

FILE # 39801-90

I.D. # 39801

RQ-1005

REQUEST FOR OPINION

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The Commissioners Court of Henderson County, Texas convened for a regularly scheduled meeting on Monday, September 08, 1997. Present on the agenda was the discussion for the payment of a salary supplement to the judge of the 392nd Judicial District Court for his service on the Henderson County Juvenile Board.

Opinion Committee

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The membership of the 392nd District Court and its authority to sit and serve upon the Henderson County Juvenile Board has been questioned. When the 392nd was created in 1995, the judge of that court began sitting on the juvenile board. While never questioned until recently, the general belief was one of assuming the 392nd would automatically sit on the board.

After a discussion between the Commissioners Court and the Henderson County County Attorney and the Henderson County District Attorney, the Commissioners Court fears that by authorizing and issuing a payment for a juvenile board supplement for a position that may not be authorized by current law to sit on the board, it may be tantamount to making an illegal or unauthorized payment. If that would be the case, the Commissioners Court, as well as the County Treasurer and County Auditor, are deeply concerned that both criminal and civil penalties could exist for abuse of office.

The result of the Commissioners Court meeting of September 08, 1997 was to authorize payment of the juvenile board supplement for the judge of the 392nd to be placed into escrow subject to having an opportunity to review your opinion.

While the Commissioners Court is fully aware that it has no authority to make a determination of whether the 392nd sits on the juvenile board, it is necessary to have that question resolved to answer the questions presented before you.

STATUTORY BACKGROUND INFORMATION

Pursuant to § 152.1131 of the Texas Human Resources Code, the juvenile board of Henderson County consists of the judges of the 3rd and 173rd District Courts, County Court At Law Judge, County Judge, and the County Attorney. The 173rd is the designated juvenile court of the county as well as the chairman of the juvenile board and its chief administrative officer. For his services as such, he is to be paid a salary supplement of not less than Seven Hundred Fifty Dollars (\$750.00) per month while all other members listed above are supplemented at a rate of not less than Two Hundred Fifty Dollars (\$250.00) per month.

The 392nd District Court was created and became effective on September 1, 1995 pursuant to § 24.537 of the Texas Government Code. That section falls under Subchapter C. Judicial Districts Act of 1969. Tex. Gov't Code Ann. § 24.301-§ 24.553 (Vernon 1988). Section 24.306 of the Texas Government Code states "the district judge of any district listed in this subchapter is a member of the juvenile board in each county within his district in which a juvenile board exists."

Therefore, under existing law, there exists a specific statute that does not include the judge of the 392nd District Court on the juvenile board and a general statute that does.

CONFLICTING STATUTES

From time to time, the need arises for a county with a specific statute to amend that statute due to changes in membership structure of its juvenile board. Such an event occurred in 1983. In 1983, the legislature amended the Henderson County provision relating to membership on the juvenile board to the language currently existing under § 152.1131. Prior to 1983, § 152.1131 used the general juvenile board membership language of "the judges of the district courts in Henderson County." Therefore, the legislature changed general language which would include all district judges, even those created in the future, to specific language of including only the district judges of the 3rd and 173rd judicial districts.

While the 392nd was not created until 1995, it is presumed since the legislature recognized its authority to change the language from general to specific in 1983, it would require another amendment to change the membership of the juvenile board when the 392nd was created. In other words, just as the legislature took action they believed to be necessary in 1983, the opportunities presented themselves in 1995 and again in 1997 to add the 392nd to the specific membership of the juvenile board by virtue of an amendment. The Supreme Court has held that "time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." Connecticut National Bank v. Germain, 503 U.S. 249 (1992).

The point has been raised that § 24.306 of the Government Code, even though a general statute, allows the 392nd to sit on the juvenile board. Authority for such an interpretation lies in § 311.026 of the Government Code, part of the chapter commonly referred to as the Code Construction Act. Section 311.026 states that "if a general provision conflicts with a specific or local provision, the provisions shall be construed, if possible, so that effect is given to both." Tex. Gov't. Code Ann. § 311.026 (Vernon 1988).

It further provides that "if the conflict between the general provision and the special or local provision is irreconcilable, the special or local prevails as an exception to the general provision, unless the general provision is the later enactment and (our emphasis) the manifest intent is that the general provision prevail." Id.

