

# ABC'S OF COUNTY GOVERNMENT

## And Some Tips for Newly-Elected Officials

### Introduction

While the County Commissioners Court is the focal point of county government in Texas it is also one of the most confusing and least understood local institutions. Although this institution has far-reaching effects upon the lives of every Texan, few really understand exactly what it is, what it can do, how it is organized and how it governs them. County government tends to be viewed as a rural institution. Urban Texans often ignore county government at the ballot box and pay more attention to their city governments. This article attempts to explain the organization, powers and duties of the commissioner court and to point out why the court is an important local institution for both urban and rural residents.

### What is a county?

Before examining the county commissioners court it is necessary to understand the legal nature and status of county governments and how they differ from city governments. Counties traditionally have been considered to be local subdivisions of the state, created by the sovereign power of the state of its own sovereign will, without the particular solicitation, consent or concurrent action of the people who inhabit them. Thus, the state creates the county as an administrative arm to aid it in the administration of state business and not as an institution of local residents request. A city is created at the request of the local inhabitants, primarily to serve local needs that are not common with the whole state. A city is not created as an administrative arm of the state, although it may perform some state functions.

In Texas, all counties have exactly the same form of government except for minor differences in some urban counties where the state has allowed additional offices and courts. Cities, or more correctly the municipal corporations, have many forms of government. These differences result from the fact that a city is granted a charter which prescribes its structure, functions and powers. A charter might be described as a "mini-constitution," however, the term constitution is not accurate since there is no grant of the sovereignty, and the state may retract the charter. The state, in granting the charter, is creating a public corporation, thus the term municipal corporation. Since counties are not granted charters by the state, they are not considered municipal corporations, but rather are often referred to as quasi-municipal corporations.

This distinction between municipal corporations and quasi-municipal corporations is an important one. In essence this means the municipal corporation has a greater right of local self government and a broader grant of power. The city has a broader area in which it can act without obtaining state authorization. The county has a very limited right of local self government and a more limited grant of power. The county is more dependent upon grants of authority from the state legislature.

With this greater grant of power and right of local self government which is given the city, comes greater responsibility for its actions. Thus, cities have greater liability for actions in certain areas and less protection by the state. The county, as an administrative arm of the state, has less liability for action and more state protection. The functions of the county are political and administrative, and the powers conferred upon them are more duties imposed than privileges granted.

Thus, the differences between the city and county are primarily, but not totally, one of degree. These differences can best be displayed in the chart below.

#### COUNTY

1. Created by the state.
2. Not granted a charter.
3. Primarily performs functions of the state; an administrative arm.

#### CITY

1. Created at request of local residents.
2. Granted a charter.
3. Primarily serves local residents

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|--|---|
| 4. Generally limited in powers by the state constitution and state legislative action. | 4. Limited primarily by charter. Broader grant of power from state. |
| 5. Limited range of liability for actions.   | 5. More extensive range of liability for actions.                   |

## Organization of County Government in Texas

Every county in Texas, regardless of its population or land area, has exactly the same structure for its commissioners court. Each county is divided into four commissioners precincts which might be described as legislative districts since they must follow the principle of one man, one vote. In each of these precincts the qualified voters of that precinct elect one county commissioner. The entire county elects a county judge. The commissioners, so elected, with the county judge as presiding officer, compose the county commissioners court.

## Qualifications and Election to Office

The qualifications for the office of county judge and the office of county commissioner differ only slightly. The judge must be "well informed in law," but this does not mean he must be a lawyer. Candidates for both offices must be citizens of the United States and residents of the state for at least one year prior to the first primary election. Candidates for the office of commissioner must be residents of the precinct for six months prior to election and the candidate for county judge must be a resident of the county for the same period of time prior to election. Candidates for both offices must be qualified electors. One can assume this would now set the age limit for holding these offices at 18 years, since no legislation exists imposing a specific age limit.

The county judge and county commissioners are elected to four year terms, with two of the four commissioners being elected every two years. Both offices also require candidates to be nominated in the party primaries if the party holds primary elections, but this does not prohibit a person running as an independent or non-partisan. All candidates must also stand for election in the November general election.

