



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 10, 1997

The Honorable Michael J. Guarino  
Criminal District Attorney  
Galveston County Courthouse  
722 Moody, Suite 300  
Galveston, Texas 77550

Letter Opinion No. 97-090

Re: Whether Government Code section 76.006 requires the Galveston County Community Supervision and Corrections Department to establish a voluntary exit incentive program for its employees (ID# 39536)

Dear Mr. Guarino:

You ask whether Government Code section 76.006 requires the Galveston County Community Supervision and Corrections Department to establish a voluntary exit incentive program for its employees equal to the voluntary exit incentive program established by the Galveston County Commissioners Court for certain county employees. We conclude that it does not.

Chapter 76 of the Government Code requires the district judge or judges trying criminal cases in each judicial district to establish a community supervision and corrections department, also known as an adult probation department, whose charge it is to conduct pre-sentence investigations of criminal defendants, supervise and rehabilitate defendants placed on community supervision, enforce the conditions of community supervision, and staff community corrections facilities.<sup>1</sup> Gov't Code § 76.002. The district judges must appoint a department director, who is responsible in turn for hiring a sufficient number of officers and employees to perform the work of the department. *Id.* § 76.004; *see* Attorney General Opinion DM-208 (1993) at 3-4. Courts and this office have held that adult probation department officers and employees are not county officers and employees; they are officers and employees of the judicial districts they serve. *See Clark v. Tarrant County, Tex.*, 608 F. Supp. 209, 211 (N.D. Tex. 1985) (holding that probation department employees were not county employees); *Shore v. Howard*, 414 F. Supp. 379, 390 (N.D. Tex. 1976) (holding that probation department employees were not within purview of County Civil Service Act); Open Records Decision No. 236 (1980) (concluding that adult probation officer is agent of district judge); *see also* 36 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 22.31, at 111-12 (Texas Practice 1989) (describing status of probation officers and employees as "murky").

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<sup>1</sup>Community supervision is the placement of a criminal defendant in a program with court-imposed conditions during which imposition of the defendant's sentence is suspended or criminal proceedings are deferred without an adjudication of guilt. *See generally* Code Crim. Proc. art. 42.12. Community supervision is commonly called "probation."

The salaries of adult probation department employees are paid by the judicial districts served by the department. Gov't Code § 76.006(b). Part of a department's funding comes from the state by way of the Community Justice Assistance Division of the Texas Department of Criminal Justice. *Id.* § 493.003(a). Departments are also funded in part from fees assessed to persons placed in pretrial intervention programs. *See* Code Crim. Proc. art. 102.012.<sup>2</sup> The county or counties served by a department are required to provide the department with physical facilities, equipment, and utilities, Gov't Code § 76.008, and the district judge or judges may expend district funds for these purposes under certain circumstances, *id.* § 76.009(a). A department may also accept public funds and grants and gifts from any source for the purpose of financing programs and facilities.<sup>3</sup> *Id.* § 76.007. The Local Government Code requires an adult probation department to prepare its own budget every fiscal year and submit it to the commissioners court before it is finalized, but we find no provision giving the commissioners court authority to approve, reject, or amend the budget, which is not supported with county funds. *See* Local Gov't Code § 140.004.

Prior to September 1, 1978, although employee salaries were set by the district judges, adult probation departments were operated with county funds. *See Commissioners Court of Lubbock County v. Martin*, 471 S.W.2d 100, 107 (Tex. Civ. App.--Amarillo 1971, writ ref'd n.r.e.). Senate Bill 39, enacted by the Sixty-fifth Legislature, created the Texas Adult Probation Commission and provided for adult probation departments to be funded by the state. Act of May 27, 1977, 65th Leg., R.S., ch. 343, 1977 Tex. Gen. Laws 910, 910; *see also* Attorney General Opinion H-1218 (1978) (discussing legislative history of S.B. 39). At the same time, the legislature provided with respect to department employees:

Personnel of the respective district probation departments shall not be deemed state employees and the responsible judge or judges of a district probation department shall negotiate a contract with the most populous county within the judicial district for all district probation department staff to participate in that county's group insurance program; retirement plan; and personnel policies with regard to vacation credit, sick leave credit, holiday schedule, credit union, jury leave, military leave, etc. . . .

