

Qualifications for office-holding and ethical standards of conduct

Elective positions, by their nature, require political acumen, political affiliation, an understanding of constituencies, and, to the extent permitted by law, the ability to implement politically based policies.

Generally, states may impose reasonable and neutral limitations on access to the ballot for election of officials. States need only meet a rational-basis test to justify the restrictions they impose.¹ "...[B]allot access cases...focus on the degree to which the challenged restrictions operate as a mechanism to exclude certain classes of candidates from the electoral process. The inquiry is whether the challenged restrictions unfairly or unnecessarily burden the 'availability' of political opportunity."²

First Amendment interests and fundamental rights (equal protection under the law) are threshold concepts that trigger judicial scrutiny of access to the ballot. For example, states will face a heavy burden when seeking to justify filing fees that impinge upon the rights of potential indigent candidates. Furthermore, regulations that place substantial limits upon independent or minor party candidates must also be justified by compelling state interests.³

QUALIFICATIONS FOR OFFICE-HOLDERS

States may adopt reasonable qualifications and standards for state office as long as they do not discriminate against protected categories of candidates in doing so. For instance, property ownership requirements would violate equal protection standards. Minimum age requirements have not been tested by the Supreme Court, but it seems likely they would be upheld, at least to a point, on the grounds that the state has a rational interest in assuring maturity and experience in state office-holders.⁴ To qualify for the presidency of the United States, a person must be at least thirty-five years of age when assuming office and be a natural-born citizen who has lived for at least 14 years in the United States.⁵

The US Supreme Court has upheld residency requirements for city employees, and its holding would presumably extend to candidates for public office. The Court has also summarily affirmed duration periods of residency as a requirement for candidates.⁶

Qualifications for office will obviously vary depending upon the prescribed duties and responsibilities. Boilerplate qualifications that are too stringent pose the problem of availability of candidates in some regions of the state.

Some county officials have statutorily designated qualification requirements in force. For example, a Constable is not eligible to serve without a high school diploma or a high school equivalency certificate and must be licensed under applicable sections of the Government Code (peace officer license). Failure to secure or maintain licensure will result in a forfeiture of the office.⁷ Most county officials have continuing educational requirements. (Local Government Code)

Qualifications for public office are usually very minimal. Prescribed qualifications for an appointed position can be commensurate with the demands of the position. Elective positions, by their nature, require political acumen, political affiliation, an understanding of constituencies, and, to the extent permitted by law, the ability to implement politically based policies. There are, however, no legal obstacles that would prohibit a job description

of an appointed department-head from including “public relations” so long as it is not directed toward the personal political liberties of the employee.⁸

“County officials are the stewards of the public’s money. Serving in that capacity, their standards are similar to those of a trustee, such as the exercise of reasonableness in protecting the best interests of their principals. This standard, however, is not free from difficulty in its application, for there are a multitude of principals to serve, who quite naturally will differ on what is prudent.”⁹

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THE ABUSE OF AUTHORITY AND EXPOSING CORRUPTION

Qualifications are not the only factor, however, in how a public servant ultimately performs. In his controversial work, “*The Prince*,” Niccolo Machiavelli states “Those who commit themselves and are not greedy should be honored and loved. Those who do not ... who are artfully influenced by ambition, exhibit a sign that they think more of themselves than of [the system] ... they will always, in adverse times, help bring downfall.”¹⁰ In a political speech made in 1770, William Pitt said it this way, “Power corrupts and absolute power corrupts absolutely. People in power are often corrupt, and the more power they possess, the more corrupt they are.”¹¹ Are these historical observations applicable today? It’s difficult to tell whether we have more corruption or more exposure of the corrupt public servants.

Additionally, the JFK biographer Richard Reeves in his “*Character Above All*” states “Power is what you do and character is who you are.” In a similar vein, John Adams, in his letter to Joseph Warren in 1776, stated “There must be a positive passion for the public good, the public interest.”