Once elected, a candidate must take the oath of office and post bond in support of that oath. Bond for commissioners is \$3,000 and for each county judge the bond is between \$1,000 and \$10,000, determined by the commissioners court. Once bond is posted, all officers take office on the first day of January following their election.

If a vacancy in a county office occurs by any means it is filled by appointment. The commissioners court fills a vacancy in the office of county judge, and most other elected county offices. A vacancy in the office of county commissioner is filled by the county judge. A vacancy in the office of district clerk or auditor is filled by the district judge or judges. A vacancy in the office of district attorney is filled by the Governor. It should be noted, however, that the commissioners court may not remove any elected official from office. This can be done only by the district judge and only for official misconduct.

In addition to the commissioners court, most counties also have the following officials, elected by the voters for four year terms: a tax assessor-collector, a county clerk, a county attorney, a county treasurer, justices of the peace (and usually an equal number of constables), a district clerk, a district attorney and a sheriff. In smaller counties, some of the above offices may be combined into one office; for example, a county and district clerk, and a sheriff-tax assessor/collector.

## Who are County Commissioners?

While no comprehensive study of the background of county commissioners in Texas has been conducted, there is some data on these officials. Data used in this study is from a 1971 survey, conducted by the Department of Political Science at Texas A&M University, of 25 percent of the county commissioners in Texas gathered by mail questionnaire. The average county commissioner tends to be a home town or home county resident. Most (56%) were born in the county from which they were elected, and only a small percentage were born out of state (12%). The remainder were born in other Texas counties. Most have been life-long residents of the county, with only 15 percent living in the

county less than 20 years. The median age of county commissioners is 56 years old, with 33 percent over the age of sixty and none below 30 years of age.

The educational level of the county commissioners is somewhat comparable with the state as a whole. Most, or 81 percent surveyed in 1971, had a high school education, 10 percent were high school graduates with some additional training, and 8 percent have a college education. Today, more and more college graduates are being elected as county commissioners. In terms of occupation, 64 percent list farming and ranching as their occupation, and only 11 percent list non-farm. The remainder (25%) list the county commissioners' job as full time occupation. The high percentage of farmers and ranchers results from the fact that most counties in Texas are rural and so few are urban.

Most county commissioners surveyed had not had much previous political experience. Only 12 percent have held any other elected office before becoming a county commissioner. Additionally, most began their political careers late in life, with 57 percent beginning after the age of 40 years.

## **The County Commissioners Court as an Executive, Legislative and Judicial Body**

One frequently asked question by students of Texas government is: "I don't understand. Is the commissioners court an executive, legislative or judicial body?" The easiest way to answer this is to say that the commissioners court is all three: part executive, part legislative, and part judicial. This fact is the source of much confusion.

The judicial powers of the commissioners court are granted by the Texas Constitution in Article V, Section 1, which states the following: "The judicial power of this state is vested in one Supreme Court, in Courts of Civil Appeals, in Courts of Criminal Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justice of the Peace, and in such courts as may be provided by law." Thus, the state constitution created the commissioners court, and subsequent court decisions have recognized the commissioners court as a court of law. The only means of challenging its decisions is judicial review by higher courts. The Constitution gives the district court appellate jurisdiction and general supervisory control over the commissioners court. No constitutional or statutory provisions are made for appealing decisions, however, judicial usage has provided such a procedure.

The courts have also recognized that the commissioners court possesses the legislative powers of the county. Since no other unit of county government has been recognized by the courts as possessing any legislative power, one must assume all such power rests with the commissioners court. However, since the county is legally an arm of the state it does not possess general legislative power, but limited power.

The degree of legislative power possessed by the county commissioners court became an issue in 1966 reapportionment cases. In the now famous *Avery v. Midland County* case, the Texas Supreme Court declared that it was unnecessary for the commissioners' precincts to be of equal population, as the legislative functions of the commissioners court were negligible. However, the United States Supreme Court reversed this decision by saying that although the commissioners court may not be "easily classified in the neat categories favored by civic texts..." it does possess the power to make decisions which have a "broad range of impacts on all citizens of the county ..." and is a legislative body.

Thus, the commissioners court has been recognized as a legislative body with broad enough legislative powers to require equal apportionment of its commissioners' precincts.

