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OPINION COMMITTEE



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OFFICE OF COURT ADMINISTRATION

DAVID SLAYTON
Administrative Director

September 23, 2014

The Honorable Greg Abbott
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548

Re: Request for opinion regarding the authority of a constitutional county court judge or commissioners court to appoint and terminate a court administrator for the county's district and statutory county courts

Dear General Abbott:

I respectfully submit this opinion request on behalf of Judge Lonnie Cox, the judge of the 56th Judicial District and local administrative judge for Galveston County. We seek your opinion regarding the authority of a constitutional county judge or commissioners court to appoint and terminate staff assigned to perform judicial functions for the district and statutory county courts in the county.

Background

On July 24, 2014, the Galveston County Judge ("county judge"), without input or approval from the district and statutory county court judges in the county, terminated the employment of the Justice Administrator for Galveston County (the "court administrator"). The court administrator was responsible for various functions related to the management of the district and statutory county courts in the county. These functions included managing the courts' caseloads, developing and implementing procedures for the processing and docketing of cases, maintaining and submitting statistical court data to the State, coordinating magistrate operations, and directing the operations of the courts, including developing the budget, auditing and approving the department's expenditures and payroll, and supervising and disciplining non-court employees who work on general judicial functions. The court administrator was also responsible for ensuring compliance with the Texas Fair Defense Act.

Galveston County's first court administrator position was approved by the commissioners court in 1993, and the original court administrator was selected by the county's district court judges. Approximately three years later, at the request of the district court judges, the commissioners

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court approved the establishment of Galveston County's Office of Court Administration and the original court administrator was appointed as director/court administrator by the district court judges. The original director/court administrator resigned his position in 2000, and the district and statutory county court judges appointed a new director/court administrator, or as the position is also called, the justice administrator. This director/court administrator is the person who was terminated by the county judge last month.

Shortly after the termination of the director/court administrator, a notice to fill the vacancy was posted on the county's website, and the Human Resources Director has established an interview process without input from the judges. Though judges have been invited to attend the interviews, the actual selection process has not been explained to them. We can only deduce that since the judges did not post the position, did not screen the applicants nor select the persons to be interviewed, the judges will not be making the final decision regarding the person who will fill the position.

Discussion

It is Judge Cox's and the State Office of Court Administration's (OCA) position that the authority to appoint and terminate court personnel lies with the courts, not the county judge nor the commissioners court, and the county judge's termination of the court administrator and proposed selection of her replacement violates the separation of powers doctrine and infringes on the courts' inherent power. This action also violates Local Government Code Sec. 151.004 which prohibits the county judge and commissioners court from attempting to influence the appointment of a person to a position authorized by the commissioners court for the department of another district, county or precinct officer in the county.

Separation of Powers and Inherent Power

The Texas Constitution's separation of powers provision is found in Art. II, Sec. 1. It provides:

The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are judicial to another; and no person, or collection of persons, being one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

The court in *Dist. Judges of the 188th Jud. District v. County Judge and Comm'rs Court of Gregg County*, 657 S.W.2d 908 (Tex. App. – Texarkana 1983, writ ref'd n.r.e.) summarized the separation of powers doctrine as follows:

Our Constitution distributes the powers of government among three separate and independent branches, thereby creating a system of checks and balances which has served us well as a guard against usurpation and tyranny. For this separation

of powers principle to operate effectively as intended, there must be a reasonable and proper exercise of power by each branch and harmonious cooperation among the three.

Texas courts also have “inherent” power which “springs from the doctrine of separation of powers between the three governmental branches.” *Eichelberger v. Eichelberger*, 582 SW2d 395, 398-99 (Tex. 1979). This “inherent” judicial power is “not derived from legislative grant or specific constitutional provision, but from the very fact that the court has been created and charged by the constitution with certain duties and responsibilities.” *Id.* at 398. “This power exists to enable our courts to effectively perform their judicial functions and to protect their dignity, independence and integrity” and “has existed since the days of the Inns of Court in common law English jurisprudence.” *Id.* at 399. When the spirit of cooperation between the branches fails, “the judiciary must resort to its inherent power to insure that it will have the means to discharge its responsibilities.” *Dist. Judges of the 188th Jud. District* at 909.

Citing *Vondy v. Comm'rs Court of Uvalde County*, 620 S.W.2d 104 (Tex. 1981) and other cases, the court in *Dist. Judges of the 188th Jud. District* stated that the proposition “that the judicial branch of government possesses inherent power to require the legislative and executive branches to provide essential staffing and facilities for it to properly perform its judicial functions is no longer open to serious question.” *Id.* at 109. See also *Comm'rs Court of Lubbock County v. Martin*, 471 S.W.2d 100, 109 (Tex. Civ. App. – Amarillo 1971, writ ref'd n.r.e.). Your office has also opined that legislative or executive branch interference with the judiciary’s employment of persons necessary for it to function adequately could, under some circumstances, have equally negative consequences for the judiciary as if the legislative branch were to refuse to adequately fund the courts. Tex. Att’y Gen. Op. No. JC – 0563 (2002) at 6.

The county judge and the commissioners court attempt to control the appointment and termination of personnel assigned to serve as court administrator for the district and statutory county courts infringes on the courts’ inherent power to discharge their duties and appoint their own staff.

