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The municipal charter details the authority of the city, the structure of the government, and the processes by which the government exercises authority.

WORDS TEXAS AND U.S. CONSTITUTIONS TEXAS STATUTES

WORDS MATTER

- Plain English
- Definitions
- Write What You Mean
- Clarify When Necessary or When Not
- Consistency, Consistency, Consistency

Term Limits:

1. Recognize the difference between:

"Shall serve no more than three consecutive terms" and
"Shall serve no more than three consecutive <u>3 year</u> terms"

2. When adopting or amending a Charter to include term limits you need to specifically state retroactivity if that is your intent.

The governing and law making body of the City of X shall consist of a <u>Mayor</u> and five (5) <u>Councilpersons</u>, and said body shall be known as the "<u>City Council of the City of X</u>." The <u>members of the City Council of the City of X shall be the only elective officers of the City and shall run for office by place and be elected from the City at large for a term of three (3) years, or until their successors are duly elected and qualified.</u>

The Mayor and three (3) members of the Council, qualified and serving, shall constitute a quorum for all meetings for the transaction of all business. No action of the Council shall be valid or binding unless adopted by the affirmative vote of a majority of the City Council present.

As a member of the Council, the Mayor may participate in the discussion of all matters coming before the Council, but shall be entitled to vote only in case of a tie upon all affairs considered by the council, and shall have no veto power.

The Mayor Pro Tem shall be selected from among the members of the five (5) Councilpersons.

Decisions on annexation or disannexation require favorable votes by not <u>less than four (4) members of the Council.</u>

The Council may remove the City Manager, upon the affirmative vote of a majority of the Council.

The Judges, as may be authorized, shall be appointed by the Council by <u>affirmative vote of at least three (3) of the five (5) council members of the City Council.</u>

CONSTITUTIONS MATTERS

THE TEXAS CONSTITUTION

Article 11, Sec. 11. TERM OF OFFICE EXCEEDING TWO YEARS IN HOME RULE AND GENERAL LAW CITIES; VACANCIES

- Where Terms of Office for any non-civil services officer exceed 2 years but not 4 years then:
 - Election of the governing body must occur by majority vote.
 - Officers subject to Automatic resignation provisions of Section 65(b).
 - Vacancies must be filled by majority vote at a special election called within 120 days except the Charter may provided for alternative procedure for an unexpired term of 12 months or less.

Indebtedness to City as qualification for office

Ordinance which barred candidacy in city council election of person who did not own realty within municipality or was delinquent in payment of property taxes denied such persons equal protection of the law and was invalid.

Gonzales v. City of Sinton, Tex., 319 F. Supp. 189 (S.D. Tex. 1970)

Indebtedness to City as qualification for office

City charter requirement that elected officials pay alleged liabilities to city or risk forfeiture of office was not rationally related, under equal protection clause, to governmental interests of promoting good citizenship or administration of tax system, and therefore city council members who sought declaration that such requirement was unconstitutional showed substantial likelihood of success on merits sufficient for preliminary injunction

Hunt v. City of Longview, 932 F. Supp. 828 (E.D. Tex. 1995), aff'd, 95 F.3d 49 (5th Cir. 1996)

It was the purpose of the Home-Rule Amendment, Art. XI, Sec. 5, and the enabling statutes, supra, to bestow upon accepting cities and towns of more than 5000 population full power of self-government, that is, full authority to do anything the legislature could theretofore have authorized them to do. The result is that now it is necessary to look to the acts of the legislature not for grants of power to such cities but only for limitations on their powers.

Forwood v. City of Taylor, 147 Tex. 161, 168, 214 S.W.2d 282, 286 (1948)

STATUTES MATTER

TEXAS LOCAL GOVERNMENT CODE

Sec. 43.142. DISANNEXATION ACCORDING TO MUNICIPAL CHARTER IN HOME-RULE MUNICIPALITY.

A home-rule municipality may disannex an area in the municipality <u>according to rules as may</u> <u>be provided by the charter of the municipality</u> and not inconsistent with the procedural rules prescribed by this chapter.

