



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 27, 1998

The Honorable Mike Moncrief  
Chair, General Investigating Committee  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711-2068

Letter Opinion No. 98-095

Re: Whether chapter 143 of the Local Government Code authorizes a municipal civil service commission to hold a police department entrance examination for the same eligibility list at different locations or on different dates (RQ-1128)

Dear Senator Moncrief:

On behalf of the City of Fort Worth, you ask whether chapter 143 of the Local Government Code authorizes a municipal civil service commission to hold a police department entrance examination for the same eligibility list at different locations or on different dates. For the following reasons, we conclude that Local Government Code section 143.025 does not permit a municipal civil service commission to do so.

Local Government Code chapter 143 establishes a civil service system for municipal police and fire departments. Its purpose "is to secure efficient fire and police departments composed of capable personnel who are free from political influence and who have permanent employment tenure as public servants." Local Gov't Code § 143.001(a). If its voters have approved the adoption of chapter 143, a municipality must establish a fire fighters' and police officers' civil service commission ("commission"). *Id.* § 143.006(a).

Section 143.025 of chapter 143 governs the authority of a commission to offer entrance examinations for beginning positions in police and fire departments, providing in pertinent part as follows:

(a) The commission shall provide for open, competitive, and free entrance examinations to provide eligibility lists for beginning positions in the fire and police departments. The examinations are open to each person who makes a proper application and meets the requirements prescribed by this chapter.

(b) An eligibility list for a beginning position in the fire or police department may be created only as a result of a competitive examination held in the presence of each applicant for the position. . . . A person may not be

appointed to the fire or police department except as a result of the examination.

(c) An applicant may not take an examination unless at least one other applicant taking the examination is present.

(d) Examinations for beginning positions in the fire department may be held at different locations if each applicant takes the same examination and is examined in the presence of other applicants.

....

(f) An applicant may not take the examination for a particular eligibility list more than once.

This statutory language establishes a system whereby fire and police department applicants take a competitive entrance examination in order to be placed on an eligibility list for beginning positions. Subsection (b) provides that the examination must be “held in the presence of each applicant for the position.” This language in subsection (b) suggests that all applicants for an eligibility list will be tested in the same place at the same time. Your letter notes that subsection (d), which authorizes a commission to offer a fire department entrance examination at different locations, does not apply to police department entrance examinations. Your letter suggests, however, that subsection (d) need not be read to prohibit a commission from offering a police department examination for the same eligibility list at different locations. It also suggests that subsection (f), which prohibits an applicant from taking “the examination for a particular eligibility list more than once,” may contemplate that both fire and police department entrance examinations for the same eligibility list will be offered multiple times. Your letter concludes that section 143.025 “contains some ambiguity regarding multi-location testing of police applicants for the same eligibility list” and asks this office to resolve the ambiguity.

Based on our review of the legislative history of section 143.025, we conclude that the statute prohibits a commission from offering a police department entrance examination for the same eligibility list at different locations or at different times. The substance of subsections (c), (d), and (f) was added to the statutory predecessor to section 143.025, now-repealed V.T.C.S. article 1269m, section 9,<sup>1</sup> as House Bill 1325 in 1979.<sup>2</sup> House Bill 1325 amended article 1269m in various places,

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<sup>1</sup>Former V.T.C.S. article 1269m was repealed and codified in the Local Government Code in 1987. *See* Act of May 1, 1987, 70th Leg., R.S., ch. 149, §§ 1, 49, 1987 Tex. Gen. Laws 707, 895, 1306-07.

<sup>2</sup>*See* Act of May 28, 1979, 66th Leg., R.S., ch. 753, § 4, 1979 Tex. Gen. Laws 1856, 1858.

including the first paragraph of section 9. Prior to amendment, that paragraph provided in pertinent part as follows:

Sec. 9. The Commission shall make provisions for open, competitive and free examinations for persons making proper application and meeting the requirements as herein prescribed. All eligibility lists for applicants for original positions in the Fire and Police Departments shall be created only as a result of such examinations, and no appointments shall ever be made for any position in such Departments except as a result of such examination, [which shall be based on applicants' knowledge and qualifications,] as shown by competitive examinations in the presence of all applicants for such position . . . .<sup>3</sup>

This language, which predates the House Bill 1325 amendment, now appears in subsections (a) and (b) of section 143.025. House Bill 1325 added the following language to the end of the paragraph:

Fire Department entrance examinations may be given at different locations if all applicants are given the same examination and examined in the presence of other applicants. An applicant may not take the examination more than once for each eligibility list. An applicant may not take an examination unless at least one (1) other applicant being tested is present.<sup>4</sup>

Again, this language now appears in subsections (c), (d), and (f) of section 143.025.