A problem in attempting to give effect to both statutes is that in § 152.1131, nothing is left to speculation. By changing its original language from including all district judges, even those created in the future, to a specific language as it currently exists, the legislative intent appears clear. When a court approaches a statute for interpretation, it can consider many factors such as the object sought to be obtained, circumstances surrounding enactment, legislative history, consequences of a particular construction and others. Tex. Gov't. Code Ann. § 311.023 (Vernon 1988). However, where the statute is "clear and unambiguous, legislature must be understood to mean what it has expressed, and it is not for courts to add or subtract from the statute on grounds that different reading of the statute better serves the public interest. "Mitchell v. State, 821 S.W.2d 320 (Tex. App. - Austin 1991, review ref'd) (stating that legislative intent should be determined from language of the statute without resort to rules of construction.)

Any attempt to have § 24.306 to give effect over § 152.1131 must come from the doctrine of *pari materia*.

PARI MATERIA

"The "pari materia" rule is a principle of statutory interpretation whose purpose is to carry out the full legislative intent by giving effect to all laws and provisions bearing on the same subject. It proceeds on the supposition that several statutes relating to one subject are governed by one spirit and policy, and are intended to be consistent and harmonious in their several parts and provisions. The rule applies where one statute deals with a subject in comprehensive terms and another deals with a portion of the same subject in a more definite way. Thus, when the general statute and a more detailed enactment are in conflict, the latter will prevail, regardless of whether it was passed prior to or subsequently to the general statute, unless it appears that the legislature intended to make the general act controlling." Ex Parte Smith, 849 S.W. 2d 832 (Tex. App. - Amarillo 1992) and Cheney v. State, 755 S.W. 2d 123, 126 (Tex. Crim. App. 1988)

The statutes at hand both deal with membership on juvenile boards. However, membership is not limited to just district judges. A statute's objective has been considered to be more important than its subject matter and where two statutes share an objective then the principle or *pari materia* would dictate that effect should be given to both statutes. Johnson v. State,

882 S.W. 2d 39 (Tex. App. - Houston [1 Dist], 1994, review ref'd). When two statutes are in pari materia, any conflict between their provisions will be harmonized, if possible, and effect will be given to all provisions. Goldstein v. State, 803 S.W. 2d 777 (Tex. App. - Dallas 1991, review ref'd). Statutes may be pari materia even when passed at different legislative sessions or when they do not reference each other. Deep East Texas Regional Mental Health and Mental Retardation Services v. Kinnear, 877 S.W. 2d 550 (Tex. App. - Beaumont 1994, reh'g overruled); see e.g. Cullen v. State, 832 S.W. 2d 788 (Tex. App. - Austin 1992, review ref'd), State v. Barte, 894 S.W.2d 34 (Tex. App. - San Antonio 1994, no writ history), Rodriguez v. State, 879 S.W. 2d 283 (Tex. App. - Houston [14 Dist.] 1994, reh'g denied and review ref'd).

Therefore, creating harmony between § 152.1131, Tex. Hum. Res. Code and § 24.306, Tex. Gov't. Code, is the only way to include the 392nd as one authorized to sit on the juvenile board.

However, the doctrine of pari materia does not apply where two statutes that govern the same subject matter have different objects, intend to cover different situations, and are not intended to be considered together. Johnson v. State, 882 S.W.2d 39, review ref'd. When the legislature amends a law, it is presumed the legislature intends to change the law. Buckner Glass & Mirror, Inc. v. T.A. Pritchard Co., Inc. 697 S.W.2d 712 and Schott v. Leissner, 659 S.W.2d 752, ref. n.r.e. 668 S.W.2d 686. Further, when the legislature replaces a statute, the legislature is presumed to have a purpose, and the new purpose should be given full effect. Auclair v. Sher. 866 F. Supp. 322, affirmed in part, vacated in part 63 F.3d 407, as corrected.

Applying the spirit of the above case law to the instant case, it is difficult to find harmony between § 152.1131 and § 24.306. The objective of § 152.1131 is to limit the membership of the Henderson County juvenile board to those specified in the statute, while the objective of § 24.306 is to have all district judges in the state be members of the juvenile boards in their district. Had this been the objective or intent for Henderson County, then the legislature could have either not enacted a specific statute, preferring instead to have the general statute regarding juvenile board composition located at § 152.0032 of the Texas Human Resource Code control, or simply not have amended § 152.1131 to read as it does. These statutes also cover different situations; section 152.1131 pertains only to Henderson County while § 24.306 pertains to the entire state. In comparison, § 152.0032 describes the composition of juvenile boards for those counties not having specific statutes. Since Henderson County has been provided a specific statute regarding the juvenile board, the general provisions of § 152.0032 do not apply. Further, it is hard to argue that the intent is to read these two statutes together when a much clearer intent may be drawn from the legislatures failure to amend § 152.1131 given two sessions in which to do so. If that be the case, pursuant

to § 311.026 of the government code, the statutes are irreconcilable, resulting in the specific statute being an exception to the general statute since there is no evidence that the manifest intent of the general statute was to prevail.

