



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 21, 1998

The Honorable Robert T. Jarvis
County Attorney
Grayson County Justice Center, Suite 116A
Sherman, Texas 75090

Letter Opinion No. 98-121

Re: Seniority of police officer who accepts
voluntary demotion pursuant to section 143.054,
Local Government Code (RQ-1065)

Dear Mr. Jarvis:

You have asked this office, on behalf of the city of Sherman, Texas, whether the chief of police may determine the seniority of a police officer who has accepted a voluntary demotion for violation of civil service rules and departmental policy, and, in the event that the chief may not do so, how the seniority is to be calculated.

The facts, as a brief from the city explains them, are that on September 1, 1997, a police lieutenant in Sherman accepted a voluntary demotion to his former rank as a sergeant. The city seeks to know whether the chief of police may strip the officer of his seniority for these violations.

The city's brief refers us to sections 143.013 and 143.014 of the Local Government Code, which provide that persons removed as department heads or positions immediately below that of department head retain their rights of seniority in the department. We presume that the position of lieutenant in the Sherman police department is therefore a position to which one of these sections is applicable. The city suggests, however, that these provisions may not apply in the case of a voluntary demotion, citing section 143.054(e) of the Local Government Code.

We cannot agree with the city's argument with respect to this statute. Section 143.054(e) provides: "A voluntary demotion in which the fire fighter or police officer has accepted the terms of the demotion in writing is not subject to *this section*." (Emphasis added). The protections waived by such an acceptance, then, are those afforded by section 143.054, not by the civil service law generally. The relevant provisions concern the right to be advised of the reasons for the proposed demotion, and a right to notice and a public hearing before the demotion. Seniority rights are not mentioned in section 143.054, and are therefore not subject to the waiver contemplated by section 143.054(e). The officer has not, accordingly, waived his seniority rights by acceptance of a voluntary demotion.

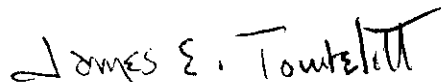
The city then asks, if the chief of police may not set aside the officer's seniority rights, how seniority is to be calculated. The Texas Supreme Court answered that question, albeit in a different

factual context, in *Taylor v. Firemen's and Policemen's Civil Service Commission of City of Lubbock*, 616 S.W.2d 187, 190 (Tex. 1981), in which it held "that the term 'seniority' . . . means years of service, whether interrupted or uninterrupted, and not merely the last continuous period of service."

S U M M A R Y

A police officer does not waive his seniority rights by accepting a voluntary demotion pursuant to section 143.054 of the Local Government Code. "Seniority" is defined as years of service, whether interrupted or uninterrupted.

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Opinion Committee