



TEXAS CITY ATTORNEYS ASSOCIATION
2016 SUMMER CONFERENCE
JUNE 16, 2016
BASTROP, TEXAS

**The City Council and Municipal
Court Judge**
Ryan Henry

City Attorney Smith



- Councilman Jones discovered that Judge Stephen Hammer was dismissing “large numbers of municipal court tickets.”
- City Court, City Employee, Better Get With the Program.

You are either with the City or
against us!



Councilwoman Debbie Falcon



- Upset that Judge Hammer would not dismiss a ticket of a supporter
- Stated the City Attorney 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.



Judge Hammer

- Judge Hammer walked into Smith's office.
- Upset City Manager was moving his municipal court from the main complex at City Hall to an annex across town.
- 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 Relationship

- Parties not understanding everyone's roles = 95% of conflicts
- Municipal Court is often the misunderstood redheaded stepchild
- Sometimes even misunderstood by the judge

No “One-Size-Fits-All” Answer to Relationship

- Courts of Record v Courts of Non-Record
- Home-Rule v General Law v Special Charter City
- Appointed v Elected
- General Laws v Charter Creation
- Judge v Mayor or other Magistrate

The Court

- *Ex Parte Wilbarger*, 55 S.W. 968 (Tex. Crim. App. 1900).
- Municipal Courts are STATE courts of limited jurisdiction
- They are HOSTED by the City

Judge is Not an Employee

- *Thompson v. City of Austin*, 979 S.W.2d 676, 680-82 (Tex. App.—Austin 1998, no pet.).
- Judges are classified as public officials and are expressly not employees
- Not even “local” public officials. *Krueger v. Reimer*, 66 F.3d 75, 77 (5th Cir. 1995).
- None of their judicial actions attributable to City

Court of Record Statutory Reference

- 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.”)

Employment Contracts Not Advisable

- MOUs are Fine
- Employment. . . Not so much
- Since Judge's are not employees, Whistleblower Act and TCHRA do not apply. *City of Roman Forest v. Stockman*, 141 S.W.3d 805, 809–10 (Tex. App.—Beaumont 2004, no pet.)

Yes, Separation of Powers Doctrine Applies

- Council has no control over judicial branch, including municipal court.
- *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.
- Does not apply to non-judicial functions

Understand How Judges are Trained

- “[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, 5th Edition, pp. 32-33 (2014).

However, the City Hosts the Court

- Appointment or Election is performed by the City
- Different processes exist depending on various moving parts, but always exists a way to remove the judge (some more limited than others)
- City determines the judge's staff levels, resources, location of courtroom, logistics to deal with docket levels.

Example: Court of Records in Chapter 30

- Tex. Gov't Code §30.00006(h) (salary),
- §30.00009 (clerk, other personnel),
- §30.00010 (court reporter),
- §30.00012 (court facilities)

Court of Non-Record

- 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).

Commenting on Revenue

- Judge's sometimes misinterpret comments regarding revenues
- Make references to expenses instead
- Utilize Judge's training to explain

TMCEC Training

- 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.”
- Ryan Turner, Texas Municipal Court Education Center – The Municipal Judges Book, 5th Edition, pp. 32-33 (2014)

City Attorney Smith

- Must tell Councilman Jones the municipal court is a state court hosted by the City
- Must tell Council woman Falcon the City cannot interfere with individual cases
- Must tell Judge Hammer the City hosts the court and controls where the courtroom is located
- Must try to get everyone to work together ... but independently... well sort of.

The End