A good example of how power can influence us is the time when former Governor Ferguson was confronted with a question as to why he opposed the funding of the University of Texas. He replied: “I don’t have to give any reasons. I am the Governor of the State of Texas.” Ultimately, the House voted 21 Articles of Impeachment, and, in August 1917, the Senate convicted Ferguson on ten of the charges. “Farmer Jim” was even suspected of using state money for personal use and making no effort to retire a loan of \$156,000 from the beer industry.¹² None of this, however, prevented Ferguson from granting 20 pardons just prior to his removal.

No institution is immune from corruption. In 1998 a Texas jury ordered the Roman Catholic Diocese of Dallas to pay nearly \$120 million in damages for ignoring evidence a priest sexually molested 11 altar boys from 1977 to 1992. The church denied any cover-up and officials, who say the verdict is the largest of its kind ever, plan to appeal.¹³ History is replete with many such disgusting events, which are particularly disappointing when an entrusted loyalty is breached. The lesson may be that we should be sparing with grants of power and although some efficiency is given up in doing so, ultimately we gain by discouraging the temptation to use that “little larceny that resides in us all.”

In 1979 stories began to appear in the media that featured a dramatic political corruption scandal focused on Oklahoma County Commissioners (Okscam). Harry Holloway’s book, “*Bad Times for Good Ol’ Boys*,”¹⁴ is a study of such widespread corruption in Oklahoma counties. By 1984, Okscam included some 220 convictions in 60 of the state’s 77 counties.

Most of the corruption arose from kickbacks whereby suppliers and commissioners skimmed off invoice payments and pocketed bogus expenditures associated with county road building supplies.¹⁵

“The system ... would have corrupted most Saints. ... it left commissioners with too much money and discretion in the building of county roads.¹⁶ ... We did find structural weaknesses that fostered corruption—the segmentation of authority... and constituents would not take ‘no’ for an answer, but sought favors that were illegal.”¹⁷ (Holloway, “*Bad Times for Good Ol’ Boys*”)

It may be that the system itself is such that those who would can misuse it. Holloway offers this observation: “Over-centralization is pathological because it (1) causes the kind of delay that fails to clearly allocate responsibility while conflicting directives and duplicated effort is mired in rigid rules applied with little consideration of the specific case; (2) distorts decision making because it ignores experience and judgement at the line level; and (3) negatively affects morale by dis-empowering subordinates. It may seem paradoxical that over-centralized public bureaucracies are also afflicted with inadequate authority.”¹⁸

“... County commissioners, cannot be constrained to one set of rules without offending potential friends who think in terms of other rules and values.”¹⁹ “If I were designing institutional or structural features to create a vehicle for corrupt political behavior, I would use the Oklahoma system as a model.... The basic superstructure design ... appears to be faulty and permissive.”²⁰

Corruption and sleaze have, throughout the last century, marched inevitably onward—proliferating mightily. Some 1000 public officials were convicted (nationwide) between 1970 & 1977.²¹ “In the post-Watergate era, there have been so many ethics flaps, from Koreagate to Iran-Contra to the Jim Wright affair, that America seems to have a bad case of scandal fatigue.”²² “What the Founders have put asunder, the politicians must join together if anything is to be accomplished... the ‘bagman,’ the ‘political boss,’ and the ‘political party’ operate as independent branches of government through the exchange of favors.”²³

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REFORM MEASURES

Over the years Texas has enacted laws designed to deal with open government, sleaze and corruption including: Financial disclosure; campaign finance reporting; open meetings; open records; conflicts of interest; nepotism; whistleblower issues; televised and audio broadcasts of local government proceedings; bribery laws and others.²⁴

Successful reform measures resulting from Okscam included:

- use of a purchasing agent,
- use of state purchasing system,
- mandatory county training programs,
- new bid laws,
- state funding of district attorney’s budget,
- a stronger grand jury system,
- mandatory reapportionment,
- laws requiring a professional engineer; and
- mandatory county long range plans.

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Commonly prohibited activities among the states now include:

- acceptance of gifts or honoraria,
- receipt of compensation to influence the conduct of official duties,
- doing business with one's city/county,
- inappropriate use of public property, and
- misuse/unauthorized disclosure of non-public or confidential information.

