

SUBJECT: Allowing commissioners court members to practice law in other county courts

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 6 ayes — Lewis, W. Smith, Casteel, Chisum, Farabee, Flynn
1 nay — Quintanilla
2 absent — Farrar, Olivo

WITNESSES: For — Jim Allison, County Judges and Commissioners Association of Texas; Donald Lee, Texas Conference of Urban Counties; Stanley H. Peavy III; Brad Stephenson; Gene S. Terry
Against — Rene Guerra, Hidalgo County Criminal District Attorney

BACKGROUND: **District and county court structure.** The Texas Constitution creates three local courts for every county: justice of the peace courts; county courts; and state district courts.

Texas Constitution, Art. 5, Sec. 16 designates the county judge as presiding officer of the county court, sometimes called the constitutional county court. Under Local Government Code, sec. 81.001, the county judge also serves as presiding officer of the county commissioners court, which acts as the county's administrative body. County commissioners also serve on the court.

Government Code, sec. 25.003 authorizes the state to create county courts at law, also known as statutory county courts, to share jurisdiction with constitutional county courts and state district courts in civil and criminal matters. This section also gives judges of statutory county courts at law the same appellate jurisdiction prescribed for constitutional county court judges. Both courts may hear appeals from the justice of the peace courts.

Texas Constitution, Art. 5, sec. 7 requires election of district court judges and states that the Legislature must set their annual salaries. Art. 5, sec. 8 gives district courts general supervisory control over county commissioners courts.

Local Government, Ch. 291 requires commissioners of county courts to provide and maintain county courthouses, courthouse offices, and other necessary public buildings. These include the chambers for district court judges. Government Code, Ch. 32 includes provisions authorizing commissioners courts to supplement the annual salaries of their district court judges.

County judges and commissioners and the practice of law. Government Code, sec. 82.064(b) states that a county judge or county clerk may not practice as an attorney in any county or justice court in a case over which the court in which the judge or clerk serves has original or appellate jurisdiction.

Attorney General Opinion JC-0574 (November 6, 2002) states that “absent express authority from the Legislature, we conclude that the commissioners court may not provide consent [to a county judge’s wish to practice law in the county’s courts].” The opinion cites the Texas Supreme Court’s Committee on Professional Ethics Opinions 530 and 540. These opinions identified conflicts of interest in concluding that neither a county commissioner nor a constitutional county judge should practice law in the justice, statutory county, or district courts of their respective counties. The opinions cited the Texas Disciplinary Rules of Professional Conduct and stated that county commissioners courts have perceived or actual influence over the other courts due to commissioners courts pervasive fiscal authority and approval of personnel appointments.

No single statute prohibits statutory county court judges from practicing law. Government Code, secs. 25.0041 to 25.2512 treat counties individually. As a general rule, the statutes prohibit statutory county court judges from practicing.

Local Government Code, Ch. 171 deals with conflicts of interest among officers in local government. Sec. 171.004 requires a local public official having a substantial interest in a business entity or in real property to file an affidavit stating the nature and extent of the interest before a vote or decision on a matter involving the business entity or the real property. Under certain conditions, the official also must abstain from further participation in public decision making about the matter.

DIGEST:

CSHB 1716 would add sec. 171.010 to the Local Government Code, stating that a county judge or county commissioner practicing law would gain a substantial interest in a business entity when the official entered a court appearance or signed court pleadings in a matter relating to that business entity. The bill would require a county judge or county commissioner having a substantial interest in a business entity to comply with Chapter 171.

CSHB 1716 would prohibit a county judge from entering a court appearance or signing pleadings as an attorney in any matter before the judge's own court or any Texas court over which the judge's court exercised appellate jurisdiction.

The bill otherwise would authorize, in compliance with Chapter 171, a county judge or commissioner to practice law in the courts located in the county where the county judge or commissioner served.

The bill would take effect September 1, 2003.

