



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 30, 1998

The Honorable Eddie Lucio
Chair, Intergovernmental Relations Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 98-051

Re: Whether the mayor or the city manager
of the City of Brownsville may remove a
municipal housing authority commissioner
(RQ-1084)

Dear Senator Lucio:

You have requested our opinion as to whether the mayor or the city manager of Brownsville is authorized to remove a commissioner of the municipal housing authority. You indicate that the City of Brownsville Housing Authority was created in 1938 under the provisions of section 392.011 of the Local Government Code.

Subsection 392.041(a) of the Local Government Code, provides: "The mayor may remove a commissioner of a municipal housing authority for inefficiency, neglect of duty, or misconduct in office." "Mayor" is defined for purposes of chapter 392 as "the mayor of a municipality or the officer given the duties customarily imposed on the mayor or executive head of a municipality." Local Gov't Code § 392.002(7). In 1987, this office construed article 1269k, V.T.C.S., the statutory predecessor of chapter 392 of the Local Government Code, with regard to the power to appoint and remove public housing commissioners in the City of San Benito. Attorney General Opinion JM-686 (1987). The city charter of San Benito designated the city manager as "the administrative head of the municipal government," charged him with the duty of "appointing all appointive officers except the city attorney," and granted him the authority to remove, at will, any persons appointed by him. *Id.* at 2. On the basis of these charter provisions, the opinion concluded that the city manager in San Benito was "the officer given the duties customarily imposed on the mayor or executive head of the municipality," and consequently, that the city manager was the "mayor" for purposes of the appointment and removal statutes. *Id.* at 3.

Prior to 1993, article 392.031 of the Local Government Code, had provided that "the mayor shall appoint five persons to serve as commissioners of the authority." Thus, as in the situation described in Attorney General Opinion JM-686, one looked to the definition of "mayor" in section 392.002(7), and if the city manager fit the definition more closely than the *actual* mayor, the city manager was the official authorized both to appoint and to remove public housing commissioners. In 1993, however, the legislature amended section 392.031 to provide that "the presiding officer of the governing body of a municipality shall appoint five persons to serve as commissioners of the

authority.” The Brownsville city charter declares the *mayor* to be “the presiding officer of the [city] commission.” Brownsville City Charter art. V, § 11 (1938). As a result, it is the actual mayor who appoints public housing commissioners, and the statutory definition of “mayor” is now applicable only to the *removal* of a commissioner. The resulting situation is that, if the charter of Brownsville is construed in a manner similar to that of the charter of San Benito, the combination of the 1993 amendment to section 392.031 and the reasoning of Attorney General Opinion JM-686 would give the appointment power to the mayor and the removal power to the city manager. As you note, “one can envision a scenario where the mayor appoints a particular commissioner, the city manager removes that commissioner, the mayor reappoints that commissioner, the city manager re-removes the commissioner, and so on.”

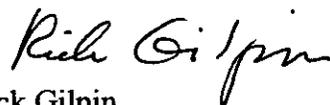
For purposes of your inquiry, the Brownsville city charter is virtually identical to the San Benito city charter. The city manager is granted “the power to appoint and remove all officers and employees in the administrative service of the city except the city attorney.” But as we have already noted, the 1993 amendment to section 392.032 presently vests the power to *appoint* public housing commissioners in the mayor alone. In our opinion, Attorney General Opinion JM-686, while not incorrect *per se*, failed to consider the precise nature of the definition of “mayor” in section 392.002. The statute used the disjunctive “or”: “the mayor of a municipality *or* the officer given the duties customarily imposed on the mayor or executive head of a municipality.” In the case of Brownsville, section 392.032 could thus be read to vest the removal power in *either* the mayor *or* the city manager.

In our opinion, the most credible reading of section 392.031 is that it is for the city commission to determine which officer has the removal power. The statute itself permits a choice. We conclude that the city commission of the City of Brownsville, consistent with its city charter provisions, is the appropriate body to determine whether the mayor or the city manager is authorized to remove a public housing commissioner.

S U M M A R Y

It is for the city commission of the City of Brownsville to determine, consistent with its city charter provisions, whether the mayor or the city manager is authorized to remove a public housing commissioner.

Yours very truly,



Rick Gilpin
Deputy Chair
Opinion Committee