

FILED^{VS}

CAUSE NO. 20-2040

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THE STATE OF TEXAS EX REL.
NATHAN KASPAR

Plaintiff

V.

RUBEN BECERRA, IN HIS OFFICIAL
CAPACITY AS COUNTY JUDGE OF
HAYS COUNTY, TEXAS

Defendant

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Becerra County
IN THE DISTRICT COURT
DISTRICT CLERK
HAYS COUNTY, TEXAS

274TH JUDICIAL DISTRICT

HAYS COUNTY, TEXAS

**ORDER
ON APPLICATION FOR
CITATION UNDER
TEXAS LOCAL GOVERNMENT CODE SEC. 87.016**

Plaintiff, Nathan Kaspar, bringing suit in the name of the State of Texas on his relation, filed a Petition for Removal of Defendant, Hays County Judge Ruben Becerra, citing Texas Constitution Art. 5, Sec 24, and Chapter 87, Texas Local Government Code, and alleging as grounds:

1. Official Misconduct, and
2. Incompetency.

The factual assertions made by Plaintiff in support of these grounds are the following:

1. Plaintiff asserts that, for the years 2019 and 2020, Defendant filed with the Texas Comptroller's Judiciary Section an affidavit swearing on his oath that at least 40 percent of the functions he performs as a County Judge are Judicial Functions, and that as a result Defendant has received an annual salary supplement of \$25,000.00 for those two years.

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2. Plaintiff further asserts that Defendant, for the years 2019 and 2020, has not presided over any cases as a Judge involving the types of matters handled by Courts in Hays County, even though Defendant has the authority to preside over certain types of case in those Courts: Justice of the Peace, County Court at Law, Probate Court, Juvenile Court, JP and Municipal Court appeals, Magistrate.

STANDARD FOR REMOVAL

County Judges may be removed from office for incompetency and official misconduct (and other causes not relevant to the present case). *See Texas Const. Art. 5, Sec. 24, and Tex. Local Gov't Code Ann. Sec 87.013.*

“Official Misconduct” means intentional, unlawful behavior relating to official duties. *Tex. Local Gov't Code Ann. 87.011(3).* “To justify removal from office the allegations of the petition shall be specific and certain and the official misconduct must be willful or in other words with evil intent or without reasonable grounds to believe the act lawful.” *Meyer v. Tunks*, 360 S.W.2d 518, 520 (Tex. 1962). “Invariably some clearly defined statutory duty or obligation is involved.” *State v. Reyna*, 333 S.W.2d 832, 836 (Tex. 1960); *See also Stern v. State ex rel. Ansel*, 869 S.W.2d 614, 619 (Tex. App. Houston [14th Dist.] 1994, writ denied).

“Incompetency”, as relevant to this case, means gross ignorance of official duties, or gross carelessness in the discharge of those duties. *Tex. Local Gov't Code Ann. Sec 87.011(2).*

ANALYSIS

A Constitutional County Judge is entitled to an annual salary supplement from the State in an amount equal to 18 percent of the state base salary paid to a District Judge if at least 40 percent of the functions the County Judge performs are “judicial functions”. To receive this annual supplement, a County Judge must file with the Texas Comptroller’s Judiciary Section an affidavit swearing on oath that at least 40 percent of the functions that the Judge performs are “judicial functions”. *Tex. Gov’t Code Sec. 26.006(a) and (b)*.

Two Texas Attorney General Opinions cited by Plaintiff state that when a Constitutional County Judge sits as a magistrate, or exercises criminal or civil jurisdiction in cases, the County Judge is performing a “judicial function” for purposes of the state salary supplement provisions of the Government Code. *See Tex. Att’y Gen. Op. No. KP-0090 (2016); Tex. Att’y Gen. Op. No. GA-0426 (2006)*. However, the Attorney General specifically noted that the Legislature has not expressly defined the phrase “judicial function” as used in Government Code section 26.006, and the Attorney General opinion makes it clear that it is not giving a global answer to describe all “judicial functions”, but rather was focusing only on the judicial functions encompassed by one chapter of the Government Code. *See Tex. Att’y Gen. Op. No. KP-0090 (2016)*.

As Presiding Officer of the Commissioners Court, the County Judge’s duties include the following Judicial Responsibilities listed in: ***2018 GUIDE TO TEXAS LAWS FOR COUNTY OFFICIALS, TEXAS ASSOCIATION OF COUNTIES,***

(www.county.org/TAC/media/TACmedia/About%20Texas%20Counties/Guide-to-Laws-2018.pdf):

