



ROBERT DUNCAN
STATE SENATOR

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GOVERNMENTAL INQUIRY
UNIT

RQ-1022

Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548

FILE # ML-39882-97
I.D. # 39882

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Dear Mr. Morales:

Opinion Committee

The City of Lubbock, Texas, through its City Attorney, has asked me to request an Attorney General's Opinion pursuant to V.T.C.A., Government Code § 402.042 concerning a matter which I believe affects the public interest.

The question for which I am requesting a response is "Whether the Executive Director of the Lubbock Housing Authority may also serve as a member of the local Civil Service Commission?"

V.T.C.A., Local Government Code § 143.006(c)(5) states: "A person appointed to the commission must not have held a public office within the preceding three years." The individual appointed to the Lubbock Civil Service Commission is currently serving as the Executive Director for the Lubbock Housing Authority.

In Tex. Atty. Gen. Op. JM-874 (1988), the Attorney General ruled that an individual who had recently served as a commissioner for a municipal housing authority was a public officer and thus ineligible to serve as a civil service commissioner under Section 3(b) of former article 1269m, V.T.C.S. (now section 143.006 of the Local Government Code).

V.T.C.A., Government Code § 392.038 seems to suggest that an executive director of a housing authority might also be considered an officer for the authority and, consequently, be ineligible to serve on a civil service commission unless he has not served as executive director for more than three years.

Section 392.038 states:

Mr. Morales
October 24, 1997
Page 2

A municipal or county housing authority may employ a secretary, who shall serve as executive director, and may employ technical experts and other officers, agents, and employees, permanent or temporary, the authority considers necessary. The authority shall determine the qualifications, duties, and compensation of the persons employed. (Emphasis added)

On the other hand, Tex. Atty. Gen. Op. DM-163 (1992) concluded that an executive director of a housing authority is not subject to the nepotism statute, V.T.C.S. Art. 5996a, since he has no statutory authority to hire personnel. This particular opinion suggests that an executive director is not an officer since the housing authority he serves determines his qualifications, duties, and compensation, and he may only perform functions the authority delegates to him.

A job position description for the Executive Director for the Housing Authority of the City of Lubbock is attached for your information in the event it is necessary for your determination as to whether the individual who serves in this particular position would be precluded from also serving on the local Civil Service Commission.

I would very much appreciate your assistance concerning this request.

Very truly yours,



Robert Duncan