

SUBJECT: Permitting municipal court judges to hold more than one office

COMMITTEE: Judicial Affairs — favorable, without amendment

VOTE: 5 ayes — Hartnett, Clark, Luna, Shields, Zbranek
0 nays
4 absent — Thompson, Crabb, Garcia, Solis

WITNESSES: For — Michael O’Neal, Texas Municipal Courts Association and Texas Municipal League; David Indorf, municipal court judge
Against — None

BACKGROUND : Art. 16, sec. 40 of the Texas Constitution prohibits anyone who holds a civil office for compensation from holding another civil office, with certain exceptions including justice of the peace, county commissioner and notary public. Citizens may hold more than one nonelective office if this situation is determined to be of benefit to the state.

The attorney general recently issued an opinion that a municipal court judge is a civil office for the purposes of Art. 16, sec. 40 and would thus be prohibited from serving in two elected offices for compensation. (Op. Tex. Att’y Gen. DM-428). However, the opinion stated that a municipal court judge could hold two *appointed* judgeships so long as a factual inquiry determined that such an arrangement was of benefit to the state. The attorney general stated that the issue of allowing municipal court judges to serve more than one municipality should be addressed by the Legislature.

DIGEST: HJR 87 would add municipal court judges to the constitutional exceptions to simultaneously holding more than one civil office for compensation.

The proposal would be presented to voters at an election on November 4, 1997. The ballot proposal would read: “The constitutional amendment to allow a person who holds the office of municipal court judge to hold at the same time more than one civil office for which the person receives compensation.”

**SUPPORTERS
SAY:**

HJR 87 would allow the state to put to good service the underused talents of skilled municipal court judges. Texas law creates a municipal court in every incorporated municipality and requires training for the judges who serve in those courts. In many small municipalities, a full-time judge is not needed. One full-time judge who has completed the training and continuing education requirements can serve more than one city without any conflict of interest or pressure on the judge's time. Texas is wasting its resources by keeping trained and experienced judges from serving more than one municipal court.

Municipal court judges are not very different from justices of the peace, listed in the Constitution as the first exception to the general prohibition on holding more than one elected office. Because both offices can be part-time in small communities, there is no good reason to allow justices of the peace to hold more than one office but prohibit a municipal court judge from doing the same thing.

The enabling legislation — HB 2280 — would require that municipal court judges be appointed in order to preside over two courts. Municipal court judges whose duties required them to work full-time in one court would not be appointed to preside over a second court, and therefore would not be able to receive compensation, unless they are fully attending to the duties of both positions. Although the constitutional amendment proposed by HJR 87 is preferable to clarify this situation beyond any doubt, HB 2280 would provide the necessary determination by the Legislature that dual office-holding by municipal judges is of benefit to the state.

**OPPONENTS
SAY:**

The prohibition against holding more than one office for compensation dates back to the first Texas Constitution. It is intended to prevent people who have a full-time public job from being paid for another full-time public job. This intent is manifested in Art. 16, sec. 33, which prohibits state accounting officers from paying two salaries to one person. While some municipal courts may be part-time or off-hour jobs, many are not. This legislation should be more specifically drafted to reach only part-time municipal court judges.

HJR 87
House Research Organization
page 3

NOTES: The companion bill, SJR 36 by Duncan, passed the Senate on April 9 by 31-0 and was reported favorably, without amendment, by the House Judicial Affairs Committee on April 15, making it eligible to be considered in lieu of HJR 87.