The commissioners court has also been declared by the courts to be a quasi-executive body and the legal head of the county. Executive functions include such activities as supervision of other divisions of county government, supervision of expenditures of funds, supervision of road maintenance and construction, appointment of county health officials and other minor officials, and the filling of vacancies in county offices. The county judge's administrative functions take on some of the trappings of a mayor or city manager of a city and the functions of the commissioner court resemble those of a city council. However, the power of the county judge is more limited than most city managers who appoint department heads. In county government, "department heads" such as the county clerk and sheriff are

constitutional offices and elected by the people.

Thus, the commissioners court possesses all three powers which are normally thought of as being separate in the American tradition. It might be described as a mixture of powers rather than separation. It is a court of general jurisdiction when acting within the sphere of powers conferred it by law. Its actions have the effect of court decisions; however, it lacks several attributes of a court.

Courts of law usually differ from either executive or legislative bodies in terms of policy or decision making in the following ways. First, courts do not normally initiate policy decisions but must wait until a case is brought to them. Secondly, before a court can hear a case, there must be a real controversy between two or more disputing parties. Thirdly, court procedures are governed by established rules. Procedures are more formal and require special legal skills. This leads to a decorum which, for the most part, is absent in legislative and executive bodies. Fourth, courts of law must confine their decisions to the specifics of the case and cannot make general policy decisions or statements.

The point is, that the commissioners court in its actions and proceedings is not governed by this same set of rules. It does initiate policy and decide matters in which there is no controversy between two or more disputing parties. It is not governed by courtroom procedures and does make general policy decisions.

If one were to attend a meeting of a commissioners court and a meeting of a city council, it would be very difficult to observe more than minor differences in the mode of operation. The commissioner court looks and acts like a legislative body, not a court. It sets the tax rate, approves the budget and generally determines policy for the county. At the same time, it performs executive functions, some of which are mentioned above. In addition, each county commissioner performs executive functions within his own precinct; most notable is the supervision of the construction and maintenance of county roads.

In conclusion, although the commissioners court is a court of law and its decisions have the protection of a court of law; in action and practice it is a legislative and executive body. In short, the commissioners court is the principal policy-determining body of the county and not a court in the true sense of the term.

One final point is that the commissioners court is often confused with the county court. In every Texas county, there is also a constitutional county court presided over by the county judge. However, the constitutional county court is not the same body as the commissioners court. It is a regular court of law hearing both criminal and civil cases. In most counties, the county judge has a dual role, presiding over both the county court and the commissioners court.

In more populous urban counties, the Legislature and amendments to the Constitution have provided for the creation of additional county courts to relieve the crowded dockets of the constitutional county courts. These courts generally have specific functions such as probate courts, county criminal courts, and county civil courts. Judges elected to these special county courts at law have no relationship with the commissioners court and must be attorneys licensed to practice in Texas. The judge elected to the first created or constitutional county court presides over the commissioners court and is not required to be an attorney. Residents of urban counties where these courts are located may have difficulty at the ballot box distinguishing which county judge will serve as the chief administrative officer and county judge, and which will serve only as a court judge.

## **Procedures, Powers and Duties of Commissioners Court Procedures**

The regular meeting of the commissioners court may now be any day of the week and is set by the commissioners court itself. If business requires, the court may meet for one week. Special meetings may be called by the county judge and any three commissioners and last until the business is completed. All meetings are open to the public, and public notices of all meetings are required.

The county judge is the presiding officer of the commissioners court and in his absence any commissioner may be selected to preside over the court. The county judge has no discretionary power to decide, for example, what busi-

ness the court will hear, or what motions will be considered. The body as a whole decides this. The county judge is a voting member of the court, although in many counties, by custom he votes only in cases of ties. There must be a quorum of the five member commissioners court to transact county business. Any three court members including the judge (that is 3 commissioners or 2 commissioners and the judge) constitute a quorum for all county business, except setting the county tax rate when four court members must be present.

The county clerk serves as the ex-officio clerk of the commissioners court and keeps all records and issues all notices of the proceedings of the court. Citizens wishing to review the minutes and proceedings of the meetings can do so in the county clerk's office. The county judge reads the minutes of the court from previous meetings or may request the county clerk to read them.

