



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

January 22, 1993

Honorable Jim Mapel
Criminal District Attorney
Brazoria County
329 North Arcola
Angleton, Texas 77515

Letter Opinion No. 93-6

Re: Whether chapter 143 of the Local Government Code applies to a municipality that has a paid police department and a volunteer fire department (ID# 17880)

You ask us to consider whether chapter 143 of the Local Government Code applies to a municipality that has a paid police department and a volunteer fire department. The factual background of your request is as follows:

The city of Angleton, Texas ("the city"), has a population of more than 10,000 people and has a paid police department and a volunteer fire department. The city has received a petition to hold an election to adopt chapter 143 of the Local Government Code, which adoption would implement that chapter's civil service law for the city's police department. Although the petition complies with the requirements of section 143.004 of the Local Government Code, the city has rejected it for the reason that the city is not a municipality that may adopt chapter 143 because it does not have both a paid police department and a paid fire department. The provision upon which the city relies is section 143.002 of the Local Government Code, which provides in part:

This chapter applies only to a municipality that:

....

(2) has a paid fire department and police department.

The key question is whether the word *and* in the quoted phrase "a paid fire department and police department" should be construed as being exclusively conjunctive in meaning (so that the phrase means "both a paid police department and a paid fire department") or as being disjunctive and conjunctive (so that the phrase means "either a paid police department or a paid fire department, or both"). The city contends that chapter 143 applies only to municipalities that have both a paid fire department and a paid police department. The opposing contention is that the chapter applies to municipalities that have a paid police department or a paid fire department, or both. We are of the opinion that the word *and*, as used in the above-quoted portion of section 143.002, has an exclusively conjunctive meaning and conclude that the city is not a municipality that is covered by chapter 143 because it does not have both a paid police department and a paid fire department.

The following rule of construction of the word *and* was quoted with approval by the supreme court in *Board of Ins. Comm'rs v. Guardian Life Ins. Co.*, 180 S.W.2d 906 (Tex. 1944):

'Ordinarily the words "and" and "or," are in no sense interchangeable terms, but, on the contrary, are used in the structure of language for purposes entirely variant, the former being strictly of a conjunctive, the latter, of a disjunctive, nature. Nevertheless, in order to effectuate the intention of the parties to an instrument, a testator, or a legislature, as the case may be, the word 'and' is sometimes construed to mean "or." *This construction, however, is never resorted to except for strong reasons* and the words should never be so construed unless the context favors the conversion; as where it must be done in order to effectuate the manifest intention of the user; and where not to do so would render the meaning ambiguous, or result in an absurdity; or would be tantamount to a refusal to correct a mistake.'

180 S.W.2d at 908 (quoting 3A C.J.S. *And* at 451-53 (1973))(emphasis added).

In a search for "strong reasons" to convert *and* to *or*, we have studied the language of the current civil service law and its predecessors. We also have reviewed the legislative history of the source law for chapter 143, V.T.C.S. article 1269m, repealed by Acts 1987, 70th Leg., ch. 149, § 49(1); Acts 1947, 50th Leg., ch. 325,¹ and the extensive amendments that were enacted by the 66th Legislature in 1979, including the amendment that added a provision permitting eligible municipalities to adopt the civil service law to apply only to the police department or only to the fire department, Acts 1979, 66th Leg., ch. 753, at 1868, which provision now appears (in substantially the same language) in section 143.004(c), Local Gov't Code. We have found no evidence in the language of the current civil service law or its statutory predecessors or in the legislative history of the law that suggests that the legislature ever considered whether the law *should* apply to

¹The source law for section 143.002(2) read, in pertinent part:

There is hereby established in all cities in this State having a population of ten thousand (10,000) or more inhabitants, according to the last preceding Federal Census, and having a paid Fire Department and Police Department, a Firemen's and Policemen's Civil Service.