COUNTY COMMISSIONERS COURT

DUTY/RESPONSIBILITY	AUTHORITY
12. JUDICIAL RESPONSIBILITIES	
The commissioners court has certain responsibilities to the judicial operations at the county level.	
	Local Government Code
May provide office buildings or jails outside county seat;	Sec. 292.001 et seq.
May own, construct, equip, enlarge, and maintain buildings as criminal justice centers (bracket legislation);	Sec. 361.001 et seq.
Shall provide safe suitable jails, definition;	Sec. 351.001
May require review of jail commissary accounts by county auditor;	Sec. 351.0415
May cooperate among counties through contracts to furnish and operate jail;	Sec. 351.031
May contract for joint financing, construction, and maintenance of jail between counties and cities under 20,000;	Sec. 361.041
May increase salaries in sheriff's department upon voter petition in counties over 25,000 population;	Sec. 152.072
Allow or disallow claims against the county;	Sec. 89.004
In counties over 1.25 million may employ special counsel to represent the county in suits brought against the county;	Sec. 89.001
Approve efforts of justice of peace to collect fines or judgments imposed by him;	Sec. 112.052
May sell rights to judgment proceeds belonging to county;	Sec. 130.901
May establish and provide for maintenance of county law library;	Sec. 323.021
May contract with private detention facilities for county inmates;	Sec. 351.101 et seq.
In metropolitan counties may provide for the creation of a crime control and prevention district;	Sec. 363.001 et seq.

COUNTY COMMISSIONERS COURT

DUTY/RESPONSIBILITY	AUTHORITY
12. JUDICIAL RESPONSIBILITIES, continued	
	Family Code
May contract with a private entity for the receipt and disbursement of child support payments.	Sec. 204.001 et seq.
May establish a visitation center for purposes of enforcing court orders regarding child custody and access.	Sec. 153.014
	Transportation Code
May appoint persons with authority to file charges for enforcement of handicap parking laws;	Sec. 681.0101
	Government Code
Observe requirements of Texas Commission on Jail Standards;	Chapter 511
Provide funding through collection of fines and other sources to finance court administration system;	Sec. 75.401
May provide for additional terms for county court when needed;	Sec 26.002
Must provide interpreters for deaf jury members in district, county, and justice courts;	Sec. 62.1041
Set aside places in courthouse for use by prospective jurors;	Sec. 62.018
Compliance with public information statute requiring disclosure to public and containing exemptions;	Chapter 552
May hold meetings by means of telephone conference calls if necessary;	Sec. 551.125
May apply for grants and loans to the state historical commission pursuant to historic courthouse preservation program;	Sec. 442.0081
Shall provide facilities, equipment, and utilities for adult probation department;	Chapter 76
Provide for public safety employees treatment court program;	Chapter 129

COUNTY COMMISSIONERS COURT

DUTY/RESPONSIBILITY	AUTHORITY
12. JUDICIAL RESPONSIBILITIES, continued	
	Civil Practices and Remedies Code
Recognition of religious freedom in connection with exercise of governmental authority;	Chapter 110
May establish an alternative system for resolving citizen disputes;	Sec. 152.001 et seq.
Texas Tort Claims Act;	Chapter 101
Spanish language interpreters;	Sec. 21.021 et seq.
Liability for recreational facilities;	Chapter 74
Recognition of constitutional right to petition, free speech, and right of association pursuant to Citizens Participation Act;	Chapter 27
	Texas Family Code
Shall provide a suitable place for detention of court-related children.	Sec. 51.12

According to an April 2019 Texas Legislative Budget Board Staff Report, during the 2018 Fiscal year, 220 of the 254 Texas Constitutional County Judges, like Defendant, received the state salary supplement involved in this case. The Report acknowledges that: “Judicial Functions are not defined in statute or administrative rules. Without an explicit definition, it is difficult to determine compliance with the salary supplement criteria.” *See TEXAS LEGISLATIVE BUDGET BOARD STAFF, IMPROVE OVERSIGHT OF THE TEXAS COUNTY JUDGE SALARY SUPPLEMENT (April 2019),* (www.LBB.State.Tx.US/Documents/Publications/Staff_Report/2019/4750_County_Judge_Salary_Supplement.pdf). The recommendations of the Legislative Budget Board Staff in that publication include:

Option 1-A: Amend statute to clarify that eligibility for the Constitutional County Judge supplement is based on 40.0 percent of work time addressing judicial functions and to require the Texas Judicial Council to define what qualifies as a judicial function for this purpose. Require the Office of Court Administration to develop a method to verify whether a Constitutional County Judge has met the eligibility criteria.

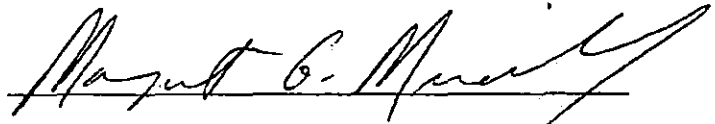
RULING

Having Considered Plaintiff's Petition for Removal, and the authorities discussed above, the Court Rules as follows:

The Court **CONCLUDES** that, as a matter of law, this case does Not involve a "clearly defined duty or obligation" as required by Texas law for removal of a County Officer from Office. Accordingly, Defendant's removal from Office is not justified, as a matter of law. **THEREFORE**, Plaintiff's Application for Citation under Texas Local Government Code Section 87.016 is **HEREBY DENIED**.

IT IS SO ORDERED.

SIGNED this 15th Day of October, 2020.

A handwritten signature in black ink, appearing to read "Margaret G. Mirabal", written over a horizontal line.

Judge Margaret G. Mirabal, Presiding Judge