TEXAS ALCOHOLIC BEVERAGE CODE

§ 109.31. Municipal Regulation of Liquor

A CITY BY CHARTER MAY PROHIBIT THE SALE OF LIQUOR IN ALL OR PART OF THE RESIDENTIAL SECTIONS OF THE CITY.

TEXAS ELECTION CODE

§ 141.001. ELIGIBILITY REQUIREMENTS FOR PUBLIC OFFICE

- (1) BE A UNITED STATES CITIZEN;
- (2) BE 18 YEARS OF AGE OR OLDER;
- (3) HAVE NOT BEEN DETERMINED TO BE (A) TOTALLY MENTALLY INCAPACITATED; OR (B) PARTIALLY MENTALLY INCAPACITATED WITHOUT THE RIGHT TO VOTE;
- (4) HAVE NOT BEEN FINALLY CONVICTED OF A FELONY FROM WHICH THE PERSON HAS NOT BEEN PARDONED OR OTHERWISE RELEASED FROM THE RESULTING DISABILITIES;
- (5) <u>HAVE RESIDED CONTINUOUSLY IN THE STATE FOR 12 MONTHS AND IN THE TERRITORY FROM WHICH THE OFFICE IS ELECTED FOR SIX MONTHS</u>;
- (6) ON THE DATE DESCRIBED BY SUBDIVISION (5), BE REGISTERED TO VOTE IN THE TERRITORY FROM WHICH THE OFFICE IS ELECTED; AND
- (7) SATISFY ANY OTHER ELIGIBILITY REQUIREMENTS PRESCRIBED BY LAW FOR THE OFFICE.

TEXAS ELECTION CODE

§ 141.003. AGE AND RESIDENCE REQUIREMENTS FOR HOME-RULE CITY OFFICE

(A) DIFFERENT AGE AND RESIDENCE REQUIREMENTS FROM THOSE PRESCRIBED BY SECTION 141.001 MAY BE PRESCRIBED BY A HOME-RULE CITY CHARTER, BUT A MINIMUM AGE MAY NOT BE MORE THAN 21 YEARS AND A MINIMUM LENGTH OF RESIDENCE IN THE STATE OR CITY MAY NOT BE MORE THAN 12 MONTHS IMMEDIATELY PRECEDING ELECTION DAY.

(B) A CHARTER PROVISION IS VOID IF IT PRESCRIBES A MINIMUM AGE REQUIREMENT OF MORE THAN 21 YEARS OR A MINIMUM LENGTH OF RESIDENCE REQUIREMENT OF MORE THAN 12 MONTHS.

AMENDMENTS BY PETITION

From what has been said it follows that we must first determine whether the initiative election sought by respondents is within the field in which the initiatory process is operative and therefore one which they have a legal right to have held.

Glass v. Smith, 150 Tex. 632, 637, 244 S.W.2d 645, 649 (1951)

The declaratory judgment suit, at this stage of the proceedings, seeks an advisory opinion. The election may result in the disapproval of the proposed amendment. District courts, under our Constitution, do not give advice nor decide cases upon speculative, hypothetical, or contingent situations. Firemen's Ins. Co. of Newark New Jersey v. Burch, 442 S.W.2d 331 (Tex.1968); California Products, Inc. v. Puretex Lemon Juice, Inc., 160 Tex. 586, 334 S.W.2d 780 (1960). The election will determine whether there is a justiciable issue, at which time the respondents' complaints against the validity of the initiatory process under article 1170 may be determined by the trial court.

Coalson v. City Council of Victoria, 610 S.W.2d 744, 747 (Tex. 1980)

The principles stated in Glass appear to be in conflict with the principles stated in Coalson. However, in Coalson, the Supreme Court cited Glass for an ancillary proposition and did not overrule it, so we must presume that the Court did not perceive a conflict. We can only conclude that the two-step examination used in Glass, under a city charter initiative and referendum provision, is not to be used in an article 1170 case. Instead, when article 1170 is satisfied, the election is held first and questions concerning the amendments are litigated later.

Green v. City of Lubbock, 627 S.W.2d 868, 872 (Tex. App.—Amarillo 1981, writ ref'd n.r.e.)



QUESTIONS?

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