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RECEIVED

DEC 14 1994

BEXAR COUNTY JUDGE

MEMORANDUM

TO: County Judge Cyndi Krier

FROM: *SVH* Steven C. Hilbig
Bexar County Criminal District Attorney

RE: Appointments to Bexar County Civil Service Commission
and Bexar County Sheriff's Civil Service Commissioner

DATE: December 13, 1994

DA-94-020

In your letter dated November 29, 1994, you have asked me whether any appointment to the Bexar County Civil Service Commission made by the current Commissioners Court will be for the unexpired term, or whether such appointment results in a new two-year term beginning on the date of appointment. You have subsequently asked the same question relating to the Sheriff's Civil Service Commission. Finally, you have asked whether the agenda notice for the appointments to the Civil Service Commissions complies with the Open Meetings Act since the items are listed as appointments for a two-year term.

Civil Service Commission Appointments

Local Government Code § 158.008 governs Civil Service Commission appointments. Similarly, Local Government Code § 158.034 governs Sheriff's Civil Service Commission appointments. At common law, one appointed to an office served the entire term prescribed for the office. Banton v. Wilson, 4 Tex. 400 (1849). When a statute, however, contradicts the common law, the statute is given effect over the common law. Milner v. Red River Valley Pub. Co., 249 S.W.2d 227, 229 (Tex. Civ. App. -- Dallas 1952, no writ) (common law controls unless modified, changed, or added to by statute). Furthermore, when a statute is enacted it is presumed that the entire statute is intended to be effective, and that a just and reasonable result is intended. Tex. Code Construction Act § 311.021.

Therefore, the portion of the statuta dictating appointments for the unexpired term must be read with the portion of the statute that dictates two year terms, so that each part has some effect. See Shanken v. Lee Wolfman, Inc., 370 S.W.2d 197, 201 (Tex. Civ. App. -- Houston 1963, writ ref'd n.r.e.); Baylor University Medical Center v. Borders, 581 S.W.2d 731, 733 (Tex. Civ. App. -- Dallas 1979, writ ref'd n.r.e). If the statute is interpreted according to these rules of construction, Commissioners Court would fill the holdover Commissioners' seats by appointing successors to the unexpired term only. The holdover Commissioners' seats are considered vacant because their original term has expired, despite their continuation in office due to the Texas Constitution. Tex. Const. Art. XVI § 17.

Open Meetings Act

The Open Meetings Act requires that items on an agenda provide sufficient notice to apprise the general public of the subjects to be considered during each meeting. City of San Antonio v. Fourth Court of Appeals, 820 S.W.2d 762 (Tex. 1991). In this case, the notice provides sufficient information to the public that Commissioners Court intends to appoint members to the respective Commissions. The fact that the term of office is incorrectly stated is of no consequence to the Open Meetings Act analysis. The public was sufficiently apprised of the action considered.

CONCLUSION

Any appointments made by the Commissioners Court to the respective Civil Service Commissions are valid only for the unexpired terms.

The agenda item stating that the Court will consider appointments for two year terms does not violate the Open Meetings Act. That agenda item adequately informs the public that the subject of the appointments of Commissioners will be discussed for possible action. Therefore, the item complies with the Open Meeting Act.

cc: Commissioner Robert Tejsda
Commissioner Paul Elizondo
Commissioner Walter Bielstein
Commissioner Helen Dutmer

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