

Constitutional Constraints on County Judges

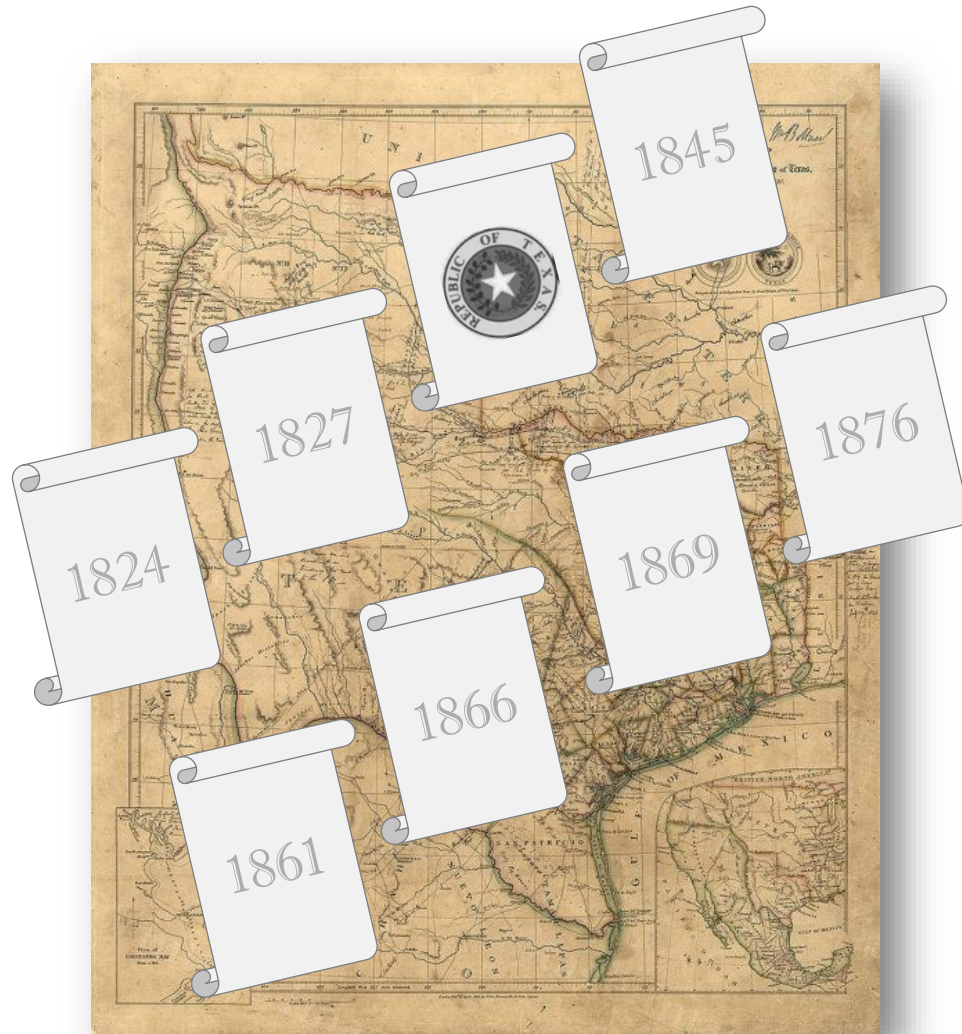
Garry Merritt, General Counsel



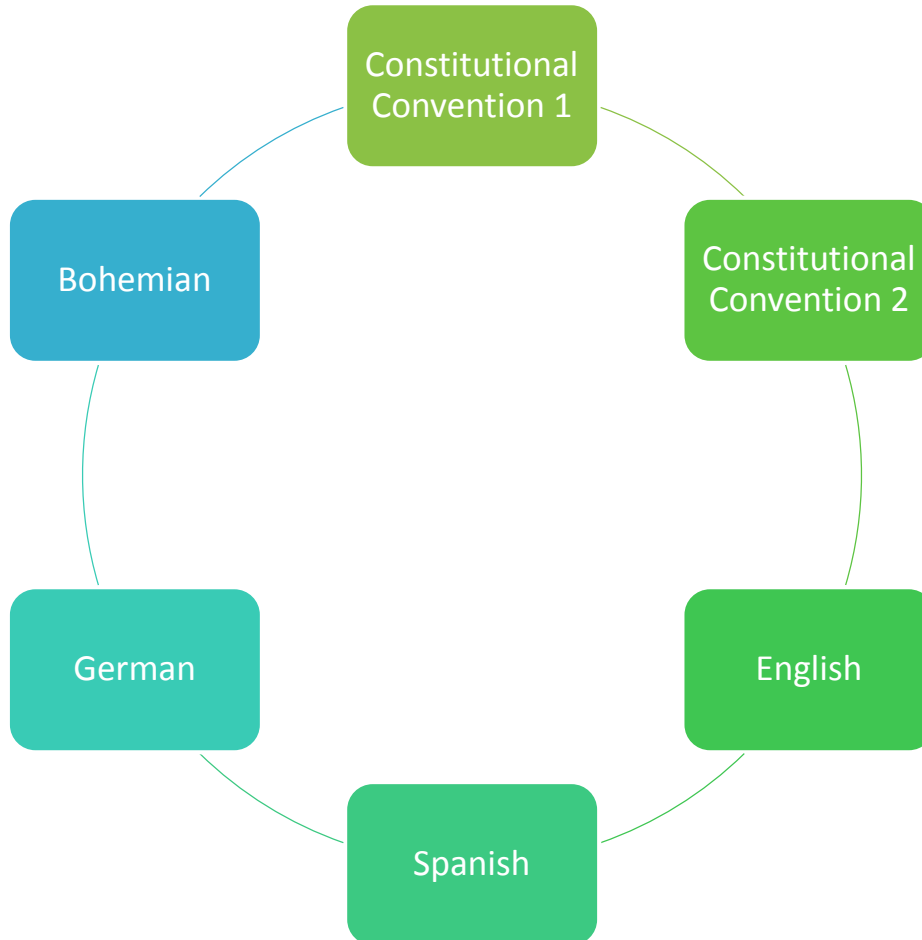
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HISTORY



SIX VERSIONS



COUNTIES

Article 9 §1

Creation of Counties

- “Unorganized” counties were often created by the legislature before they had population enough to support a county government.
- The last unorganized county disappeared in 1931; now all of the 254 Texas counties have been organized into administrative units.

COUNTIES

Article 9
§2

Removal of County Seats

- Only a majority vote is necessary to locate a county seat within the central five-mile limit; it requires a two-thirds vote to move it outside the five-mile limit.
- These restrictions were placed in the constitution in order to stop vexatious elections and petitions on the issue of the county seat.

COUNTIES

Article 11
§1

Counties as Legal Subdivisions

- A county is an involuntary political subdivision of the state created as an agency or arm of state government.
- Because counties are agents of the state, they have no powers except those which are set forth in the constitution and the statutes.

COUNTIES

Article 3
§56

Local and Special Laws

- The legislature is denied the right to pass any special private or local law, except as otherwise provided in the constitution, regulating the affairs of local governments.
- Prohibition against special laws has been only partially successful.

COUNTIES

Article 3
§64

Consolidation of Governmental Offices and Functions in Counties and Political Subdivisions

