



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

December 12, 1961

Honorable Justin A. Keever
District Attorney
Tom Green County
San Angelo, Texas

Opinion No. WW-1219

Re: Whether a Commissioners
Court is authorized
to discontinue the
Veterans Service
Office under Article
5798a-2, V.C.S., and
the facts stated.

Dear Mr. Keever:

You have requested an opinion of this office on the following two questions:

(1) "Is the Commissioners Court authorized under article 5798a-2 to discontinue the Veterans Service Office upon the expiration of the date of the term for which the incumbent is appointed when said Court has determined that such office is no longer a public necessity?"

(2) "Is the Commissioners Court authorized to discontinue the services of the Veterans Service Officer upon completion of his two year term when the office is determined to be no longer a public necessity?"

The opinion request further states that the Commissioners Court of Tom Green County with all members present on September 11, 1961, voted to discontinue the Veterans Service Office effective January 1, 1962, which is the expiration date of the two year term for which the present incumbent has been appointed.

Section 1 of Article 5798a-2, Vernon's Civil Statutes, to which you refer, gives the Commissioners Court the authority to effectuate a Veterans County Service Office. This statute reads in part as follows:

"Section 1. The office of Veterans County Service Office is hereby created. When the Commissioners Court of a county shall determine that such an office is a public necessity in order that those residents of a county who have

served in the armed forces may promptly, properly and rightfully obtain the benefits to which they are entitled, it shall by a majority vote of the full membership thereof, maintain and operate such an office and shall appoint a Veterans County Service Officer" (Emphasis supplied)

From the above quoted statute, it can be observed that this office was created by the Legislature. However, the maintenance and operation of the office was placed at the discretion of the Commissioners Court, upon a determination by that body of a public necessity for the operation of that office under the criteria set out. Consequently, it is our opinion that although the office itself could not be abolished or discontinued per se by the Commissioners Court (it being a statutory office set up by the Legislature), the court could, upon a determination that a public necessity for such office no longer exists, suspend the operation of the office by a majority vote of the full membership of the court.

We do not believe that it was the intention of the Legislature to do a useless thing in this instance by giving the Commissioners Court the authority to use their discretion in determining a public necessity for the operation of this office, and then, on the other hand, denying all means of the court to use its discretion to suspend the operation when a public necessity was found to have ceased to exist. A primary rule of construction of statutes is to ascertain and give effect to the intent of the legislative body. Morris v. Calvert, 320 S.W.2d 117 (Civ. App. 1959, err. ref., n.r.e.).

The Court in the case of Wood v. State, 133 Tex. 110, 126 S.W.2d 4 (1939) spelled out this point in the following language:

"It is the settled law that statutes should be construed so as to carry out the legislative intent, and when such intent is once ascertained, it should be given effect, even though the literal meaning of the words used therein is not followed. . . ."

In arriving at legislative intent it is of primary importance to ascertain the purpose for which the statute was enacted. Harris County v. Tennessee Products Pipe Line Co., 332 S.W.2d 777 (Civ. App. 1960). Since the obvious

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purpose of this statute is to provide for the operation of this agency when a public necessity for such is found to exist, it seems entirely logical to us that when such public necessity is found to have become non-existent, it is within the power of the Commissioners Court to suspend the operation of that office. Looking to the subject matter and purpose here, we believe that our construction is in accord with the purposes for which this statute was passed, that it meets the criterion of reasonableness demanded in statutory interpretation. Southwest Sav. and Loan Ass'n of Houston v. Falkner, 331 S.W.2d 917 (1960).

In reference to your second question, we believe in accordance with the above, that the Commissioners Court is also authorized to discontinue the services of the Veterans Service Officer at the end of his term if the Court finds a public necessity for such office no longer exists. The officer here in question is subject to the general rule that in the absence of legal inhibition the governing body under which an officer holds may abolish the office, and in a statutory office, the Legislature may also authorize the Commissioners Court of any county to abolish an office insofar as that county is concerned, where the matter of filling such office in the first instance is left to the Court's discretion. Stanfield v. State, 83 Tex. 317, 18 S.W. 577 (1892). We think it a reasonable interpretation that since the filling of the Veterans County Service Office in the first place was left to the Commissioners Court, upon a discretionary finding of a public necessity, the Court is authorized to discontinue the services of the officer in its discretion. (See 34 Tex. Jur. 387, Public Officers, Sec. 38).

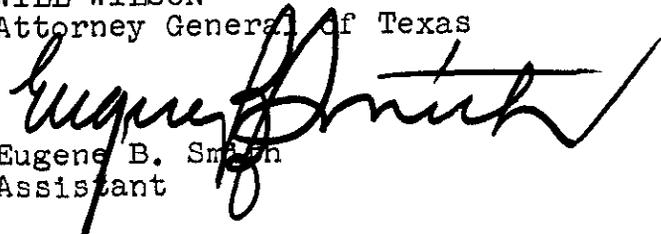
S U M M A R Y

The Commissioners Court of Tom Green County is authorized to discontinue both the operation of the Veterans County Service Office and the services of the Veterans County Service Officer upon a determination by a majority vote of the full membership of the Court that a public necessity for such office under the criteria set out in Article 5798a-2, no longer exists.

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Very truly yours,

WILL WILSON
Attorney General of Texas

By  Eugene B. Smith
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APPROVED:

OPINION COMMITTEE
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