SUPPORTERS
SAY:

CSHB 1716 would clarify that county commissioners and constitutional court judges could practice law in their counties, within reasonable limitations, and in conformity with existing law. Government Code 82.064(b) does not preclude constitutional judges from representing clients in all courts within their counties. Instead, the statute authorizes a constitutional county judge to handle cases in which the judge's court does not have original or appellate jurisdiction. No statute limits the practice of law by county commissioners in their counties.

The bill would help remove the uncertainty introduced by Opinions 530 and 540 of an advisory committee of the Texas Supreme Court. This committee does not have disciplinary authority, and its opinions are not enforceable. Nevertheless, due to these opinions and a recent attorney general opinion citing them, members of county commissioners courts across the state are under the impression that they would commit an ethical violation by practicing before any court in their counties. This conclusion is unreasonable, and the attorney general opinion calls for the Legislature to address the question.

CSHB 1716 not only would clarify existing law, but would enhance it by triggering the disclosure and abstention safeguards of Local Government Code, Chapter 171. The bill would continue to prohibit a constitutional county judge from practicing law in the judge's own court or before justice of the peace courts of the same county. Also, by designating the act of entering a court appearance or signing a court pleading as a substantial interest in a business entity, the bill would subject constitutional county judges and commissioners to the existing requirements of sec. 171.004.

Court financing and management requirements minimize any risk of collusion between commissioners court members and judges in their counties. The state, not counties, determines the salaries of district court judges. The Constitution charges district court judges with general supervisory control over county commissions, and commissioners court members, some of whom likely are not lawyers, jointly control any budget decisions for which the county is responsible. These checks and balances provide additional protections against conflicts of interest.

For many years, lawyers serving as constitutional county court judges and county commissioners have supplemented modest public salaries with earnings from practicing law before courts in their counties. This bill would restore their confidence that they could do so ethically, in compliance with reasonable safeguards.

**OPPONENTS
SAY:**

CSHB 1716 would reverse a prudent standard announced by experts in legal ethics and could injure public trust in the judiciary. The Committee on Professional Ethics of the Texas Supreme Court already has weighed the ethical consequences of county commissioners practicing law in any court of their counties and determined that it violates a rule of Texas Disciplinary Rules of Professional Conduct. The Legislature should defer to this committee's studied and expert opinion.

Attorney General Opinion JC-0574 does not suggest that the Legislature should revisit the basic interpretation provided by the Supreme Court's ethics committee. Instead, the opinion cited the conflict of interest the committee identified and discussed the ethics rule that a county commissioners court must "consent" to allowing its members to practice law in the courts of its county. Because no state law specifically authorizes commissioners courts to

consent to this practice, the attorney general concluded “that the commissioners court may not provide the consent required” The opinion simply stated that “we would expect the legislature to address [the consent authority of the county commission] expressly.” The Legislature should limit itself to the narrow issue of whether to allow the commissioners to consent.

The influence of the county commissioners court over the statutory county courts and district courts of its county should restrict its members from practicing before the judges. The commissioners court, which includes the constitutional county judge as its presiding officer, has final authority over the salaries of statutory county court judges and statutory county probate judges. The commissioners’ influence extends to budgeting for the staff and facilities these judges enjoy, as well as the chambers of the district judge. The constitutional judge and commissioners also hold political influence important to district judges during elections.

No ethics opinion suggests that constitutional county judges and commissioners should not practice law. The opinions merely conclude that these officials should not represent clients before courts in the officials’ counties. In the interests of maintaining a high public regard for our courts, the Legislature should preserve these standards.

**OTHER
OPPONENTS
SAY:**

The bill should go further by authorizing all local public officials, including justices of the peace and other modestly paid officials, to practice law in conformity with the bill’s restrictions.

NOTES:

The committee substitute differs from the bill as introduced by applying only to county judges and county commissioners instead of all local public officials. The substitute also replaced “a judge of a statutory county court” in favor of “a judge of a constitutional county court” in the provision restricting the judge from practicing in the judge’s own court and in any court over which the judge’s court exercises appellate jurisdiction. CSHB 1716 also added language to allow, upon compliance with Ch. 171, a county judge or commissioner to practice law in the courts located in the county where the county judge or commissioner serves.