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<sup>2</sup>The fee is collected by the county and deposited in a special fund in the county treasury for use by the department. *Id.* art. 103.004(b).

<sup>3</sup>A community supervision and corrections department is a "specialized local entity" which must deposit any funds it receives into the county treasury, and the county must "hold, deposit, disburse, invest, and otherwise care for the funds on behalf of the specialized local entity as the entity directs." Local Gov't Code § 140.003; *see* Attorney General Opinion DM-257 (1993) at 4.

*Id.* § 2, 1977 Tex. Gen. Laws at 914. This provision has been recodified and amended,<sup>4</sup> but its present form is substantially the same as it was when it was first enacted.<sup>5</sup> Section 76.006 of the Government Code now provides with respect to adult probation departments:

(a) Except as provided by Subsection (c),<sup>6</sup> department employees are not state employees. The department shall contract with the most populous county served by the department for insurance and retirement plans, and the employees are governed by personnel policies and benefits equal to personnel policies for and benefits of other employees of that county.

Gov't Code § 76.006(a) (footnote added).

No court or attorney general opinion that we know of has construed the personnel policy and benefits provision, nor is there any legislative history helpful to understanding the legislature's intent in enacting it. We presume that when funding for adult probation departments was moved from counties to the state, the legislature intended department employees to continue to be subject to the same or similar personnel policies and benefits as other employees of the county with whom they had worked and would continue to work, even though they were no longer under the financial control of the county.

You tell us that on May 20, 1996, the Galveston County Commissioners Court passed a resolution creating a Voluntary Exit Incentive Program. The purpose of the program was to reduce the size of the county payroll. Under the program, certain employees could commit to leave county employment during a limited period of time in exchange for a cash payment, continued health insurance, and a paid life insurance policy. The commissioners court order adopting the program states that it "supersedes any conflicting policy contained within the currently existing County Personnel, Policies and Procedures Manual."

The exit program was not offered to all employees of Galveston County, however. The program was primarily available only to employees who worked directly for the commissioners court

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<sup>4</sup>See Act of May 29, 1989, 71st Leg., R.S., ch. 785, §§ 3.02, 4.17, 1989 Tex. Gen. Laws 3471, 3485, 3519; Act of June 7, 1990, 71st Leg., 6th C.S., ch. 25, § 17, 1989 Tex. Gen. Laws 108, 113; Act of May 28, 1993, 73d Leg., R.S., ch. 988, § 2.02, 1993 Tex. Gen. Laws 4274, 4289; Act of April 25, 1995, ch. 76, § 1, 1995 Tex. Gen. Laws 458, 458.

<sup>5</sup>We note one apparently significant change: The former provision allowed department employees to *participate in* the county's personnel policies. Section 76.006 requires a department to offer employee benefits and personnel policies *equal* to those of the county. We do not construe section 76.006(a) as requiring a department to adopt the same policies as the county or participate in county programs; a department may adopt its own policies and benefits provided they are equal to the county's.

<sup>6</sup>Subsection (c) provides that department employees are state employees for the purposes of chapter 104 of the Civil Practice and Remedies Code (indemnifying state employees for certain acts) and chapter 501 of the Labor Code (providing workers compensation insurance coverage for state employees). Gov't Code § 76.006(c).

and who met certain other requirements.<sup>7</sup> Employees of county departments and officials over whose budgets, you tell us, the court does not have complete control but who are supported with county funds, could participate in the program only if their governing board or official agreed to reduce their budgets for each retired position.<sup>8</sup> You explain:

The rationale behind this condition was that since the Commissioners Court did not have unfettered control over the budgets of each of these entities, the elected official would have to agree to voluntarily trim their budget in accordance with the guidelines created by the Court in its resolution. The ultimate goal of the Commissioners Court was to decrease the amount of county tax dollars required for the payroll.

No provision was made in the resolution at all regarding the employees of the Adult Probation Department. That Department was not included since it did not receive any funding from the County for its personnel. The monies utilized by Adult Probation for its budget come from two sources: 1) fee generated payments made by probationers; and 2) monies received from the State from the Texas Department of Criminal Justice. Because no county tax dollars are utilized by Adult Probation in meeting its payroll, the inclusion of that department was not consistent with the stated aims of the program.

