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OPINION COMMITTEE



Tracy O. King
State Representative

FILE # ML-47287-13
I.D. # 47287

RQ-1130-GA

May 24, 2013

The Honorable Greg Abbott
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

Re: Request for Attorney General Opinion: May a municipality that has approved appointment of assistant chiefs, under Texas Local Gov't Code 143.014, authorize appointment of more assistant chiefs than existed on January 1, 1983 plus one?

Dear General Abbott:

Texas Local Gov. Code section 143.001, et seq, sets forth the rules to be followed for those municipalities that have adopted its provisions. Subchapter B (sections 143.021 – 143.038) contains the procedures for creating and filling positions within the department. Generally, vacant promotional positions are required to be filled from an eligibility list which is based on applicant's testing results and their seniority. Section 143.014 creates an exception to this promotional process by allowing the department head to appoint a specified number of individuals to the position immediately below his or her position.

The question being asked concerns what is the proper interpretation of the number of positions that can be appointed? Section 143.014(c) provides: "In a police department, the total number of *persons appointed to the classification immediately below that of department head* may not exceed the total number of persons, *plus one*, serving in *that classification* on January 1, 1983."

Today, the "persons appointed to the classification immediately below that of department head" are being appointed into an assistant chief's classification that was created after January 1, 1983. However, in 1983, the department had zero assistant chiefs, but 4 captains immediately below the position of department head. Therefore, is "that classification" which is being referred to in 143.014(c), the classification of assistant chief (the "person(s)" being "appointed to the classification immediately below that of department head"), so that the maximum that can be appointed to this position is 1 (0 assistant chiefs in 1983 "plus one")?

I respectfully request an Attorney General's Opinion on what is the maximum number of assistant chiefs that a city can appoint today into an assistant chief classification that was created after January 1, 1983?

Sincerely,

A handwritten signature in black ink that reads "Tracy O. King".

Tracy O. King