There is some question as to what constitute a quorum. One statute says the county judge and any three members constitute a quorum, however, the Texas Supreme Court in 1903 ruled that any three members of the court could constitute a quorum. Whenever the court acts as a quorum, its actions are binding on the county. If less than a quorum, or any individual member acts independently of the court, such actions are not binding on the whole county.

## **Powers and Duties**

As was pointed out earlier, while the commissioners court is recognized as a part of the state judiciary, its major powers and duties are executive/administrative and legislative in nature. These executive and legislative duties are granted in rather specific or limited terms by the Constitution and state statutes or legislative acts. The county does not possess, as do cities, charters with broad grants of power. The Texas Constitution limits the commissioners court to strictly county business, and this jurisdiction cannot be enlarged. Counties may do only what is expressly authorized in the State Constitution or by statute.

The Texas Constitution grants fourteen specific powers to the commissioners court. These powers are as follows: 1) protect public money -- a restriction on how money is spent; 2) organize justice of the peace courts and precincts, determine boundaries and election; 3) redistrict the commissioners precincts (on basis of "one man, one vote"); 4) make appointments to fill vacancies in offices; 5) establish terms of the county court; 6) control school lands; 7) in counties of more than 10,000 population, call election to create office of assessor and collector of taxes; 8) establish and operate a county poor farm; 9) hold local option elections for sale of alcoholic beverages; 10) hold local stock law elections to determine if livestock should be allowed to run at large; 11) set salary of county officials; 12) establish pension plan for county officials; 13) in some counties, consolidate governmental functions by contract with other political subdivisions of the state located within an individual county; and 14) set the rate of taxation on property.

In addition to these constitutional powers, the State Legislature has granted other powers and duties to the commissioners court. These are as follows: 1) building of public roads; 2) control of the payment of sheriff out of county funds and establishment of county police force; 3) issue bonds to finance specific functions authorized by enabling legislation; 4) conduct and pay for county and certain special elections; 5) create special districts such as fresh water supply districts, drainage districts, etc.; 6) with approval of electorate, establish a county agricultural experiment station, issue bonds to finance construction and appoint the director; 7) approve the county budget; and 8) supervise the keeping of all county records.

Like the constitutional powers, these statutory powers are also restrictive in nature and are not general grants of power. In theory, if the county wanted any additional powers it would have to gain these either by a constitutional amendment or, if allowed by the Constitution, an act of the State Legislature. For example, a county could not decide to build, own and operate an electrical power plant or water system without an amendment to the Constitution. A city, on the other hand, could through an amendment to its charter, do either of these things. Only the local residents and not the state, would become involved in the municipal decision.

Thus, the county is a body with power limited by the Constitution and state acts and serves in those capacities primarily as an administrative arm of the state and not as an institution whose principle function is serving the local

inhabitants. However, this does not mean the county has no effect upon the local residents of the county. It has very far-reaching effects, but the citizens of the county are limited in their ability to control, limit or alter this effect. With cities, it is far easier to affect such change.

## **The Future of County Government**

Many large urban counties in Texas find it difficult to operate under the present system of county government which was designed for rural counties of the past. Urban counties are often faced with problems that are absent in rural areas of the state. For example, in most urban counties there are usually many municipalities, special districts, school districts and other units of local government with overlapping jurisdictions and duplications of service. Additionally, there are many problems that are county-wide in nature such as traffic and land use planning, and law enforcement. Under the present government structure, the county lacks the power to coordinate actions between these many units of government or to solve area-wide problems. This is due, in large part, to two factors. First, the county simply does not have the constitutional grant of power to meet these problems; secondly, the present county judge lacks administrative power to coordinate the various departments of county government which are headed by separate elected officials.

Over the years there have been many suggestions for granting the county additional power. One, which has been of some help, is for the county to go to the Legislature with each new problem. This rather piece meal approach has not been successful. A second is to grant the county home rule. In 1933, the Texas Constitution was amended to allow for home rule, but because of the difficulty of passing such a proposal, the amendment was repealed.

If urban problems are to be solved, there needs to be some coordination of policies and programs among local governments in the county. The county seems the most suitable unit of local government to do this, and in other areas of the United States, the county has assumed this role and performed it well.