Other provisions cover:

- nepotism,
- use of staff for personal benefit,
- using one's position to obtain financial benefits or privileges,
- voting on matters of personal (financial) interest,
- working for others on government time, and
- conducting political activities inside the workplace.

Under these codes, employees may be barred from running for public office or holding an office with their employing agency. Both public officials and staff might be restricted from service with an agency or an entity that regulates them professionally. In addition, a number of jurisdictions prohibit officials and staff from representing clients before a jurisdiction of the official or employee.

Other Ethical Standards. A few jurisdictions, however, take a different approach to identifying the ethical standards which public officials and employees should follow. The ethics code that applies to county tax commissioners in New Jersey avoids the legalistic detailing of prohibited practices found most commonly in ethics codes, relying instead on a layman's description of the standards of conduct that should be followed. Similarly, the City of Greenfield, Indiana and the state of Nevada lay out a layman's narrative of ethical standards.

Disclosure. Detailed attention also is devoted to conflict of interest issues, particularly regarding their avoidance and disclosure; other codes call for disclosure of financial assets and income. Some jurisdictions also extend disclosure requirements to the names of the clients of public officials and employees and the receipt of honoraria. Governments also may impose restrictions (e.g., constraints on doing business with the jurisdiction for one year) on officials and employees after they leave government service.

Enforcement. To enforce the ethical standards, a committee of five to nine members is typically established. Most commonly, the chief elected official and members of the governing body share in the appointment of members to the panel although some entities call upon the commission members themselves to select replacements once the initial appointments have been made. Advisory opinions may be issued to help guide officials and employees in their compliance efforts.

Penalties. Penalty provisions vary widely among jurisdictions with some type of fine, ranging from \$500 to \$25,000 per violation, common. Individuals can also be removed from office or dismissed from employment. In the event that the violator has benefited financially from his/her misconduct, reimbursement of the benefits received may be ordered and any affected contracts voided. The amount of restitution mandated may be two or three times the actual amount of the benefit. Other penalties available include suspension, demotion, reduction in salary, reprimand/censure, forfeiture of retirement benefits, or a jail sentence.

A statute of limitations may apply to the filing of complaints, with examples found ranging from three to five years after the unethical conduct was committed. Finally, some jurisdictions promote compliance with the standards by extending special protections to potential “whistle blowers.”

Neglect of Duty. Less commonly addressed is the more difficult matter of the lack of action or neglect of duty. One state (Arizona) law does provide for a criminal sanction in the area of neglect of responsibility: “A public officer or person holding a position of public trust or employment who knowingly omits to perform any duty, the performance of which is required of him by law, is guilty of a Class 2 misdemeanor unless special provision has been made for a punishment of such omission.”²⁵

Ethics. Ethics is a touchy subject everywhere. Rules are difficult to write and enforcing the rules is even harder. “Most places share a frustrating experience not unlike that of Rhode Island. ‘What we’re doing by over-legislating ethics is trying to get the bad guys, says Alan Rosenthal, the nation’s foremost scholar of legislative politics. But we’re never going to get the bad guys, because they are very good at being bad.’ What we succeed in doing is making life increasingly miserable and fraught with danger for the good guys.”²⁶ (*Governing, The Ethics Backlash*, Oct. 1999) Before entering upon the duties of office, all elected and appointive officials in Texas are required to take the official oath and execute a “statement of officer” (bribery statement).²⁷

Removal from Office. The procedures and grounds for removal from office are set out in the Local Government Code. Among the removal grounds are:

- incompetence (gross ignorance of official duties),
- gross carelessness in the discharge of duties because of serious physical or mental defects that did not exist at the time of the officer’s election,
- official misconduct (intentional, unlawful behavior relating to official duties),
- intoxication caused by alcoholic beverage,
- conviction by a petit jury of any felony, or
- conviction for a misdemeanor involving official.

