



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

May 30, 1989

Mr. Ray L. Goad  
Executive Director  
Commission on Fire Protection Personnel  
Standards and Education  
510 S. Congress, Suite 406  
Austin, Texas 78704

LO-89-44

Dear Mr. Goad:

You ask whether the Commission on Fire Protection Personnel Standards and Education "has the legal authority to develop fire marshal certification standards for local fire marshals."

Your inquiry focuses on certain provisions added to article 4413(35), V.T.C.S., by the 70th legislature. Acts 1987, 70th Leg., ch. 339.1

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1. Chapter 339 amended article 4413(35) without reference to the repeal of that article by the same legislature, which adopted, as a non-substantive revision, Title 4 of the Government Code. Acts 1987, 70th Leg., ch. 147. Government Code section 311.031(c) provides:

The repeal of a statute by a code does not affect an amendment, revision, or reenactment of the statute by the same legislature that enacted the code. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

The amendments made by chapter 339 have been added as a conforming amendment to chapter 416 of the Government Code by Acts 1989, 71st Legislature, ch. 4, at 219, which will take effect on September 1, 1989. Although the provisions  
(Footnote Continued)

Section 1 of chapter 339, added, as section 1b of article 4413(35), definitional provisions which provide in relevant part:

(3) 'Fire protection personnel' means:

(A) a permanent, fully paid, full-time law enforcement officer designated as a fire and arson investigator by an appropriate local authority;

(B) an aircraft crash and rescue fire protection personnel; or

(C) a permanent, fully paid, full-time fire department employee who is not a secretary, stenographer, clerk, budget analyst, or similar support staff person or other administrative employee, and who is assigned duties in one or more of the following categories:

(i) fire suppression;

(ii) fire inspection;

(iii) fire and arson investigation;

. . . .

(v) aircraft crash fire fighting and rescue;

(vi) fire training;

. . . .

(viii) fire administration; and

(ix) any other position necessarily or customarily related to fire prevention and suppression.

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(Footnote Continued)  
will take effect as part of chapter 416 of the Government Code, we will, for convenience, refer to the amendments as they purport to amend article 4413(35).

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Section 2 of chapter 339, amending section 2 of article 4413(35), provides in subsection (3) that the commission shall have the authority to "certify persons as being qualified under the provisions of this Act to be fire protection personnel." See also subsection (2) (power to establish standards for admission to employment as fire protection personnel); subsection (4) (power to certify persons as qualified fire protection personnel instructors); subsection (5) (power to revoke the certification of fire protection personnel and fire protection personnel instructors). It is apparent from these provisions that the commission's authority to certify persons involved in fire protection is limited to those persons falling under the chapter 339 definition, quoted above, of "fire protection personnel."

As to whether the commission may develop certification standards for "local fire marshals," we note that the term "local fire marshal" is not a statutorily defined term. The establishment of the office of "county fire marshal" is provided for in section 352.011 of the Local Government Code. The duties of county fire marshals, as provided for in the succeeding sections, include elements of the chapter 339 definition of "fire protection personnel." See Local Gov't Code §§ 352.013 (investigation of fires), 352.015 (arson investigation), 352.016 (inspection of fire hazards).

There are no similar provisions, however, respecting the creation or duties of the position of municipal fire marshal. Chapter 342 of the Local Government Code appears to leave covered municipalities much discretion in their use of personnel to provide fire protection services. See Local Gov't Code § 342.004 (governing body of type A municipality "shall prescribe the powers and duties of the fire department and its officers"), § 342.011 ("a home-rule municipality may provide for a fire department"). In your request, you in fact indicate that the duties of local fire marshals may vary widely:

Fire marshal's duties are very diverse and vary a great deal with the size of the city. In the smaller cities a fire marshal may have an active role in fire prevention and arson investigation. In a large city the fire marshal may not take an active role in arson investigation or fire prevention, and actually serve as a division or department head in the fire department.

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In answer to your question, we think that the commission may develop certification standards for local fire marshals where such persons are determined to be "fire protection personnel" under the chapter 339 definition. Such determinations involve questions of fact which we in the opinion process are unable to resolve, but which are more appropriately addressed by the commission in its regulatory role.

We think that, as a matter of law, the commission is authorized to develop fire marshal certification standards for such local fire marshals as fall under the chapter 339 definition of "fire protection personnel." However, it would seem that, as a practical matter, if the commission determines that a significant proportion of such local fire marshals are not "fire protection personnel" under the definition and are therefore not certifiable by the commission, the usefulness of a certification category of "local fire marshal" might be questionable.

Very truly yours,



William Walker  
Assistant Attorney General  
Opinion Committee

APPROVED: Sarah Woelk, Chief  
Letter Opinion Section

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