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Legal Q&A

By Lauren Ford Crawford, TML Legal Counsel

Q: What is the current procedure for removal of a member of the governing body of a general law city?

A: The removal process is initiated by the filing of a sworn petition for removal in a district court in the county where the officer whose removal is sought resides. TEX. LOC. GOV'T CODE §21.026(a). The petition may be filed by any citizen of the general law city who has been a resident for at least six months and who is not currently under indictment in the county. *Id.* at §21.026(b). The petition must specify the act or acts, including the time and place of their occurrence, that constitute grounds for removal under the statute. *Id.* at §21.026(c). The person filing must then apply to the district judge for an order requiring that citation and a certified copy of the petition be served on the officer. *Id.* at §21.027(a). If issued, the order will direct the officer to appear and answer the petition on a date fixed by the judge that is after the fifth day after the citation is served. *Id.* at §21.027(d). Disposition of the removal action takes precedence over other civil matters on the court's docket. *Id.* The officer may elect to be tried by a jury or the judge. *Id.* at §21.029(a). If convicted, the officer may appeal the removal to a court of appeals. *Id.* at §21.030(a). Once final, a judgment of removal also makes the officer ineligible for reelection to the same office prior to the second anniversary of the date of removal. *Id.* at §21.032.

Q: On what grounds may a member of the governing body be removed?

A: A member of the governing body may be removed for: (1) incompetency, defined as "gross ignorance of official duties," "gross carelessness in the discharge of official duties," or the "inability to or unfitness to promptly and properly discharge official duties because of a serious mental or physical defect that did not exist at the time of the officer's election"; (2) official misconduct, defined as "intentional unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law," and includes an "intentional or corrupt failure, refusal, or neglect...to perform a duty imposed...by law"; or (3) intoxication. TEX. LOC. GOV'T CODE §§ 21.022, 21.025.

Q: Is a trial on the question of removal automatic?

A: No. After the petition is filed, the district judge may refuse to issue the order for citation and may dismiss the petition at the cost of the person filing. TEX. LOC. GOV'T CODE §21.027(c). The person filing may neither appeal the judge's decision nor seek a writ of mandamus ordering the judge to issue the order. *Id.*

Q: Who prosecutes the matter in district court?

A: The district attorney shall represent the state in the removal proceeding "and on the relation of the person filing the petition." TEX. LOC. GOV'T CODE §21.029. "On the relation" refers to the

practice of allowing a person who is a complainant in an action to participate as a “relator,” assisting the prosecutor in a role similar to that of plaintiff.

Q: What happens if a trial is held and the officer is not removed?

A: At the time the petition is filed, the district judge will require the person filing to execute a bond, with at least two sureties, in an amount intended to cover the officer’s damages and costs if the grounds for removal are found to be insufficient or untrue. TEX. LOC. GOV’T CODE §21.028(a). If the final judgment then establishes that the officer has the right to retain the office, the judge shall order the person who filed the petition to pay an amount sufficient to compensate the officer for damages resulting from the removal action. *Id.* at §21.028(b). In order to hold the person liable on the bond, the officer must serve written notice on the person and the person’s bondsman, not later than 90 days after the bond is executed, that the officer intends to hold them liable, and stating the grounds for that liability. *Id.* at §21.028(a).

Q: Is the removal of the member of the governing body in a home rule city governed by these laws?

A: No. In a home rule city, the procedure for the removal of members of the governing body is outlined by the city charter. The procedures outlined above apply only to general law cities. TEX. LOC. GOV’T CODE §21.021.