

November-December 2004
Legal Q&A
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Q: What is the responsibility of a city with regard to publication of registered sex offender information?

A: Chapter 62 of the Texas Code of Criminal Procedure requires that, before a sex offender is placed on probation or released from a penal institution, the court or penal institution must notify the local law enforcement authority (e.g., a city police department or county sheriff as appropriate) where the sex offender intends to reside. A sex offender who is paroled or is on probation must register with the local law enforcement authority where the person resides or intends to reside. The sex offender must register within seven days of moving to a new address. TEX. CRIM. PROC. CODE art. 62.02.

After a sex offender registers with the local law enforcement authority, the authority must send a copy of the registration information to The Texas Department of Public Safety. In addition, a local law enforcement authority that receives a registration form from a sex offender is required to publish notice in English and Spanish in the newspaper of greatest paid circulation in the county in which the sex offender intends to reside or, if there is no newspaper of paid circulation in that county, in the newspaper of greatest general circulation in the county. The authority must also publish a duplicate notice in the newspaper during the week immediately following the week of initial publication. *Id.* at art. 62.03(e). The notice must include the following information:

- (1) the sex offender's full name, age, and gender;
- (2) a brief description of the offense for which the sex offender is subject to registration;
- (3) the city, numeric street address or physical address, if a numeric street address is not available, and zip code number where the sex offender intends to reside;
- (4) either a recent photograph of the sex offender or the Internet address of a Web site on which the sex offender's photograph is accessible free of charge; and
- (5) the sex offender's numeric risk level assigned assigned by the Texas Department of Criminal Justice (TDCJ) or Texas Youth Commission and the guidelines used to determine a sex offender's risk level generally.

Id. at art. 62.03(f).

Q: Who bears the cost of publication?

A: A sex offender is required bear the cost of publication unless the sex offender can prove indigence. As stated above, Chapter 62 mandates that a city publish sex offender notices. The provisions of Chapter 62 appear to require that a city is also required to bear the cost of the publication. However, Texas Government Code § 508.186, another

provision that governs sex offender publication, states that a sex offender must *pay to his or her supervising officer an amount equal to the cost, as evidenced by written receipt, incurred by the local law enforcement authority for providing notice for publication to a newspaper*. The Pardons and Paroles Division of TDCJ must then remit the money paid by the sex offender to the local law enforcement authority.

However, according to the Specialized Programs Division of the TDCJ, the reimbursement is not automatic. A city must proactively obtain and file a reimbursement form, known as a “publication notification reimbursement request form,” from the local TDCJ parole office. In addition, a provision was added in 2003 that allows a city to add the cost of the publication to an offender’s utility bill. *Id.* at art. 62.041; *see also* TEX. GOV’T CODE § 508.186(a)(1). If the offender fails to pay the bill, the city may suspend utility service. *Id.*

The punishment for failing to reimburse the supervising officer is revocation of probation or parole. However, at a revocation hearing, a sex offender that can prove he or she is indigent is not required to pay for the notification. TEX. GOV’T CODE § 508.186(c).

Q: May a city make a grant or loan to a private individual or corporation for purposes of promoting economic development?

A: Yes. Texas Local Government Code § 380.001, entitled “Economic Development Programs,” states that:

- (a) The governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality.
- (b) The governing body may:
 - (1) administer a program by the use of municipal personnel;
 - (2) contract with the federal government, the state, a political subdivision of the state, a nonprofit organization, or any other entity for the administration of a program; and
 - (3) accept contributions, gifts, or other resources to develop and administer a program.

This above provision gives a city broad authority to enact and administer economic development programs designed to attract business and industry. When offering a loan, grant, or discounted or free city services, a city must follow the requirements of the Texas Constitution and other applicable statutes. Additionally, a city should review its city

charter and any other local provisions that may provide for self-imposed limitations on this type of power.

Because § 380.001 does not expressly indicate how a program is to be administered, the provision of incentives should be made conservatively. TML recommends that a city develop written guidelines outlining the goals and procedures of its economic development program.

Q: Does a mayor who engages in conversations with individual councilmembers regarding the placement of an item on an upcoming council agenda violate the Texas Open Meetings Act?

A: The mere fact that two councilmembers visit in person or over the phone does not in itself constitute a violation. Several court cases and attorney general opinions have addressed conversations of less than a quorum. The TML Legal Services Department advises our member city officials that discussions about whether to place an item on a future agenda is permissible, so long as councilmembers don't discuss the merits or substance of the issue and do not come to a "meeting of the minds" on the issue outside of a properly posted meeting.

The case of *Harris County Emergency Service Dist. #1 v. Harris County Emergency Corps*, 999 S.W.2d 163 (Tex. App – Houston [14th Dist.] 1999, no writ) stands for the proposition that a councilmember does not violate the Act by using the telephone to discuss agendas for future meetings. The record in that case showed "that the board members discussed only what they needed to put on the agenda for future meetings" and that there was "no evidence that the district members were attempting to circumvent the [Act] by conducting telephone polls with each other." *Id.* at 168; *see also* Op. Tex. Att'y Gen. No. MW-32 (1979) (concluding that a procedure permitting individual members of a governmental body to write to the executive director suggesting items to be placed on a future agenda does not violate the Act).

According to the *Harris County* opinion, so long as the individual councilmembers approach the mayor (or vice versa) for the sole purpose of placing an item on a future agenda, no one has violated the Act. *Harris County*, 999 S.W.2d at 168.

Q: What is the difference between a municipal court and a municipal court of record?

The Texas Constitution names the constitutional courts of the state, ranging from the Supreme Court to the Justice of the Peace courts. The Texas Constitution also provides that the Legislature may establish other courts that it deems necessary. TEX. CONST. art. V, § 1. Pursuant to this authority, the Legislature enacted Chapter 29 of the Texas Government Code, which creates a municipal court in each Texas city and prescribes the court's jurisdiction and procedures.

Chapter 30 of the Government Code authorizes a city to create a municipal court of record by ordinance. TEX. GOV'T CODE § 30.00003. In addition, Chapter 30 contains specific statutes that establish municipal courts of record in particular cities.

The main difference between the two types of municipal court relates to appeals. Appeals from either type of municipal court are generally to the county court. TEX. CRIM. PROC. CODE art. 4.08. Appeals from a non-record municipal court are tried *de novo*, meaning that the case is tried again from the beginning and all the evidence and witnesses must be presented again. On the other hand, an appeal from a municipal court of record is based on specific points of error as contained in the "record" of the court. *Id.* at art. 44.17. Municipal courts of record are created for the practical purpose of providing a more efficient disposition of appeals.