## **Tips for Newly-Elected Commissioners Court Members and Other Officials**

- 1) Allow yourself enough time to be effective. Just attending commissioners court meetings or working eight hours a day is not enough -- you must study and discuss the problems, and keep yourself informed on what's going on. To do even a fair job takes a lot of time.
- 2) Pace yourself. Limit the number of meetings you attend. Set priorities, recognize the need to spend time with your family, and don't burn yourself out. Recognize that life -- and the county -- is dependent on a lot of things over which you have little control.
- 3) Don't make promises you can't deliver!
- 4) Treat everyone the same. Be consistent.
- 5) Don't spend most of your time checking on what other officials' staffs are doing. Your primary job is to provide policy direction for the county.
- 6) Always deal with people as if you will have to deal with them again.
- 7) Take your budget preparation job seriously, because it will determine what your county does or doesn't do for the coming year. It's the best policy development tool available to govern the county. And when budget cutbacks become necessary, don't cut back on those activities that are vital to the critical operations of the county.
- 8) Be alert for the little things. They are the things which always seem to grow and come back to get you.
- 9) Establish policy statements. Written policy statements let the public -- and other county officials -- know where they stand. They protect the employee and the county, and writing them provides a process consensus. "That's the way

it's always been done" is not a good enough reason to perpetuate old methods.

- 10) Maintain the infrastructure! Make certain you are adequately keeping up what you now have before taking on any new projects. Deferring maintenance to the future simply shifts your troubles to those who will follow you in the future.
- 11) Don't give quick answers when you're not sure of the real answer. It may be embarrassing to appear ignorant, but it can be more embarrassing to tell a person something that's wrong.
- 12) Don't be stampeded into action. Don't be misled by the strong demands of special interest groups who want it done now, their way. Your job is to find the long-term public interest of the county, and you may be listening to the wrong people.
- 13) Don't spring surprises on your fellow commissioners court members or other elected officials, especially at formal meetings. If a matter is worth bringing up for discussion, it's worth putting on the agenda. Surprises may get you some publicity -- sometimes at the embarrassment of others -- but tend to erode the "team" approach to local government.
- 14) Don't bypass the system! If you have a County Policy, stick to policy, and avoid personal involvement in day-to-day operations in other offices.
- 15) Formalize your personnel rules and regulations into manuals. Make sure they're clear. Once the rules are established, commissioners court member should avoid the temptation to get involved in personnel matters in individual offices.
- 16) Distribute your court meeting agenda several days prior to each meeting. It should be no secret what you are going to discuss, and a planned agenda permits orderly meetings.
- 17) Have as few closed meetings as possible. In government, there shouldn't be any secrets. You are there to represent the public. Don't hide anything from them; your attempt to do so will certainly result in trouble. Follow the law for any executive sessions you think are necessary.
- 18) Keep your constituents informed, using weekly columns in the local newspaper, radio interviews or news releases. Be friendly with the news media.
- 19) Keep your employees informed -- particularly those on the front line who make decisions and are in frequent contact with the people.
- 20) Appoint citizen advisory committees when you need them, but be prepared to follow their advice if you use them. Appointing your opponents to a committee can let them work for you instead of against you.
- 21) Hire the best people you can and give them as much responsibility as they can handle. There is always the possibility that they will get you into trouble at first, but if you stand behind them, eventually they can keep you out of trouble.
- 22) Charge your employees with being responsible for new ideas and better ways.
- 23) Don't simply ask your county attorney whether or not you can do something. Sometimes the most appropriate question is: "How can we legally accomplish the objective?"
- 24) If yours is a typical county, don't expect your county attorney to be an expert on every matter. County government is too complex. On occasion, you will need outside counsel and it will be a good investment.

- 25) Make sure you have a good financial accounting and reporting system. Some counties have gotten into financial trouble simply because they spent more money than they had available and nobody knew it. Regularly check with your County Treasurer as to balances in various accounts and funds.
- 26) Never put all of your trust in a consultant. You are the one who will be around to yell at if things don't turn out right.
- 27) Don't be hesitant to budget money for your fellow elected officials and employees to attend meetings and seminars. These provide learning opportunities and personal contacts which can be valuable to your county.
- 28) Finally, define what "trouble" means to you. You must realize that you now work in a fish-bowl environment and that most of the things you do affect people. Many times they will be affected in a manner they don't like. If trouble means having someone mad at you, you're in the wrong business! You should handle each item in a straightforward way that you know.