

THE CITY COUNCIL AND THE MUNICIPAL COURT JUDGE  
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### **A. Intro**

The City Council and the Municipal Court Judge have to work independently most of the time, but work together regarding certain issues. The purpose of this paper is to simply shed light on the different perspectives taken by each in hopes it can help resolve common conflicts before they occur.

### **B. The Scenario**

City Attorney John Smith was sitting in his office drafting an annexation ordinance when Council Member Jones entered the room. Council Member Jones was upset and informed City Attorney Smith that he needed to do something about a municipal court judge. Councilman Jones had just discovered that Judge Stephen Hammer was dismissing large numbers of municipal court tickets. Jones seemed incensed that the judge would dare to dismiss any citation issued by police officers for the City of Deep Pockets. He instructed City Attorney Smith that the municipal judge works for the City, it is a City court and the judge had better get in line or else the Council would fire him.

City Attorney Smith was still scratching his head after Councilman Jones left when Councilwoman Debbie Falcon abruptly entered his office. Councilwoman Falcon was upset that Judge Hammer would not dismiss a ticket which was received by one of her biggest supporters, developer Ima Gna Suem. Councilwoman Falcon instructed City Attorney Smith that he had better do something about the municipal court judge or else she was going to get rid of both the Judge and City Attorney Smith.

That afternoon, City Attorney Smith was trying to figure out how to best deal with the situation when Judge Hammer walked into his office. Judge Hammer was upset that the City Manager had instructed him the City was moving his municipal court from the main complex at City Hall to an annex across town. Judge Hammer told City Attorney Smith that he was the judge and the City had no business telling him how to operate his court or where his court could be held. The City Manager had also instructed the Judge that he wanted court to be held once a week as opposed to twice a month in order to handle the number of citations being issued and the back log currently plaguing the court. Judge Hammer instructed City Attorney Smith that he was to properly advise the City to let Hammer operate his court the way he saw fit and to not interfere. After Judge Hammer left, City Attorney Smith called in his municipal court prosecutor, Kim Hangem-Hai. Smith looked at her across the table and said, with frustration, “Why can’t we all just get along?”

### **C. The Reality**

When dealing with the interaction between city council, city administration and the municipal court, 95% of the conflicts appear to stem from the parties not understanding everyone’s roles. Most of the time, if you have a good city manager or administrator and a good municipal court judge then matters can be easily resolved without much tension. Once everyone understands the various limits and boundaries of each role, then expectations can be managed.

### **D. The Court and Judge**

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First, it is important to understand the often misunderstood role of the municipal court and the municipal judge. In 1899, a comprehensive statute was enacted to create municipal courts and to give them uniform jurisdictions and procedures. Act of April 1, 1899, 26th Leg., R.S., Ch. 33, 1899 Tex. Gen. Laws 40; see also *Aguirre v. State*, 22 S.W.3d 463, 467 (Tex. Crim. App. 1999). This Act was interpreted to mean a municipal court is a state court of limited jurisdiction, which included jurisdiction over state law offenses punishable by fine only. *Ex Parte Wilbarger*, 55 S.W. 968 (Tex. Crim. App. 1900).

A municipal court is established by statute in each municipality. See Tex. Gov't Code Ann. § 29.002 (West 2015); see also *Id.* §§29.001,.003 (West 2015) (defining the term “municipality” and defining municipal courts' jurisdiction).

The best way to think about the court is that a municipal court is a state court that is hosted by the city. This means it is not the city's court. The city is provided compensation for hosting the court through the retention of a sliding scale of fines and fees. The court was not designed or created to be a money maker. The retention of fees is designed to allow the court to sustain itself.

The municipal judge is not technically a city employee. Judges are classified as public officers and not employees. *Thompson v. City of Austin*, 979 S.W.2d 676, 680-82 (Tex. App.—Austin 1998, no pet.). In fact, any local judge (which presumably would include municipal, county, or district) acting in his or her judicial capacity is not considered a local government official whose actions are

attributable to the hosting entity. *Krueger v. Reimer*, 66 F.3d 75, 77 (5<sup>th</sup> Cir. 1995); see also *Johnson v. Moore*, 958 F.2d 92, 94 (5<sup>th</sup> Cir. 1992); *Bigford v. Taylor*, 834 F.2d 1213, 1221-22 (5<sup>th</sup> Cir. 1988)(a municipal judge acting in his or her judicial capacity to enforce state law does not act as a municipal official or lawmaker.); See Tex. Gov't Code Ann. § 30.00006(g) (West 2015) (“A person may not serve as a municipal judge if the person is employed by the same municipality. A municipal judge who accepts employment with the municipality vacates the judicial office.”); *City of Roman Forest v. Stockman*, 141 S.W.3d 805, 809–10 (Tex. App.—Beaumont 2004, no pet.) (holding that a municipal court judge is not within the definition of “public employee” in the Texas Whistleblower Act).

Entrusted with independent and sovereign powers, judges are public officers who cannot be employees. “The determining factor which distinguishes a public officer from an employee is whether any sovereign function of the government is conferred upon the individual to be exercised by him for the benefit of the public largely independent of the control of others.” *Aldine Indep. Sch. Dist. v. Standley*, 154 Tex. 547, 280 S.W.2d 578, 583 (1955). A public officer “is authorized by law to independently exercise functions ... subject to revision and correction only according to the standing laws of this state.” *State ex rel. Hill v. Pirtle*, 887 S.W.2d 921, 931 (Tex. Crim. App. 1994).