On its face, section 76.006 requires adult probation department employees to be governed by personnel policies and benefits equal to personnel policies for and benefits of other employees of that county. We do not believe, however, that section 76.006 requires the Galveston County Community Supervision and Corrections Department to establish a voluntary exit incentive program for its employees equal to the voluntary exit incentive program established by the Galveston County Commissioners Court for certain county employees.

First, we question whether the voluntary exit incentive program was a "personnel polic[y]" or "benefit," terms that are undefined in section 76.006.<sup>9</sup> The nature of the program depends in part

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<sup>7</sup>The program provided: "This Voluntary Exit Incentive Program Policy Offer is available to any Employee or Department Head who works for the Commissioners' Court, is a member of the Texas County and District Retirement System ("TCDRS"), and qualifies for retirement under TCDRS' rules and regulations at anytime between January 1, 1996 and December 31, 1996."

<sup>8</sup>The program further provided: "It is not available to similarly situated employees of any of the following: Elected Officials; Appointed Officials; District and Statutory County Court and Statutory Probate Courts, Court Reporters; and Juvenile Probation Department . . . unless such Official (or, in the case of the County Auditor, County Purchasing Agent or Chief Juvenile Probation Officer, their respective boards) first agrees that in order for such Employee to take advantage of the Program, upon each such Employee's leaving County employment the Official (or Board) agrees to a budgeted salary reduction . . . ."

<sup>9</sup>You argue that the commissioners court established the program as a temporary cost-cutting measure and did  
(continued...)

upon the terms of the county's existing benefits and personnel policies and the intent of the commissioners court in adopting the program, information which we do not have before us. In any event, we normally do not construe the employment policies of local governments, *see* Letter Opinion No. 93-107 (1993) at 1, or make factual determinations in the opinion process, *see* Attorney General Opinion DM-95 (1992) at 1.

Second, even if the county's voluntary exit incentive program established a personnel policy or benefit, an "equal" program for the adult probation department would not result in the program being available to department employees in this case. The voluntary exit incentive program was adopted to meet a specific goal of the county commissioners court: reducing the county's payroll. The program was available only to commissioners court employees, whose salaries and budgets were controlled directly by the commissioners court, and to employees of other departments not similarly controlled who agreed to reduce their salary budgets in furtherance of the program's goal, a reasonable distinction in our view. *See* Attorney General Opinion DM-337 (1995) at 6-7 (concluding that phase out of medical coverage for certain officers would not violate equal protection guarantees of Texas and federal constitution if phase out had rational basis); Attorney General Opinion JM-910 (1988) at 8 (holding that benefits offered to county employees and officers may vary provided differences not so unreasonable as to constitute abuse of discretion). An equal program for the adult probation department would be one that served the same purpose and was available to similarly situated employees. You tell us that the Adult Probation Board considered adopting the program for department employees, but declined to do so, presumably because the department, whose salaries are paid by the state, did not share the county's goal. We believe that the department's decision not to extend the program to its employees was within its discretion and not contrary to the requirements of section 76.006.

For these reasons, we conclude that Government Code section 76.006 does not require the Galveston County Community Supervision and Corrections Department to establish a voluntary exit program for its employees equal to the program established by the Galveston County Commissioners Court for certain county employees.

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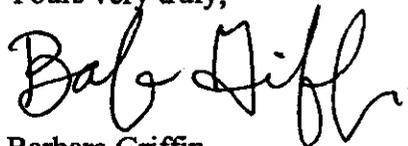
<sup>9</sup>(...continued)

not intend to create a retirement benefit or a personnel policy. We note that the commissioners court order adopting the program states that it "supersedes any conflicting policy contained within the currently existing County Personnel, Policies and Procedures Manual," apparently amending the personnel manual. Furthermore, we believe a benefit or personnel policy may be established however short its duration.

**S U M M A R Y**

Government Code section 76.006 does not require the Galveston County Community Supervision and Corrections Department to establish a voluntary exit incentive program for its employees equal to the voluntary exit incentive program established by the Galveston County Commissioners Court for certain county employees.

Yours very truly,

A handwritten signature in black ink, appearing to read "Barbara Griffin". The signature is written in a cursive style with a large initial "B" and a long, sweeping tail.

Barbara Griffin  
Assistant Attorney General  
Opinion Committee