

THE BRIEF



Information for Texas Municipalities about Texas Municipal Courts (March 2020)

Regarding the Appointment of Municipal Judges: OATH OF OFFICE

This is the second in a series of installments of *The Brief* aimed at providing decision-makers at city hall important information about the appointment of municipal judges.

The first installment addressed three basic issues (selection, term of office, and removal). This installment focuses on the deceptively simple, yet critically important, oath of office.

The Texas Constitution (Article XVI, Section 1) requires all elected and appointed officials, including municipal judges, to take an oath of office before assuming their official duties. The oath of a municipal judge is an official record of the office and is required to be filed with and kept by the city secretary or the municipal court clerk.

The Importance of Taking the Oath

Without a valid oath of office a municipal judge has no authority to assess fines (monies that are deposited into the city treasury and are retained locally).

The constitutional oath qualifies a judge to act as judge. While failing to *file* an oath does not deprive a judge of his or her authority, the acts of a judge who has not *taken* the oath of office are void.

Cities Beware: Oaths and Reappointment under Section 29.005 of the Government Code

Under Section 29.005 of the Government Code, a municipal judge serves for a term of office of two years unless the municipality provides for a longer term. In 1993, the Legislature amended Section 29.005 to provide that when a municipal judge's term of office expires, if that judge is not reappointed within 91 days, he or she continues to serve for another term of office beginning on the date the previous term expired, unless the appointing authority acts in some way inconsistent with the retention of that office by the incumbent. This is commonly referred to as a reappointment by operation of law.

It is critically important that city secretaries and other city government officials be aware of a looming unsettled legal question regarding the constitutional oath requirement and reappointment of municipal judges under Section 29.005.

Specifically, if a judge is "reappointed by operation of law," is he or she required to take another oath? The answer is not clear.

City hall, take note. The best practice is for a municipal judge to take and file an oath before each term of office, including instances where he or she is reappointed by operation of law. No Texas case explicitly holds that a municipal judge must retake and refile an oath of office when he or she continues to serve a subsequent term under Section

29.005. However, there is case law pertaining to other types of Texas judges suggesting that an oath expires at the end of a term and a new oath and filing are required before each term to satisfy the Texas Constitution. If an appellate court were to conclude that a municipal judge who is reappointed by operation of law is an “appointed official” for constitutional purposes, failure to retake an oath could void a judge’s judgments and sentences.

Conclusion

In order to be qualified to act, municipal judges must take the constitutionally required oaths of office. Those oaths should be filed with the city secretary or municipal court clerk. Cities are encouraged to make sure that municipal judges retake the oath of office (even in instances where a judge is reappointed by operation of law). The idiom may be overused, but still rings true: better safe than sorry.

Note: For more detailed information on this subject, see, Regan Metteauer, *When the Acts of a Judge May Be Void: A Look at the Constitutional Oath Requirement in Light of Section 29.005 of the Texas Government Code*, 22 THE RECORDER 1 (May 2013).

The Brief is a periodic briefing for Texas mayors, city council members, and other local officials highlighting issues and increasing awareness and understanding of municipal courts in the Lone Star State. *The Brief* is part of TMCEC’s public information and education campaign, *Councils, Courts, and Cities* (C3). For more information about TMCEC, visit: www.tmcec.com. Follow C3 on Twitter: @C3ofTexas.

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