The municipal judge's actions may not be reviewed by any other party, including the council. “The [c]ouncil's lack of control results naturally from the separation of powers doctrine and sovereign nature of both the executive and judiciary

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branches. The [c]ouncil, which has been endowed with executive and administrative powers, does not exercise control over the independent municipal court; the [c]ouncil cannot control or influence the decisions of the municipal judge.” *Thompson v. City of Austin*, 979 S.W.2d 676, 682-83 (Tex. App.—Austin 1998, no pet.) This restriction applies to the municipal court’s decisions in individual cases as well as traditional judicial functions.

### E. The City

The judge is the one that manages the courtroom, the docket, the case load and case decisions. However, that does not mean the city has no say in the effects of court operations or on matters vested within the city’s hosting parameters.

First, the city council typically appoints the judge, unless an election is authorized by city charter. The term of office for a judge depends on whether the city is a home-rule charter city, a special charter city, or a general law city. The qualifications for the judge depend on the charter as well as whether the court is a court of record or non-record. Removal of the judge will depend on the charter or general law provisions found in Chapters 29 or 30 of the Texas Government Code. Several variables exist as to the appointment, term of the judge and removal and any restrictive windows to act. Any city attorney should examine the appointment, term, and removal provisions for the specific municipal court before advising a city council on options.

From a hosting standpoint, the city determines the judge’s staff levels, resources, location of courtroom, and has the right and ability to comment on the number

of times court is held in order to deal with docket levels. *See* Tex. Gov’t Code Ann. §§29.002, 29.004, 30.00006(h) (salary), 30.00009 (clerk, other personnel), 30.00010 (court reporter), 30.00012 (court facilities), 30.000125 (seal) (West 2015); Op. Tex. Att’y Gen. No. GA-0348 (2005.) Although the hosting provisions are better set forth in the statutes regarding courts of record, the non-record courts are still hosted by their respective cities by operation of the court’s creation. Municipal judges, as members of the judicial branch of government, do not exercise policy-making authority. Typically, this policy-making role belongs to the legislative branch of government, as evidenced in Article II of the Texas Constitution. Tex. Const. art. II, 1; see also *In re Johnson*, 554 S.W.2d 775, 780 (Tex. App.—Corpus Christi 1977), *writ ref’d n.r.e. by per curiam op.*, 569 S.W.2d 882 (Tex.1978).

If the city council does not like a particular way a judge handles the court under the hosting arrangement, the city council may be able to replace the judge under the proper procedure. However, some charters call for the election of municipal judges, thereby taking that check and balance out of play and placing it with the voters.

Additionally, the municipal court judge is not free to manage all administrative matters. The judge technically does not have a say in that type of resource allocation when a city manager or administrator is attempting to determine the proper level of resources. Sometimes a city manager will inquire with the judge regarding certain revenue aspects associated with hosting. Many municipal court judges can misinterpret this. Sometimes the inquiry

is proper and legitimate and while other times, it is not.

A city manager or city administrator might improperly comment to a municipal court judge or attempt to put pressure on the judge to increase revenue in municipal court by way of finding more people guilty or increasing fines. This type of involvement is improper because it violates the independence of the court and the separation of powers doctrine.

However, sometimes an inquiry regarding revenue may be proper. When dealing with a judge, it is imperative to understand how the judge is trained so you can use the same vocabulary to express a proper inquiry. When a city manager/administrator inquires with the judge regarding the increased cost of healthcare and why the City may have to reduce staff or why certain renovations of the courtroom will not occur, that is not an impermissible pressure attempt to increase revenue. Such comments, more than likely, are merely a logistics element of the hosting procedure.

The parties in that conversation must understand each other's perspectives in order to work together. A good municipal court judge will understand that, while the city cannot attempt to influence individual rulings, the city does have legitimate logistic considerations regarding hosting the court in the first place. A good municipal court judge will keep that in mind when setting standing orders.

Likewise, it is important for a city manager or administrator to understand that judges are trained to disregard external influences and avoid references to revenue. The Texas Municipal Court Education

Center ("TMCEC") is one of the primary entities responsible for training municipal judges and, specifically, trains a judge to understand that "[e]thically, a judge is prohibited from setting fines for the purpose of either satisfying or dissatisfying the city council, city manager, or mayor. Justice requires, regardless of intergovernmental pressures, that a municipal judge decide each case upon its merits." Ryan Turner, Texas Municipal Court Education Center – The Municipal Judges Book, 5<sup>th</sup> Edition, pp. 32-33 (2014). From the city's perspective, it is helpful to reference the judge's own training materials in dealing with conflicts. Communication with the municipal judge should incorporate references to expenses for the hosting systems as oppose to revenue. Courts are not to be thought of as revenue generators. Ryan Turner, Texas Municipal Court Education Center – The Municipal Judges Book, 5<sup>th</sup> Edition, pp. 32-33 (2014) ("Regardless of what portion of a city's budget comes from fines and court costs, a municipal court should not be viewed by a public official or the public at large as being tantamount to a 'cash cow' or an ATM for local expenditures.") However, even the TMCEC notes that "judges must recognize that mayors, city managers, and council members are required to be concerned about revenues. While finding a balance between judicial independence and fiscal reality may present special challenges in municipal government, achieving such a balance should be a goal shared by all members of municipal government." *Id* at 33.

## F. Conclusion

Most of the tension that tends to occur between your municipal court and your city council has to do with the

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misunderstanding of everyone's roles. Sometimes it falls to the city attorney to explain and educate everyone about the various roles in order to find the middle ground. In the end, you should want everybody to get along and, when that occurs, the city, the court, and the public benefit.