However, if one attempts to place the two statutes in pari materia, one can argue that the 1983 amendment of § 152.1131 to the juvenile board had the effect of including all then existing district judges, therefore the legislative intent was to include all district judges, not limit them. By doing so, there exists the argument of creating harmony between § 152.1131 and § 24.306, thus creating pari materia.

JUVENILE BOARD SUPPLEMENT

If it is determined that the 392nd is authorized to sit on the Henderson County juvenile board under current law, the question next raised is the salary supplement range.

Recall that § 152.1131 sets the salary of the district judge of the 173rd at a monthly rate of not less than Seven Hundred Fifty Dollars (\$750.00), while paying not less than Two Hundred Fifty Dollars (\$250.00) per month to the other members of the board. Tex. Hum. Res. Code Ann. § 152.1131(c).

Section 24.307(a) of the Texas Government Code provides that, under this general statute, the district judge "receives the same amount of supplemental compensation for his services on the juvenile board as is received by other judges on the board." Section 24.307(b) provides "unless otherwise provided by this subchapter, the judge receives the same amount in other supplemental compensation from the county as the other district judges in the county."

Logical speculation or interpretation would not go so far as to consider the 392nd the designated juvenile court. It is clear that there is only one chief administrative officer and chairman of the board. That designation currently belongs to the judge of the 173rd. Tex. Hum. Res. Code Ann. § 152.1131(b). He alone is entitled to compensation of at least Seven Hundred Fifty Dollars (\$750.00) per month.

Therefore pursuant to § 24.307(a), a specific provision within a general provision applying to district judges supplemental pay for service on juvenile boards, the 392nd would fall in the amount of compensation provided for "other judges on the board", i.e. no less than Two Hundred Fifty Dollars (\$250.00) per month.

However, pursuant to § 24.307(b), a general provision by virtue of "unless otherwise provided by this subchapter", an argument has been made

that the judge of the 392nd is entitled to the same amount of compensation paid to the district judge of the 173rd.

SUMMARY AND CONCLUSION

The Commissioners Court of Henderson County is asking for an interpretative Attorney General's opinion regarding whether the judge of the 392nd District Court is authorized to sit on the Henderson County Juvenile Board under existing law. In addition, if it is determined that the 392nd does sit on the juvenile board, the Commissioners Court further asks the supplemental salary range for the 392nd serving on the board.

If one looks to § 152.1131 of the Texas Human Resources Code, the 392nd will not be found among those members specifically listed in the statute. Every word of a statute is presumed to have been used for a purpose, and every word excluded must also be presumed to have been excluded for a purpose. In the Matter of A.F., 895 S.W.2d 481 (Tex. App. - Austin 1995), citing Cameron v. Terrel & Garret, Inc., 618 S.W.2d 535, 540 (Tex. 1981).

If one looks to § 24.306 and Chapter 311, both of the Texas Government Code, and attempts to create pari materia, then the 392nd could be considered a member of the juvenile board.

If it is determined that the 392nd is authorized to sit on the juvenile board, § 24.307(a) and (b) of the Texas Government Code would be dispositive regarding the supplemental salary range paid to judge of that court. Would it be at a rate of not less than Two Hundred Fifty Dollars (\$250.00) per month as provided for "other judges" via § 24.307(a), or at a rate of not less than Seven Hundred Fifty Dollars (\$750.00) per month as provided for under § 24.307(b)?

**TO THE OFFICE OF THE ATTORNEY GENERAL
STATE OF TEXAS
THE HONORABLE DAN MORALES, ATTORNEY GENERAL**

**FROM THE OFFICE OF THE COUNTY ATTORNEY
COUNTY OF HENDERSON**

**THE HONORABLE LAWRENCE E. HEFFINGTON,
COUNTY ATTORNEY**

REQUEST FOR ATTORNEY GENERAL'S OPINION

SEPTEMBER 26, 1997

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QUESTIONS PRESENTED

1. Does the judge of the 392nd District court sit on the Henderson County Juvenile Board under current law?
2. If the judge does sit on the Henderson County Juvenile Board, what is the proper range of supplemental pay the Commissioners Court can authorize?