

## **Legal Q&A**

**By Heather Mahurin, TML Legal Counsel**

### **Is a city required to operate a municipal court?**

No, a city is not required to operate a municipal court. TEX. GOV'T CODE § 29.003 provides that a municipal court has concurrent jurisdiction with the justice court of a precinct, in which the city is located, in all criminal cases arising under state law that occur in the city. If a city does not have a municipal court, the justice court would handle any Class C misdemeanor that occurs in the city.

A municipal court has exclusive original jurisdiction within the city limits in all criminal cases that arise under a city ordinance. TEX. GOV'T CODE § 29.003. This means that a city cannot enforce *any* city ordinance imposing a criminal penalty (for example, high weed restriction or junked vehicle prohibition) the city passes, if the city does not have a municipal court. A justice court does not have jurisdiction over criminal cases involving violations of a city ordinance.

### **How does a city create a municipal court?**

The Texas Government Code provides that a municipal court is created in each city. TEX. GOV'T CODE § 29.002. However, a city is not *required* to operate a municipal court. Once a city chooses to begin operating a municipal court, many cities pass an ordinance stating that a court is created and establishing court personnel and procedures.

### **What is the difference between a municipal court and a municipal court of record?**

A municipal court of record is required to provide a court reporter to create and preserve a record in cases tried before the court, while an ordinary municipal court typically does not create or preserve a record. TEX. GOV'T CODE § 30.00010. The practical effect of this difference surfaces on appeal. Appeals from either type of municipal court are generally to the county court. TEX. CODE CRIM. PROC. art. 4.08. Appeals from a municipal court are tried *de novo*, meaning that the case is tried again from the beginning and all the evidence and witnesses must be presented again. On the other hand, an appeal from a municipal court of record is based on specific points of error as contained in the "record" of the court. *Id.* at art. 44.17. Municipal courts of record are created for the practical purpose of providing a more efficient disposition of appeals.

### **Can the chief of police dismiss a ticket?**

No, the chief of police does not have the authority to dismiss a ticket, or a citation, once issued and submitted to a court for a complaint to be generated. If the chief of police, or another officer, believes there is insufficient evidence to prosecute an offense, he or she can indicate that to the prosecutor. The prosecutor may, by permission of the court, dismiss a criminal action at any time upon filing a written statement setting out the reasons for such dismissal. TEX. CODE CRIM. PROC. art. 32.02. These reasons are then incorporated in the judgment of dismissal. A case cannot be dismissed without the consent of the judge. *Id.*

### **Can the court clerk dismiss a complaint filed in municipal court?**

No, a municipal court clerk cannot dismiss a complaint filed in municipal court. Dismissing a case when permitted by statute is a judicial act. Attorney General Opinion H-386 (1974). Judicial duties may not be delegated unless there is express authority to do so. *Newsom v. Adams*, 451 S.W.2d 948 (Tex. Civ. App.– Beaumont 1970, no writ); Attorney General Opinion H-386 (1974). Hence, a judge is not permitted to delegate to a court clerk a duty that the judge is required to perform, such as dismissing a case.

### **Can a city share a municipal court judge with another city?**

Yes. A person may hold the office of municipal judge for more than one city at the same time, if each office is filled by appointment. The Legislature has declared that allowing an individual to hold these offices at the same time is of benefit to the state. TEX. GOV'T CODE § 574.001(b).

### **Can a city hold municipal court proceedings outside the city limits?**

A city with a population of 700 or less may hold municipal court proceedings in a contiguous city. TEX. GOV'T CODE § 29.104. Additionally, a city that contracts with one or more other cities for the operation of a joint police department may conduct its municipal court proceedings within the city limits of any city that is a party to the contract. TEX. GOV'T CODE § 29.105.

A city with a population of 1.9 million or more and another city contiguous to that city may enter into an agreement providing concurrent jurisdiction for the municipal courts of either city for all criminal cases arising from offenses under state law that are committed on the boundary of those cities or within 200 yards of that boundary and are punishable by fine only. TEX. GOV'T CODE § 29.003(h). Additionally, any city may enter into an agreement with a contiguous city or city with boundaries that are within one-half mile of the city to establish concurrent jurisdiction of the municipal courts in the cities and provide original jurisdiction to a municipal court in which a case is filed, as if the municipal court were located in the city in which the case arose, for city ordinance violations and cases that arise under Section 821.022 of the Texas Health and Safety Code or Section 25.094 of the Education Code. TEX. GOV'T CODE § 29.003(i).

### **What is the procedure for a complaint against a municipal court judge?**

A person aggrieved by the actions of a municipal court judge may, under Article V, § 1-a of the Texas Constitution, mail a sworn complaint to the State Commission on Judicial Conduct charging a municipal court judge with willful or persistent violation of rules of the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his duties or that casts public discredit on the judiciary or on the administration of justice. The Commission subsequently makes a recommendation to the Texas Supreme Court, which will finally adjudicate the matter.

### **How does a prosecutor change a charge against someone in municipal court?**

To change a charge against an individual, the charging instrument, or complaint, must be amended to contain the new charge and elements of the offense. The Code of Criminal Procedure provides that a defendant is entitled to notice of a complaint not later than the day before any proceeding, which means that the complaint would have to be amended by this time. TEX. CODE CRIM. PROC. art. 45.018(b). Additionally, the amended complaint must contain the language required by the Texas Code of Criminal Procedure. *Id.* at. art. 45.019.

A complaint cannot be amended if the statute of limitations on the offense has passed. A complaint for any Class C misdemeanor must be presented within two years from the date of the commission of the offense. *Id.* at. art. 12.02(b).

### **May our mayor also serve as the municipal judge?**

In some instances, the mayor can also serve as the municipal judge. In a general law city, the mayor is ex officio judge of the municipal court, unless the city council by ordinance authorizes the election or provides for the appointment and qualifications of the judge. TEX. GOV'T CODE § 29.004(b). Once a city passes an ordinance authorizing the election or appointment of a municipal judge, the mayor can no longer serve as municipal judge. In other words, the only way a mayor can serve as judge is if the city has not previously adopted an ordinance creating the office of municipal judge.

There is no similar Texas Government Code provision that allows the mayor of a home rule city to serve as the municipal judge. A municipal judge is considered an "officer" and is normally a paid position, so the mayor of a home rule city serving as municipal judge would violate the constitutional prohibition on dual officeholding. TEX. CONST. Art. XVI, § 40. If, however, the municipal judge was not a paid position and the charter allowed for it, a home rule city could possibly allow this practice.

### **May a city charge a fee for collections on delinquent payments of municipal court fines?**

Yes. The council of each city may pass an ordinance prescribing rules to enforce the collection of fines imposed by a municipal court. TEX. CODE CRIM. PROC. art. 45.203. A city may enforce the collection of fines by a special expense, not to exceed \$25, for the issuance and service of a warrant of arrest for the offenses of Failure to Appear (FTA) or a Violation of a Promise to Appear (VPTA). (These are considered two different offenses; FTA refers to not showing up to court after posting bail, whereas VPTA refers to not making an appearance after receiving a citation.) *Id.* Any money collected is deposited into the city treasury for the use and benefit of the city.