- The Legislature may by special statute provide for consolidation of governmental offices and functions.
- The county government or any political subdivision located therein may contract one with another.

COUNTIES

Article 11
§7

Counties And Cities On Gulf Of Mexico...

(a)...but no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund, except as provided by Subsection (b). . .

COUNTIES

Article 11
§7

Counties And Cities On Gulf Of Mexico...

(b) To increase efficiency and effectiveness to the greatest extent possible, the legislature may by general law authorize cities or counties to enter into interlocal contracts with other cities or counties without meeting the tax and sinking fund requirements under Subsection (a).

COUNTIES

Article 3
§52

Counties...Lending Credit; Grants; Investment Of Funds

- No county may “lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation”
- Over the years, this section has been litigated and has been the subject of many AG opinions.

COMMISSIONERS COURT

Article 5
§18

Division Of Counties Into Precincts...

- Consist of a county judge and four county commissioners elected by the voters of individual commissioners precincts.
- County judge is the presiding officer.
- Court has the authority to divide the county into four commissioners' precincts.
- Court shall exercise powers over county business as provided by law.

COUNTY JUDGE

Article 5
§15

County Court; County Judge

- County judges “shall be well informed in the law of the state”.
- In November, 1954, this section was amended increasing the tenure of office of a County Judge from two to four years.