Acts 1947, 50th Leg., ch. 325, at 550. This provision remained unchanged until the article was codified in 1987. See V.T.C.S. art. 1269m § 1 (Vernon 1963 & Supp. 1986) (showing no change). The codification of this provision, as well as the rest of article 1269m, was intended to be nonsubstantive. Acts 1987, 70th Leg., ch. 149, § 1 at 888 (codification of article 1269m, section 1, as Local Government Code section 143.002), § 51 at 1308 (stating that enactment of Local Government Code is not intended as substantive change in the law).

municipalities that have a paid department and a volunteer department, much less any "manifest intention" that it so apply.²

On the contrary, the language of the source law indicates that the legislature contemplated only that the law would apply to municipalities with both a paid police department and a paid fire department. For example, article 1269m, section 3; Acts 1947, 50th Leg., ch. 325, at 551, created a "Firemen's and Policemen's Civil Service Commission," without a mention there or elsewhere in the law of the possibility that the commission might regulate the civil service of either police officers or fire fighters exclusively, as would be the case if the other department had an all-volunteer staff. When the legislature enacted the aforementioned amendment now contained in section 143.004(c), it made manifest its intention that, as an alternative to adoption of the civil service law for both the police department and the fire department together, the law could be adopted for either the fire department alone or the police department alone. The amendment does not manifest an intention to extend the applicability of the law to municipalities in which either department is paid, but not both.

We may assume for the sake of argument that construing *and* to include a disjunctive meaning would promote the purpose of the civil service law: "to secure efficient fire and police departments composed of capable personnel who are free from political influence and who have permanent employment tenure as public servants." Local Gov't Code § 143.001. Given that assumption, however, we still may not convert the word from its ordinary, strictly conjunctive meaning unless not to do so would *thwart* that purpose. *See, e.g., Edwards v. Morton*, 46 S.W. 792, 793 (1898) ("[c]ourts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature, and to conclusions inconsistent with the general purpose of the act"); *cf. Neighborhood Comm. on Lead Pollution v. Board of Adjustment*, 728 S.W.2d 64, 68-69 (Tex. App.--Dallas 1987, writ ref'd n.r.e.) (construing *and* in city ordinances to mean "either or both" or "any and all" where a strictly conjunctive construction "would be

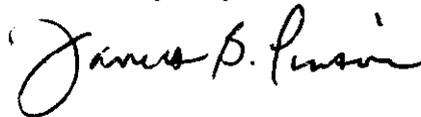
²We note the receipt of a recently dated letter from the author of the 1979 legislation that amended the civil service law. In the letter the author contends that the legislative intent of section 143.002(2) was "to differentiate between paid and volunteer departments concerning eligibility, not to statutorily prohibit a paid department from having civil service because a volunteer department exists in the city." The phrase "paid fire department and police department" was not substantively amended in 1979 but has remained unchanged over the years since the law was enacted, except for the dropping of upper-case initials. Therefore, the relevant inquiry into the legislative history is not what the legislature's understanding of the meaning of that language was when it amended the law in 1979, but rather what the legislature meant when it enacted the language in 1947. We may not treat the letter author's opinion as competent legislative history because the enactment of the statute occurred 45 years ago and thus is too remote to permit a present-day explanation of its meaning. *Cf. United States v. United Mine Workers*, 330 U.S. 258, 282 (1947) (opinions expressed by senators from floor of senate while striving to write legislation, as to meaning of statute enacted 11 years before, cannot be accepted as authoritative guides to construction of statute, particularly where some senators were not members of senate when statute was enacted and none were members of committee that reported bill).

manifestly contrary to the legislative intent"). There is no failure of purpose if chapter 143 is construed to apply only to municipalities in which both departments are paid.

S U M M A R Y

Chapter 143 of the Local Government Code does not apply to a municipality that does not have both a paid police department and a paid fire department.

Yours very truly,

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

**James B. Pinson
Assistant Attorney General
Opinion Committee**