A trial must take place in the county in which the officer resides.²⁸ Elected county officials can only be removed by a jury trial in district court.²⁹

The county auditor, an appointed official, is also subject to removal depending upon the circumstances. The county auditor may be removed from office for official misconduct or incompetence to faithfully discharge the duties of the office.³⁰

State Commission on Judicial Conduct. This Commission was created by an amendment to the Texas Constitution in 1965.³¹ “The Commission is an independent agency responsible for investigating allegations of judicial misconduct and judicial incapacity and for disciplining judges. All proceedings are confidential unless a judge elects to have the hearing open to the public. Its jurisdiction includes all sitting Texas judges; municipal judges, magistrates, justices of the peace, county judges, judges of the county courts-at-law, statutory probate judges, district judges, appellate judges, retired and former judges, and associate judges and masters, including Title IV-D masters. It does not include administrative hearing officers for state agencies or the State Office of Administrative Hearings, private mediators or arbitrators, or federal magistrates and judges.”³²

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The eleven member body consists of five judges appointed by the Texas Supreme Court (appellate, district, county court-at-law, justice of the peace, and municipal), two attorneys appointed by the State Bar of Texas, and four ordinary citizens appointed by the governor. All appointments must be from the various geographical areas of the state except for the justices of the peace, county courts-at-law and municipal judges, who serve “at large.”³³

Three thousand four hundred and forty-seven judges fall under the jurisdiction and authority of the Commission. The Commission is funded through the Appropriations Act of the State Legislature with funds coming from the General Revenue Fund and Criminal Justice Grants. For the year ending August 2001, the total annual amount appropriated was \$706,102.00. The Commission has fifteen full-time positions. The Executive Director is paid \$87,500 per annum.³⁴

The following tables provide a breakdown of the number of judges by type, the types of courts and the outcome of complaints files.

■ Courts, Judges and Complaints

COURTS		JUDGES		COMPLAINTS	
				1999	1998
District		Attorneys:		Received	772 922
County Court-at- Law		Justice of the Peace	38	# of those who were:	
Appellate		Municipal Judges	638	Constitutional Co. Judges*	8
Masters		Constitutional Co. Judges	50	Justices of the Peace**	211
Probate		Total	726	Disposition:	
Total	1,134	Non-Attorneys:		Removed from office	10
Municipal	1,216	Justice of the Peace	805	Resigned	6
Justice of the Peace	843	Municipal Judges	578	Sanctioned	57
Constitutional County	254	Constitutional Co. Judges	204	Charges dismissed	699
		Total	1,587		
Grand Total	3,447	Grand Total	2,313		

The rules by which we conduct ourselves are obviously important. To some extent, the structure we operate within affects our behavior. Many states, local governments, and professional associations have established codes of ethics and standards of conduct to guide public officials (both elected and appointed) and employees in the performance of their public duties

COUNTY PROFILES

Even though counties are the backbone of this nation’s communities, they are rarely in the spotlight. In 1988, a major television network program, the NBC Today Show, wanted to feature the Miami area on a nationwide broadcast. Of local governments in the area, Dade County government had the most significant profile by far with a budget over five times that of the City of Miami. The number of controversial issues with which Dade County

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contends is also significant. Nonetheless, the producers of the Today Show, knowing these facts, featured the Mayor in their broadcast.

With responsibility for prisoner care, the indigent, the sick, criminal adjudication, and the regulation of areas such as—sexually oriented businesses, counties have no prominent items that are popularly praiseworthy. That world, however, is changing with ever-growing focus on economic development, tourism and new government partnerships.

SUMMARY QUESTIONS

1. How are county officials viewed by the general public in terms of their (1) honesty, (2) professionalism, and (3) qualifications?
2. How do you view county officials in terms of their (1) honesty, (2) professionalism, and (3) qualifications?
3. Do the citizens trust government more now than a century ago? Please explain.
4. Do we need to elevate our professional profile? If so, how? If not, please state why.
5. Do you agree that counties would benefit from a higher profile? How could the profile be raised?
6. How can we go about achieving a higher level of professionalism and avoid appearances of impropriety?
7. How does one balance the federal requirement for open access to the ballot with the practical need for qualified officials?
8. Is a commission needed to regulate county officials? (The cost for such a commission has been estimated at \$200 per official per year.)

