



**Office of the Attorney General  
State of Texas**

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ATTORNEY GENERAL

March 11, 1996

The Honorable Keith Oakley  
Chair  
Public Safety Committee  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Letter Opinion No. 96-027

Re: Whether a municipality which has not adopted the Fire Fighter and Police Officer Civil Service Act is nevertheless subject to Local Government Code section 141.033, which requires certain municipalities to establish a position classification system for fire and police employees, and a related question (ID# 36655)

Dear Representative Oakley:

Section 141.033 of the Local Government Code provides:

(a) Each municipality affected by this subchapter shall classify all positions in its fire and police departments and shall specify the duties and prescribe the salary for each classification.

(b) A member of the fire or police department who is required to perform the duties of a particular classification is entitled to be paid the salary prescribed for that position during the time the member performs those duties.

You request our opinion about (1) "whether [this section] applies to cities with a population of 10,000 or more, whether or not they have adopted the Fire Fighter and Police Officer Civil Service Act," Local Gov't Code ch. 143, and (2) whether, under subsection (b) of this section, a municipality that has temporarily assigned a fire fighter or police officer to perform the duties of a higher classification may require the fire fighter or police officer to "perform the higher classified duties for any set period of time before being entitled to the pay of the higher classification."

Regarding the first issue, you tell us you "have been informed that some Texas cities which have not adopted the Fire Fighter and Police Officer Civil Service Act, Texas Local Government Code chapter 143, contend that they likewise are not covered by §141.033." You note that section 141.033 is part of chapter 141--not chapter 143--of the Local Government Code.

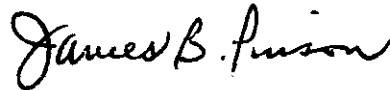
The requirements in subsection (a) of section 141.033, that all fire and police department positions be classified and that, for each classification, the duties be specified and the salary prescribed, apply expressly to “[e]ach municipality affected by this subchapter.” Section 141.033 is part of subchapter B of chapter 141. Subchapter B affects all municipalities with populations of 10,000 or more. *See* Local Gov’t Code §§ 141.031 - .032, .035. Nowhere is the effect of that subchapter made contingent on a municipality’s adoption of chapter 143. Although subsection (b) does not expressly apply to a municipality affected by subchapter B, the statutory predecessor from which section 141.033 was nonsubstantively recodified, former V.T.C.S. article 1269q, section 4, contained the predecessor provisions to subsections (a) and (b) in the same sentence and further provided that the requirement now in subsection (b) would be effective “thereafter,” that is, after the municipality complied with the requirements now in subsection (a). Act of May 29, 1983, 68th Leg., R.S., ch. 433, § 1, 1983 Tex. Gen. Laws 2432, 2437 (codified at V.T.C.S. art. 1269q), *repealed by* Act of May 1, 1987, 70th Leg., R.S., ch. 149, § 49(1), 1987 Tex. Gen. Laws 707, 1307; *see* Act of May 1, 1987, 70th Leg., R.S., ch. 149, sec. 1, § 141.033, sec. 51, 1987 Tex. Gen. Laws 707, 880, 1308. The predecessor language dispels any doubt that subsection (b) governs the same municipalities as subsection (a). We therefore conclude that all of section 141.033 applies to all municipalities with populations of 10,000 or more, regardless of whether they have adopted Local Government Code chapter 143.

Regarding the second issue, the court in the 1987 case of *Mokwa v. City of Houston*, 741 S.W.2d 142 (Tex. App.—Houston [1st Dist.], writ denied), held that section 4 of former article 1269q required a police department employee to be compensated at the higher classification rate while assigned to fill in during the absence, no matter how short, of an employee of a higher classification. *Id.* at 148. Former article 1269q was not substantively amended after 1983, *see* V.T.C.S. arts. 1269o-1269s historical and statutory notes at 90 (Vernon Supp. 1996); and section 141.033, its nonsubstantive successor, has not been amended, *see* Local Gov’t Code § 141.033 (Vernon 1988 & Supp. 1996). *Mokwa* therefore still controls on this point. We accordingly conclude that a municipality that has temporarily assigned a fire fighter or police officer to perform the duties of a higher classification may not restrict the fire fighter’s or police officer’s entitlement to higher classification pay under subsection (b) to an assignment of a certain minimum duration.

**S U M M A R Y**

Local Government Code section 141.033 applies to all municipalities with populations of 10,000 or more, regardless of whether they have adopted Local Government Code chapter 143. A municipality that has temporarily assigned a fire fighter or police officer to perform the duties of a higher classification may not restrict the fire fighter's or police officer's entitlement to higher classification pay under section 141.033(b) to an assignment of a certain minimum duration.

Yours very truly,

A handwritten signature in cursive script that reads "James B. Pinson".

James B. Pinson  
Assistant Attorney General  
Opinion Committee