COUNTY JUDGE

Article 5
§28

Vacancy in Office of...to be Filled by the Governor

- A vacancy in the office of County Judge or Justice of the Peace shall be filled by the Commissioners Court until the next succeeding General Election.
- Judge appointed to fill the vacancy holds office only for the unexpired term of his predecessor, since it is a vacancy of term and not of office.

COUNTY JUDGE

Article 5
§24

Removal of County Officers

- Not to punish the officer for any crime or dereliction, but to remove him from his office in the interest of the public
- Proceedings do not prevent the institution of criminal proceedings on an indictment if the offense for which the officer is removed is punishable criminally

COUNTY JUDGE

Article 16
§40

Holding More Than One Office

No person shall hold or exercise at the same time, more than one civil office of emolument

- Two questions must be answered to determine whether possession of two particular offices violate this section:
- Whether both positions are offices of emolument, and
- Whether the offices are both civil offices

COUNTY JUDGE

Article 16
§65

Automatic Resignation on Becoming Candidate For Another Office

- For an officeholder to announce his or her candidacy or to file for a public office other than the one he or she currently holds if more than a year and 30 days remain in the term.
- Specifically names county judge.

COUNTY JUDGE

Article 16
§17

Service of Public Officer Pending Qualification of Successor

- Resigned officer remains in office for all purposes until successor is appointed
- Commissioners court is not required to appoint a successor – subject to a quo warranto action.
- Reappointment after resignation prohibited

COUNTY JUDGE

Article 3
§19

Ineligibility of Persons Holding Other Offices

- County officeholder must resign to run for state legislature
- Limits the ability of judges and most county officeholders to run for or be appointed to the state legislature during their terms.

COUNTY EMPLOYEES

Article 3
§53

Payment of Extra Compensation or Unauthorized Claims Prohibited

- Prohibits the payment of “extra” compensation to employees and contractors of a county
- No retroactive pay raises

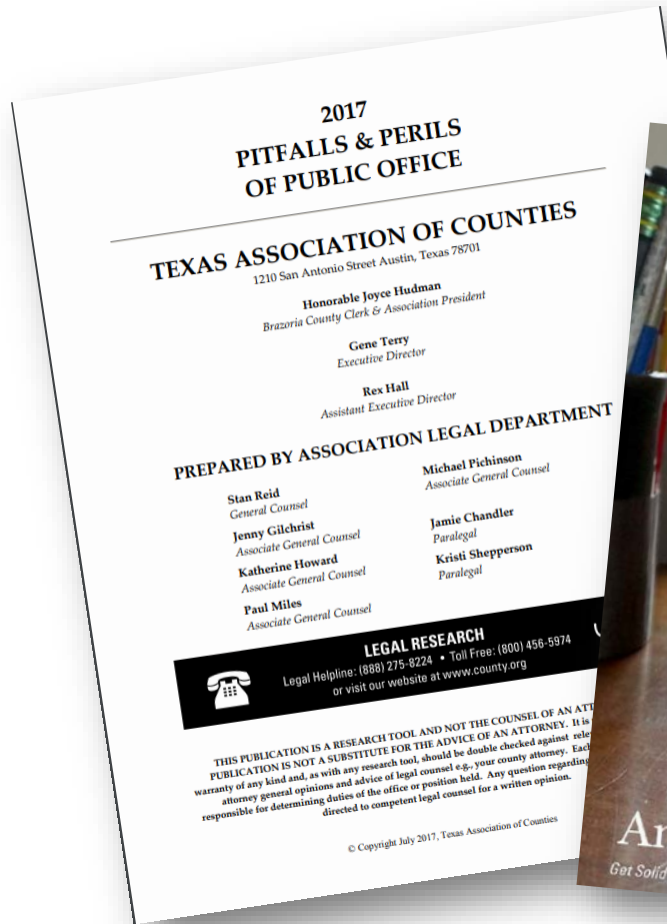
COUNTY EMPLOYEES AND OFFICIALS

Article 3
§55

Release Or Extinguishment Of Indebtedness To ...County...

- Local governments have no business insuring the acts of their employees and officials for which the government itself, by way of sovereign immunity, would not be liable.

RESOURCES



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