House Bill 1325 is significant in two respects. First, we learn from House Bill 1325 that subsections (c), (d), and (f) of section 143.025 were enacted in the same legislation as a unit. House Bill 1325 added this language to the end of a preexisting paragraph, which addressed both fire and police department entrance examinations. The first sentence of the House Bill 1325 amendment addressed fire department entrance examinations. The following two sentences of the amendment modified the first sentence of the amendment rather than the pre-amendment text of the paragraph. In other words, we believe it is clear from the House Bill 1325 amendment's structure and relationship to the pre-amendment text that each of its three sentences addressed only fire department entrance examinations. The reorganization of now-repealed article 1269m, section 9 in section 143.025 of the Local Government Code was part of a non-substantive codification.<sup>5</sup> The language

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<sup>3</sup>See former V.T.C.S. art. 1269m, § 9, as amended by Act of May 28, 1977, 65th Leg., R.S., ch. 424, § 1, 1977 Tex. Gen. Laws 1130, 1130.

<sup>4</sup>See Act of May 28, 1979, 66th Leg., R.S., ch. 753, § 4, 1979 Tex. Gen. Laws 1856, 1858.

<sup>5</sup>See Act of May 1, 1987, 70th Leg., ch. 149, § 51, 1979 Tex. Gen. Laws 707, 1308 (act "intended as a recodification only, and no substantive change in the law is intended"); see also *Lee v. City of Houston*, 807 S.W.2d 290, 291 n.1 (Tex. 1991) ("codification [of former V.T.C.S. article 1269m] entails no substantive change, see Tex. Loc. Gov't (continued...)").

now codified in section 143.025, subsections (a), (b), (c), (d), and (f) has not been amended since 1979 and we must construe it consistently with its 1979 meaning.<sup>6</sup> Therefore, we conclude that subsections (c), (d), and (f) apply only to fire department entrance examinations. For this reason, subsection (f), which prohibits “an applicant” from taking “the examination for a particular eligibility list more than once,” does not indicate that police department entrance examinations may be offered at different locations or at different times.

Second, and more significant, we believe that the express language authorizing a commission to offer fire department entrance examinations at different locations, now codified in subsection (d), indicates that a commission does not have this authority with respect to police department entrance examinations. Texas courts recognize a presumption that an amendatory enactment intends to change legal rights.<sup>7</sup> Applying this aid to statutory construction, we presume that in enacting House Bill 1325 the legislature intended to change the status quo. We are not aware of anything that would rebut this presumption, such as contrary evidence indicating that the legislature merely intended House Bill 1325 to clarify existing law.<sup>8</sup>

Given that in enacting House Bill 1325 the legislature intended to change existing law, we conclude that prior to its enactment, a commission was precluded from offering either a police or a fire department entrance examination for the same eligibility list at different locations or on different dates and that House Bill 1325 changed the law with respect to fire department entrance examinations but not with respect to police department entrance examinations. Because the relevant statutory language has not been amended since 1979,<sup>9</sup> we can only conclude that a commission

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<sup>5</sup>(...continued)  
Ann. § 1.001.”).

<sup>6</sup>*See Johnson v. City of Fort Worth*, 774 S.W.2d 653, 654-55 (Tex. 1989) (“When a conflict exists between a former statute and a revision made pursuant to the legislature’s directive to the Texas Legislative Council to make a nonsubstantive revision of the statutory law, the former statute will control. Tex.Gov’t Code Ann. §§ 311.023, 311.031, 323.007.”).

<sup>7</sup>*See, e.g., Ex parte Trahan*, 591 S.W.2d 837, 842 (Tex. Crim. App. 1979) (“In enacting an amendment the Legislature is presumed to have changed the law, and a construction should be adopted that gives effect to the intended change, rather than one that renders the amendment useless.”) (citations omitted); *American Surety Co. v. Axtell Co.*, 36 S.W.2d 715, 719 (Tex. 1931) (“It will be presumed that the Legislature, in adopting the amendment, intended to make some change in the existing law, and therefore the courts will endeavor to give some effect to the amendment.” . . . [I]t is the duty of the courts to give some effect to the amendment.”) (citation omitted).

<sup>8</sup>*See, e.g., Texas Home Management, Inc. v. Texas Dep’t of Mental Health & Mental Retardation*, 953 S.W.2d 1, 7 (Tex. App.--Austin 1997, writ denied) (presumption rebutted by evidence that amendment was intended to interpret statute in accordance with agency interpretation); *Adams v. Texas State Bd. of Chiropractic Exam.*, 744 S.W.2d 648, 656 (Tex. App.--Austin 1988, no writ) (presumption rebutted by evidence that amendment reiterated courts’ interpretation of act).

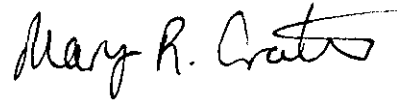
<sup>9</sup>As noted above, the codification of former article 1269m in the Local Government Code was part of a  
(continued...)

continues to lack authority under Local Government Code chapter 143 to offer a police department entrance examination for the same eligibility list at different locations or on different dates.<sup>10</sup>

### S U M M A R Y

Local Government Code chapter 143 does not authorize a municipal civil service commission to offer a police department entrance examination for the same eligibility list at different locations or on different dates.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

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<sup>9</sup>(...continued)

nonsubstantive revision and code provisions must be interpreted consistently with their statutory predecessors. *See supra* notes 5 and 6.

<sup>10</sup>You do not ask and we do not address whether a commission is authorized to offer entrance examinations outside the territorial jurisdiction of the municipality.