Judicial Branch’s Authority to Hire Court Administrator in Galveston County

Subchapter F of Chapter 75 of the Government Code authorizes the courts in certain counties to establish a court administration system and appoint a court administrator. Though the courts in Galveston County do not have specific statutory authority under Chapter 75, they do have general authority under Sec. 74.103 of the Government Code to appoint appropriate staff and support personnel according to the needs of the county. See discussion in Tex. Att’y Gen. Op. GA – 1032 (2013) at 3, regarding the court’s ability to rely on Sec. 74.103 and the court’s inherent power to appoint necessary personnel.

To appoint personnel under Sec. 74.103, the courts in Galveston County are required to follow the procedure outlined in Sec. 151.001 of the Local Government Code. Sec. 151.001(a) provides:

A district, county, or precinct officer who requires the services of deputies, assistants, or clerks in the performance of the officer's duties shall apply to the commissioners court of the county in which the officer serves for the authority to appoint the employees. If the county has a population of more than 190,000, the officer shall apply for the authority to appoint any other kinds of employees.^{1, 2}

Once a position is approved by the commissioners court under Sec. 151.001, the officer applying for the position may appoint a person to fill the position and neither the commissioners court nor a member of the commissioners court can attempt to influence the appointment of a person to the position that was approved. Tex. Gov't Code Secs. 151.003 and 151.004. *Renfro v. Shropshire* 566 S.W.2d 688 (Tex. Civ. App.--Eastland 1978, writ ref'd n.r.e.) (citing Tex. Rev. Civ. Stat. Ann. Art. 3902, the predecessor provision to Local Gov't Code Sec. 151.001, et. seq.); Tex. Att'y Gen. Op. No. GA-0656 (2008).

Both Sec. 151.003 of the Local Government Code and cases and attorney general opinions interpreting this provision are clear - the commissioners court and the county judge are without authority to hire or terminate a person who fills a position that was approved by the commissioners court for another department in the county. Thus, neither the county judge nor the commissioners court has authority to appoint or terminate a court administrator for the district and statutory county courts in Galveston County, a position that previously was approved by the commissioners court for the district and statutory county court judges of Galveston County.

Limited Authority of Commissioners Court and County Judge to Hire Staff

We do not dispute that commissioners courts and county judges have authority to employ staff to assist them in carrying out their statutory and constitutional duties. Art. V, section 18 of the Texas Constitution gives the commissioners court the authority to exercise the powers and jurisdiction over all county business as conferred by the Constitution and the laws of the State and "under this provision, and the statutes defining its powers, the commissioners court has implied authority to employ persons necessary to carry out county business." Tex. Att'y Gen. Op. No. JM - 521 (1986). However, it does not have the power to appoint or terminate nor dictate the terms of employment of other elected officials' staff. *See Abbot v. Pollock* 946 S.W.2d 513 (Tex. App.—Austin 1997, writ denied) (commissioners' court cannot appoint or terminate a sheriff's office employee); *Renfro v. Shropshire* 566 S.W.2d 688 (Tex. Civ. App.--Eastland 1978, writ ref'd n.r.e.) (commissioners court does not have the right to screen applicants or to veto appointments made by the county clerk to positions at various salary steps); *Commissioners Court of Shelby County v. Ross* 809 S.W.2d 754 (Tex. App. —Tyler 1991, no writ) (commissioners court has authority to determine number of deputies to be appointed and

¹ The 2010 Census Population of Galveston County was 291,307.

² Arguably, the courts would have the authority to request positions under Sec. 151.001 even without the specific statutory authority to appoint appropriate staff and support personnel provided under Sec. 74.103 of the Government Code.

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their compensation, but sheriff has absolute right to determine who shall be appointed); Tex. Att’y Gen. Op. No. GA-0656 (2008) (when a commissioners court has approved an elected officer’s application to appoint certain positions, it is the elected county officer who may appoint the employees). Elected county officers have a “sphere of influence” or “sphere of authority” “with which another officer may not interfere and which may not be usurped.” See Tex. Att’y Gen. Op. No. GA-0322 (2005) referencing *Pritchard & Abbott v. McKenna*, 350 S.W.2d 333, 335 (Tex. 1961) and *Renken v. Harris County*, 808 S.W.2d 222, 226 (Tex. App.-Houston [14th Dist.] 1991, no writ). See also Att’y Gen. Op. No. GA-0656 (2008).

We agree that the commissioners court has the authority to hire personnel needed for its own functions; our position is that this authority does not authorize them to usurp the Galveston County courts’ inherent and statutory authority to appoint and terminate court personnel appointed to positions approved by the commissioners court under Sec. 151.001 of the Local Government Code. Additionally, as discussed above, Sec. 151.004 of the Local Government Code specifically prohibits the commissioners court and any member of the court, including the county judge, from interfering in the appointment of a person to a position authorized by the commissioners court under Sec. 151.001 of the Government Code.

Conclusion

The appointment and termination of court personnel by the county judge or commissioners court violates the separation of powers doctrine and infringes on the courts’ inherent authority to administer justice and appoint court personnel. Though a commissioners court has the authority to hire personnel needed for its own functions, it does not have the authority to appoint personnel of other elected officials nor does it have the authority to usurp the authority of a district or statutory county court judge to appoint personnel for the courts. A position required to assist the district and statutory county courts would have to be authorized by the commissioners court under Sec. 151.001 of the Local Government Code. Once approved, however, the commissioners court and the county judge are without authority to interfere in the courts’ appointment.

Thank you for your consideration of our request. We look forward to your opinion.

Sincerely,



David Slayton
Administrative Director

Attachment