to similar claims made under the Fire and Police Employee Relations Act, Texas Local Gov't Code Chapter 174, the state statute governing collective bargaining rights of Texas police officers and fire fighters. *Diaz v. San Antonio Professional Fire Fighters Association*, 185 S.W.3d 37, 40 (Tex. App. – San Antonio 2005, no pet.).

Thank you for your consideration of this matter. If you have any questions regarding this request, please do not hesitate to contact me.

Sincerely,



Chris Turner

cc: The Honorable Robert Rivera
Arlington City Council – District 3