

Opinion_Committee

From: John Mark Cobern <tituscountyattorney@gmail.com>
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OPINION COMMITTEE

RQ-1114-GA

FILE # ML-47234-13
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Honorable Gregg Abbott:

I am requesting your opinion on the following issue:

Can a county commissioners court promulgate regulations that prohibit a independently elected county official from keeping his or her personal pet in his or her county office?

I have supplied the required brief. I am also waving the Section 402.042(c) requirements.If you need any further assistance please don't hesitate to contact me. Thank you for your assistance on this matter.

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BRIEF

ISSUE:

Can a county commissioners court promulgate regulations that prohibit a independently elected county official from keeping his or her personal pet in his or her county office?

STATEMENT OF THE CASE:

The Titus County Attorney's Office is located on the first floor of the Titus County Courthouse. The county attorney's office consists of two rooms, a large room for staff and a second office for the county attorney. A wood and glass key coded locked partition separates the office staff from the general public upon entry into the main office area. The general public does not have direct access to the county attorney's individual office except through the partition. For the past three years, I have been bringing my dog, a sixteen-year-old miniature dachshund, to my county office. The primary reason for bringing my dog to the county office was to make my office a safer work environment. My job responsibilities require me to interact with pro-se criminal defendants and parents whose parental rights may be terminated, among others. This frequently results in having to interact with the mentally ill and potentially unstable individuals. These are the types of individuals who are prone to extreme acts of violence such as the mass shootings we have witnessed recently. It has been my experience that a dog's presence often can have a calming effect these individuals. With the violence directed towards prosecutors, I feel that a dog's presence in my office makes my work environment safer. This

particular animal has never bitten anyone and the breed is not known to be aggressive.

On Monday March 10, 2013, the Titus County Commissioners voted to ban all animals from Titus County building, which would include all independently elected county officials.

ARGUMENT:

A commissioners court derives its power from Article V, Section 18 of the Texas Constitution. Article V, Section 18 provides the court shall “exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the law of the State” Furthermore, Local Government Code section 291.001 states that commissioners courts shall maintain the courthouse, offices, and other public buildings. Texas courts have found that a commissioners courts possess implied authority to keep county buildings and facilities in repair. See *Dodson v. Marshall*, 118 S.W.2nd 621, 623 (Tex. Civ. App.—Waco 1938, writ dismiss’d) The Texas Attorney General has opined that the county commissioners court has broad authority over all county businesses. See Attorney General Opinion No. DM-183.

The commissioners court has full authority to allocate space within the courthouse, employ necessary maintenance and janitorial personnel, and otherwise exercise general control over the courthouse. However, this implied authority granted to commissioners courts to exercise general control over the courthouse does not allow a commissioners court to intrude upon the domain of other independently elected officials. Elected county offices hold “virtually absolute sway over the particular tasks or areas of responsibility entrusted to [them] by statute”

Hooten v. Enriquez, 863 S.W.2d 522, 531 (Tex.App—El Paso 1993, no writ)

Furthermore, the court in *Abbott v. Pollock* stated “in Texas, an elected officer occupies a sphere of authority, which is delegated to that officer by the Constitution and law, which another officer may not interfere with or usurp.” *Abbott v. Pollock*, 946 S.W.2d 513, 517 (Tex. App—Austin 1997, pet. Denied) The court in *Abbott* went on to state “the sphere-of-authority limitation on a commissioners court’s power is “founded in the policy that elected officers...discharge the public trust and carry the responsibility for the proper discharge of that trust.” *Id.* at 517.

In Attorney General Opinion DM-183, the Attorney General agreed with this assessment. In that opinion, the Attorney General found that a commissioners court could make the courthouse a smoke free environment. However, the opinion stopped short of allowing the authority to ban smoking in the office of an independently elected county official. See footnote 1. Furthermore, the Attorney General has also stated that a commissioners court can set holidays by statute but that authority does not extend to setting office hours for an office of an independently elected county official. See Attorney General Opinion JM-440.

CONCLUSION:

Commissioners courts have the general authority to regulate the county’s courthouse. However, this authority would only apply to the public and not to independently elected county officials. This implied authority could also never extend into an independently elected county official’s office. If a county official determines that having a dog in his or her office provides a safer work environment for that official and his or her staff, it is well within that official holders

discretion to make that decision. No statute exists specifically granting a commissioners court with the authority to ban animals from a courthouse. With the increasing violence directed towards prosecutors in this state and around the county, a decision involving the safety of that prosecutor and his or her staff is a decision clearly within his or her sphere of authority. Overwhelming data exists supporting the idea that animals, such as dogs, provide a calming effect on the mentally ill and can therefore result in a safer work environment. And independently elected county official such as a county attorney has this authority delegated to him or her by the Constitution and law, which another officer such as a commissioners court may not interfere with or usurp.