



Office of the Attorney General
State of Texas

AN MORALES
ATTORNEY GENERAL

August 31, 1995

Honorable Kenny Marchant
Chair
Investments & Banking
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2548

Letter Opinion No. 95-057

Re: Whether the mayor or the city manager of the City of DeSoto has the duties and powers assigned to the "chief executive" of the city in Local Government Code chapter 143 (ID# 35232)

Dear Representative Marchant:

You ask whether the mayor or the city manager of the City of DeSoto (the "city") has the duties and powers assigned to the city's "chief executive" in chapter 143 of the Local Government Code. Chapter 143 is the statute that regulates civil service systems of municipal fire and police departments. Your question assumes that chapter 143 applies to the city, see Local Gov't Code § 143.002, and we will assume likewise.

Various provisions of chapter 143 assign duties and powers to the "chief executive" of a municipality. Section 143.006 mandates that "the chief executive of the municipality" appoint the members of the Fire Fighters' and Police Officers' Civil Service Commission.¹ Section 143.013(a)(1) requires that a fire department or police department

¹Section 143.006 provides in pertinent part:

(a) On adoption of this chapter, the Fire Fighters' and Police Officers' Civil Service Commission is established in the municipality. The *chief executive* of the municipality shall appoint the members of the commission within 60 days after the date this chapter is adopted. . . .

(b) The commission consists of three members appointed by the municipality's *chief executive* and confirmed by the governing body of the municipality. . . . If a vacancy occurs or if an appointee fails to qualify within 10 days after the date of appointment, the *chief executive* shall appoint a person to serve for the remainder of the unexpired term in the same manner as the original appointment.

....

(d) In making initial appointments, the *chief executive* shall designate one member to serve a one-year term. . . . As the terms of the members of the previously existing commission expire, the *chief executive* shall appoint members as prescribed by this section. If necessary to create staggered terms as prescribed by this section, the *chief executive* shall appoint the initial members, required to be appointed under this chapter, to serve terms of less than three years.

....

head who is not elected be "appointed by the municipality's chief executive and confirmed by the municipality's governing body." Section 143.026(a) sets forth the procedure for the "municipality's chief executive" to use in filling beginning positions in a fire or police department.² Finally, section 143.120, which provides a procedure for an appeal from an indefinite suspension, requires in subsection (f) that "the municipality's chief executive or governing body" discharge a department head who refuses to obey an order to reinstate a suspended fire fighter or police officer.

Chapter 143 does not define the phrase "chief executive," so you ask, in effect, which officer of the city is its "chief executive" for purposes of that chapter. The home-rule charter of the city specifically designates the mayor as "the chief executive officer of the City," DeSoto, Tex., Charter art. II, § 7 (1991), but the charter also provides that the city manager of the city is the officer "who shall execute the laws and administer the government of the City." *Id.* art. I, § 2. If these provisions were all we had before us, we

(footnote continued)

(g) *The chief executive of a municipality commits an offense if the chief executive knowingly or intentionally fails to appoint the initial members of the commission within the 60-day period prescribed by Subsection (a). . . . Each day after the 60-day period that the chief executive knowingly or intentionally fails to make a required appointment constitutes a separate offense.*

(h) *The chief executive of a municipality or a municipal official commits an offense if the person knowingly or intentionally refuses to implement this chapter or attempts to obstruct the enforcement of this chapter. . . .*

Local Gov't Code § 143.006(a) - (b), (d), (g) - (h) (emphasis added).

²Section 143.026 provides as follows:

(a) When a vacancy occurs in a beginning position in a fire or police department, the department head shall request in writing from the commission the names of suitable persons from the eligibility list. The director shall certify to the municipality's chief executive the names of the three persons having the highest grades on the eligibility list.

(b) From the three names certified, the chief executive shall appoint the person having the highest grade unless there is a valid reason why the person having the second or third highest grade should be appointed.

(c) If the chief executive does not appoint the person having the highest grade, the chief executive shall clearly set forth in writing the good and sufficient reason why the person having the highest grade was not appointed.

(d) The reason required by Subsection (c) shall be filed with the commission and a copy provided to the person having the highest grade. If the chief executive appoints the person having the third highest grade, a copy of the report shall also be furnished to the person having the second highest grade. [Emphasis added.]

would decline to answer your question. "As a matter of policy, this office does not interpret city charter provisions" Attorney General Opinion JM-846 (1988) at 1. Other provisions of the charter, however, make interpretation unnecessary because they make clear that the city manager is the official to whom the references to the "chief executive" in chapter 143 apply.

The charter establishes the city manager as the sole chief officer with general power to hire and fire city officers and employees. The city manager has the power to "[a]ppoint and, when necessary for the welfare of the City, remove any officer or employee of the City, except as otherwise provided by this Charter and except as he may authorize the head of a department to appoint and remove subordinates in such department." DeSoto, Tex., Charter art. V, § 2(1) (1991). The charter specifically prohibits the city council or any of its members from "direct[ing] or request[ing] the appointment of any person to or his removal from office by the City Manager or by any of his subordinates." *Id.* art. V, § 5. The mayor is a member of the city council. *Id.* art. II, § 1. The city council "ha[s] no power to exercise those powers which are expressly conferred upon other City officers by th[e] Charter." *Id.* art. II, § 6. Therefore, in regard to hiring and firing city officers and employees, there is no ambiguity in the charter that needs interpretation. The mayor, as a member of the city council, has no general power to appoint or remove city officers or employees because that power is expressly conferred upon the city manager.

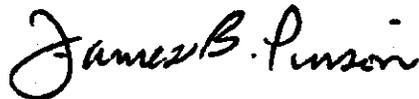
We are of the opinion that the phrase "chief executive" as used in chapter 143 means the chief officer who has the power to appoint and remove city officers and employees. All of the provisions in chapter 143 that refer to the "chief executive" involve appointments or removals of city officers or employees. "[I]n determining the meaning of words . . . , 'consideration should be given to the entire act, its nature and object, and the consequences that would follow from each construction.'" *Sayre v. Mullins*, 681 S.W.2d 25, 27 (Tex. 1984) (quoting *Chisholm v. Bewley Mills*, 287 S.W.2d 943, 945 (Tex. 1956)). "The purpose of . . . chapter [143] is 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(a). If a court construed the various references to the "chief executive" in chapter 143 as referring to that officer who is merely designated as "the chief executive officer" in the city's charter, the result would be to interfere with the appointment power that is established in the charter itself, but if the references are construed as referring to the chief officer who appoints and removes officers and employees, the statute is consistent with the city's charter. We find no suggestion in chapter 143 of a legislative intent to interfere with a municipality's organic distribution of powers.

For the foregoing reasons, we conclude that the city manager is the "chief executive" of the City of DeSoto for purposes of chapter 143 of the Local Government Code.

S U M M A R Y

The phrase "chief executive" as used in chapter 143 of the Local Government Code means the chief officer who has the power to appoint and remove city officers and employees. The city manager of the City of DeSoto is the city's "chief executive" for purposes of chapter 143.

Yours very truly,

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

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