



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

January 11, 1993

Mr. Robert Earley
Chairman
Committee on Energy
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 93-3

Re: Whether section 6 of article 42.131 of the Code of Criminal Procedure extends the benefits of attorney general legal representation to community supervision and corrections departments (ID# 17346)

Dear Representative Earley:

You have requested an opinion regarding whether section 6 of article 42.131 of the Code of Criminal Procedure, which extends legal representation by the attorney general to employees of community supervision and corrections departments, extends such legal representation to community supervision and corrections departments themselves. We conclude that it does not.

Article 42.131 provides for community supervision and corrections departments to be established by district judges at the judicial district level. Section 6 sets forth the benefits of employees of community supervision and corrections departments:

(a) *Except as provided by Subsection (c) of this section, department employees are not state employees.* The department shall contract with the most populous county served by the department for insurance and retirement plans, and the employees are governed by the same personnel policies as the employees of that county.

(b) The judicial districts served by a department shall pay the salaries of department employees.

(c) *Department employees are state employees for the purposes of Chapter 104, Civil Practice and Remedies Code, and Article 8309g, Revised Statutes.*

(d) The department shall provide transportation or automobile allowances for officers who supervise probationers. [Emphasis added.]

Clearly, by bringing community supervision and corrections department employees within the scope of chapter 104 of the Civil Practice and Remedies Code, section 6 entitles employees of community supervision and corrections departments to legal representation

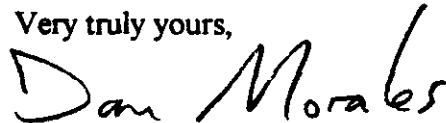
and indemnification. Chapter 104 of the Civil Practice and Remedies Code provides that the state will indemnify and defend state employees and officials in certain kinds of legal actions. Specifically, section 104.001 of the Civil Practice and Remedies Code provides that the state shall indemnify a state employee or official for damages in an action based on an act or omission by the person in the course and scope of the person's state duties and lists those persons entitled to indemnification. *See Civ. Prac. & Rem. Code § 104.002* (defining conduct entitled to indemnification). In addition, section 104.004 provides that the attorney general shall defend those persons listed in section 104.001.

Neither section 6 of article 42.131 of the Code of Criminal Procedure nor chapter 104 of the Civil Practice and Remedies Code, however, provide for legal representation or indemnification of community supervision and corrections departments themselves. Section 6 pertains exclusively to the benefits of community supervision and corrections department *employees*. Similarly, Chapter 104 of the Civil Practice and Remedies Code deals exclusively with legal representation and indemnification of *state officials and employees*. Neither provision contemplates the legal representation of a community supervision and corrections department as an entity. Thus, in answer to your query, article 42.131 of the Code of Criminal Procedure does not extend legal representation by this office to community supervision and corrections departments. You do not ask and we do not reach the issue of whether there may be other legal bases for such legal representation.

S U M M A R Y

Article 42.131 of the Code of Criminal Procedure extends legal representation by the attorney general to employees of community supervision and corrections departments but does not extend such legal representation to community supervision and corrections departments themselves.

Very truly yours,



Dan Morales
Attorney General of Texas