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END NOTES

- 1 *Clements v. Fashing*, 457 U.S. 957 (1982).
- 2 *Lubin v. Panish*, 415 S.W. 709.
- 3 *Modern Constitutional Law, Discrimination—Fundamental Interests*, Sec. 29.16 et. seq. 2nd Edition, Antieau, Chester James., West Group 1997.
- 4 *Ibid.* Section 29.21.
- 5 U.S. Constitution, Article II, Section 1, Clause 5.
- 6 *Turner v. Fouche*, 396 U.S. 346.
- 7 Section 84.009, Texas Local Government Code.
- 8 This statement is intended to foster discussion and debate and should not be used or relied upon in any other context.
- 9 Carey Boethel, “State of the County” 1995, Post Legislative Conference, Texas Association of Counties.
- 10 *The Prince*, Niccolo Machiavelli, Peter Bondanella Editor & Translator, Oxford University Press, 1984.
- 11 William Pitt (1708-78) British conservative, politician, speech January 9, 1770.
- 12 *Inside the Third House*, H.C. Pittman, Eakin Press, Austin, Texas, 1992, p. 2-7.
- 13 *The Wall Street Journal Almanac*, 1998 Ronald J. Alsop, Ballantine Books, New York, 1997 p. 51.
- 14 *Bad Times for Good Ol’ Boys*, University of Oklahoma Press, 1983 Harry Holloway.
- 15 *Ibid.* Chapter 1 p. 3
- 16 *Ibid.* Preface XI
- 17 *Ibid.* Chapter 7, p. 163.
- 18 *The Pursuit of Absolute Integrity, How Corruption Control Makes Government Ineffective*, Frank Anechiarico and James B. Jacobs, University of Chicago Press, 1996 p. 176.
- 19 Chapter 2, p. 47-48 citing note 22. Bertil Hanson, “County Commissioners in Oklahoma,” *Midwest Journal of Political Science* 9 (Nov. 1965): 388-400.
- 20 Chapter 2, p. 47 citing Phillip M. Simpson, *The County Government Scandals in Oklahoma: The Structure/Corruption Relationship*, Southern Political Science Association, Atlanta, Oct. 27-29, 1982.

- 21 US News & World Report, February 1977.
- 22 The Wall Street Journal, Jim Abramson, Wall Street Journal Almanac, 1998 Campaign-Finance Scandal p. 3-6.
- 23 James Q. Wilson, 1900's cited Harry Holloway, *Bad Times for Good Ol' Boys*, p. 45.
- 24 Vernon's Texas Annotated Codes: Local Government Code; Election Code; Government Code et seq.
- 25 Section 38 - 443 Arizona Criminal Code.
- 26 Governing, *The Ethics Backlash*, October 1999. P. 39.
- 27 Texas Constitution, Article XVI. Section 1., *Outline of Official Oath and Bond Requirements*, October 1999, p.2 Texas Association of Counties, Robert Lemens, General Counsel.
- 28 Chapter 87, Texas Local Government Code.
- 29 Texas Constitution, Article V. Section 24.
- 30 Chapter 85, Section 84.009, Texas Local Government Code.
- 31 Texas Constitution, Article V. Section 1-a.
- 32 Texas Bar Journal, Volume 63 No. 4 April 2000 p. 378.
- 33 See Appendix No. (Chapter 33, Government Code)
- 34 Appropriations Act, 76th Legislature Article IV-15.

The views expressed in this document are for discussion purposes and do not represent the views and/or opinions of The Texas Association of Counties, any Texas County represented by a PAG member, or any Texas County Officials Association.

Response Form

In order for the PAG to develop a county policy statement on this discussion paper, we need your input. Please take a moment to complete the following questions and submit your response to us by July 20, 2000.

If additional space is needed, please attachment additional sheets to this document. Thanks in advance for your suggestions and comments.

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Other comments:

Name

County

Title

Date