



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1998

The Honorable Lawrence E. Heffington
Henderson County Attorney
Courthouse Square
Athens, Texas 75751

Letter Opinion No. 98-073

Re: Whether the judge of the 392nd District
Court is a member of the Henderson County
Juvenile Board, and related question (RQ-1005)

Dear Mr. Heffington:

You explain that the Seventy-fourth Legislature created the 392nd District Court, composed of Henderson County, and that the creation of that new court has called into question the composition of the Henderson County Juvenile Board (the "board"). *See* Act of May 29, 1995, 74th Leg., ch. 704, § 3, 1995 Tex. Gen. Laws 3713, 3714. You first ask whether the judge of the 392nd District Court is a member of the board. The specific statute that governs the Henderson County Juvenile Board includes only the judges of the 3rd and the 173rd district courts as members of the board. Hum. Res. Code § 152.1131(a)(2). We therefore believe that the judge of the 392nd District Court is not a member of the juvenile board.

By its terms, the board's enabling act does not include the judge of the 392nd Judicial District as a board member. When the board was created, section 2 of that act required that the "judges of the district courts in Henderson County" would sit on the board. *See* Act of May 29, 1969, 61st Leg., R.S., ch. 508, § 2, 1969 Tex. Gen. Laws 1636, 1636. The legislature amended that provision in 1983, when it changed the description of the district judges who sit on the board from "the judges of the district courts in Henderson County" to "the judge of the 3rd Judicial District [and] the judge of the 173rd Judicial District." *See* Act of May 29, 1983, 68th Leg., R.S., ch. 1032, 1983 Tex. Gen. Laws 5470, 5470. The legislature has not amended the board's enabling act, now found at Human Resources Code section 152.1131, since 1995 to include the judge of the 392nd Judicial District. Had the legislature intended to further amend the statute when it created the 392nd District Court in 1995 to include the judge of that court on the board, we believe it would have done so either at that time or during the intervening 1997 legislative session. Just as the legislature had narrowed the language bestowing board membership on district judges in 1983, it could have widened that range in 1995 or 1997.

In addition, to the extent Human Resources Code section 151.1131 conflicts with Government Code section 24.306, the specific Henderson County provision controls. Section 24.306 of the Government Code provides that any judge of a district court listed in chapter 24, subchapter C is a member of the juvenile board in each county in the district. The 392nd District Court is listed in subchapter C. *See* Gov't Code § 24.537. In our view, section 152.1131 of the Human Resources

Code, applicable only to Henderson County, creates a specific exception to the general provision in Government Code section 24.306. Section 24.306 generally agrees with the other specific county juvenile board statutes, which, as a rule, include “the district judges” in the county on the juvenile board. *See, e.g.*, Hum. Res. Code §§ 152.0391(a) (Carson County), .1091(a) (Hartley County). *But see id.* §§ 152.0341(a) (Caldwell County) (judge of judicial district, as determined by commissioners court), .0521(a) (Comal County) (only judge of 207th District Court), .0651(a) (Deaf Smith County) (no district judges on board), .0731(a) (Eastland County) (only judge of 91st District Court). From these examples, it is clear that the legislature has not hesitated to deviate from the general rule, found in section 24.306, that the district judges in the county serve on the board. *See also* Gov’t Code § 311.026(b); Attorney General Opinion JM-1088 (1989) (specific juvenile board statute prevails over general). Thus, although the 392nd District Court is listed in subchapter C, the judge of that court is not a member of the juvenile board because section 152.1131, the specific Henderson County juvenile board statute, does not include that judge as a member. Inasmuch as we have answered your first question in the negative, we need not address your second question.

S U M M A R Y

The judge of the 392nd District Court is not a member of the Henderson County Juvenile Board.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kimberly K. Oltrogge", with a stylized flourish at the end.

Kymberly K. Oltrogge
Assistant Attorney General
Opinion Committee