



Frank Madla
Texas State Senate
District 19

RECEIVED

JAN 31 2002

OPINION COMMITTEE

1313 S.K. Military Dr., Suite 101
San Antonio, Texas 78214-2850
(210) 927-9464
FAX (210) 922-8521
P.O. Box 12068
Austin, Texas 78711
(512) 463-0119
FAX (512) 463-0117
TDD 1-800-735-2889

RQ-0504-JC

January 24, 2002

FILE # ML-42403-02

I.D. # 42403

RECEIVED

JAN 31 2002

OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

2644

The Honorable John Cornyn
Office of the Attorney General
300 W. 15th Street
Austin, Texas 78701

Re: Request for Legal Opinion as to whether by its rule-making authority a County Civil Service Commission may award back pay.

Dear Attorney General Cornyn:

As Chairman of the Senate Committee on Intergovernmental Relations, I respectfully request an Attorney General's Opinion on the following question:

Under Chapter 158, Subchapters A and B,¹ of the Texas Local Government Code, does a County Civil Service Commission exceed its statutory rule-making authority by adopting a rule which permits awarding back pay to an employee after the Commission modifies a disciplinary action taken against an employee, where such modification results either in a full or partial restoration of that employee's position?

FACTS

The following statutes bestow to Civil Service Commissions the power to ultimately decide whether an employee is demoted, suspended, or removed from his or her position for disciplinary reasons. Further, under §§ 158.009(a)(6) and 158.035(a)(5) the Commission has the authority to adopt, publish, and enforce rules regarding disciplinary actions. Subsection (b) of both sections further provides that "the Commission may adopt or use as a guide any civil service law or rule of the United States, this state, or a political subdivision in this state to the extent" it promotes the purposes of Chapter 158. Nevertheless, the statutes listed below are silent on the ability of Civil Service Commissions to award back pay when an employee is reinstated by the Civil Service Commission to his or her position and seem to suggest that an employee must file a lawsuit in state district court to obtain back pay.

Section 158.012 of Chapter 158, Subchapter A, of the Texas Local Government Code, provides as follows:

¹ Subchapter A applies to a County Civil Service System and Subchapter B applies to a Sheriff's Department Civil Service System.



(a) A county employee who, on a final decision by the commission, is demoted, suspended, or removed from the employee's position may appeal the decision by filing a petition in a district court in the county within 30 days after the date of the decision.

(b) An appeal under this section is under the substantial evidence rule, and the judgment of the district court is appealable as in other civil cases.

(c) If the district court renders judgment for the petitioner, the court may order reinstatement of the employee, payment of back pay, or other appropriate relief.

Section 158.037 of Chapter 158, Subchapter B, of the Texas Local Government Code, provides as follows:

(a) An employee who, on a final decision by the commission, is demoted, suspended, or removed from a position may appeal the decision by filing a petition in a district court in the county within 30 days after the date of the decision.

(b) An appeal under this section is under the substantial evidence rule, and the judgment of the district court is appealable as in other civil cases.

(c) If the district court renders judgment for the petitioner, the court may order reinstatement of the employee, payment of back pay, or other appropriate relief.

By its rule-making authority granted by Texas Local Government Code, Section 158.009, the Nueces County Civil Service System provides, inter alia, the following:

7.04. Third Level of Discipline: . . . Given absolution from the offense, whereby the appropriate reviewing authority or the civil service commission (in cases of classified workers) finds the disciplinary action unwarranted, the department must reinstate and pay the individual for work time lost as a result of the suspension. . . .

ISSUE

It is implied by §§ 158.012 and 158.037 that the commission has authority to hear appeals of an employee who is demoted, suspended or removed from his position. However, Chapter 158 is silent as to whether the commission can render payment of back pay when an employee is restored to his original position from which he was demoted, suspended or removed. Notwithstanding this silence, subsection (c) of both §§ 158.012 and 158.037 clearly provide for payment of back pay or other appropriate relief by a district court.

The issue at hand is whether a county civil service commission has the authority to award back pay when an employee is restored to his original position from which he was demoted, suspended or removed.

The Honorable John Cornyn

January 24, 2002

Page 3 of 3

DISCUSSION

The statutes cited above clearly convey to Civil Service Commissions the power to ultimately decide whether an employee is demoted, suspended, or removed from his or her position. Nevertheless the statutes are silent on whether the Commission has the authority to award back pay when an employee is reinstated by the Commission.

If a Civil Service Commission cannot award back pay, it would seem the Commission's power to ultimately decide the issues of demotion, suspension, or termination is thereby rendered meaningless. As stated in Rule 7.04, the Commission has the power to reinstate an employee to his or her position. The term "reinstate" means that an employee is put back into a former or original state.³ In essence, the Commission cannot "reinstate" an employee back to his or her former state unless it has the authority to award back pay.

Additionally, it is common in most jurisdictions that an employee can be disciplined only for just cause. In those cases, employee(s) would be reinstated by the Commission if it determines that the department head demoted, suspended, or terminated such employee without just cause. Further, lack of just cause would occur on the day of demotion, suspension or termination, not on the day of the Commission's order of reinstatement. If the employee should have continued to work due to a lack of just cause, then logically, the employee has an entitlement to back pay and other lost benefits. Again, if the Commission does not have the authority to award back pay, then its decision is meaningless. Moreover, it will have the effect that the department head had just cause for the adverse employment action until the commission determined otherwise. Obviously, a lengthy suspension or demotion, without full restoration of an employee's back pay, permits a department head to punish an employee that the Commission subsequently rules should not be punished.

Because I am not aware of any previous opinions or administrative construction on this issue, I believe an opinion is needed on whether a County Civil Service Commission has the authority to award back pay upon an employee's reinstatement under Chapter 158, Subchapters A and B.

I would appreciate your prompt consideration of this request. Please do not hesitate to contact Jason Anderson on my staff should you have questions or need additional information.

Yours truly,


Frank Madla

³Merriam-Webster's Collegiate Dictionary, 10th Edition, 1993.