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August 20, 2002

RQ-0595-JC

The Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

Re: Request for Interpretation of Local Government Code Section 142.0013.

Dear Attorney General Cornyn:

On behalf of the City of Georgetown, Texas, I am requesting an interpretation and an opinion as to the applicability of two subsections contained in the Chapter 142 of the Local Government Code entitled "Assistance, Benefits, and Working Conditions of Municipal Officers and Employees." Specifically, I write today to request clarification as to whether the requirements of §142.0013(a) and (b), entitled 'Hours of Labor and Vacation of Member of Fire and Police Departments in Certain Municipalities,' apply to all employees of the referenced departments, including civilian employees or, conversely, whether these provision apply only to sworn/licensed/certified police officers and fire fighters.

Section 142.0013 of the Local Government Code states the following:

- a) A **member** of a fire or police department in a municipality with a population of more than 25,000 may not, except in an emergency, be required to be on duty more than six days in a week.
- (b) A **member** of a fire or police department in a municipality with a population of more than 30,000 is entitled to 15 vacation days each year with pay if the **member** has been regularly employed in the department or departments for at least one year. The municipal officials supervising the fire and police departments shall designate the days of the week during which a **member** of a fire department or police department is not required to be on duty and the days during which the **member** is allowed to be on vacation.
- (c) A **fire fighter** and a **police officer** shall be granted the same number of vacation days and holidays, or days in lieu of vacation days or holidays, granted to other municipal employees.

[Emphasis added.]

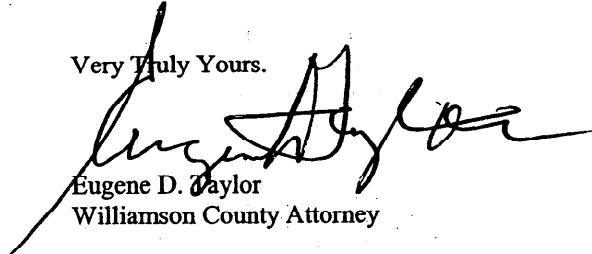
As you will note from the above text, subsections (a) and (b) reference "members" of fire or police departments, which would arguably include all civilian employees of the departments, such as clerical, administrative and building maintenance employees, as well as the sworn officers and fire fighters in the departments. However, subsection (c) references only "fire fighters" and "police officers," specifically excluding civilian employees by omission. Therefore, it is unclear whether *all* employees of the City's fire and police departments (including the

civilian staffs) are governed by §142.0013(a) and (b), or whether §142.0013(a) and (b) govern only the hours of labor and vacation benefits of the "fire fighters" and "officers" of the City's fire and police departments.

I write today for clarification as to which employees working in the fire and police departments of the City of Georgetown, Texas fall within the provisions of LGC §142.0013(a) and (b) for determining hours of labor and vacation benefits. Or, stated in another way, "Which City employees are considered to be "members of the fire and police departments," for purposes of determining the applicability of §142.0013 (a) and (b)?

I look forward to receiving your response and thank you in advance for your assistance with this matter.

Very Truly Yours.



Eugene D. Taylor
Williamson County Attorney

**BRIEF IN SUPPORT OF
REQUEST FOR INTERPRETATION OF LOCAL GOVERNMENT CODE
SECTION 142.0013(a) and (b)**

The City of Georgetown believes that §142.0013(a) and (b), entitled 'Hours of Labor and Vacation of Member of Fire and Police Departments in Certain Municipalities,' was intended by the legislature and, thus, should be interpreted by the Texas Attorney General, to apply *only* to sworn/licensed/certified police officers and fire fighters, and specifically not to civilian employees of those departments, for at least the following reasons:

1. The interpretation urged above, would make §142.0013(a) and (b) consistent with the verbiage contained in §142.0013(c), which references only "fire fighters and police officers." Both paragraph (b) and (c) of §142.0013 deal specifically with vacation days, therefore, it is consistent to all provisions of §142.0013 to apply to "fire fighters and police officers," rather than to all members of the departments, including civilian employees.
2. While §§142.0013(a) and (b) use general references to "a member of a fire or police department," these two paragraphs also use the phrase "on duty." The phrase "on duty" is only used in conjunction with fire fighters and police officers and not with the general civilian employee personnel of the department. We believe the use of this phrase is indicative of the fact that the legislature intended §§142.0013(a) and (b) to apply *only* to sworn/licensed/certified police officers and fire fighters, and specifically not to civilian employees of those departments.
3. Application of §142.0013(a) and (b) to civilian employees of the City's fire and police departments would result in disparate benefits between the administrative staff of the Fire and Police Departments and the City staff serving in other City departments. These employees, regardless of whether they are assigned to the police department or the planning department, perform similar tasks, work similar schedules, require identical skills and training, etc. While the justification for special work scheduling and special vacation time/pay is easily justified for "high stress occupations," such as fire fighters and police officers, the application of such special benefits for civilian employees in these departments, who are performing job functions that are essentially identical to those performed by other administrative staff persons employed by the City in other departments is, conceptually, difficult for the City to explain or to support.