



CIVIL SERVICE COMMISSION

Roles of the Commission and its Legal Advisor

"Delivering Outstanding Services"



Civil Service

A system of appointing government employees on the basis of competitive examinations rather than political patronage



Characteristics

The procedures for hiring and firing are generally more regulated and less discretionary than the private sector



Pros and Cons

Pros:

Merit-based

Predictable

Fair

Transparent

Cons:

Bureaucratic

Rigid

Poor-performance

Less Incentives



ROLE OF THE COMMISSION

Ensure a personnel system
based solely on merit



ROLE OF THE COMMISSION

- Neutral, fact-finding body
- Impartial, independent body that hears and/or decides appeals filed by certain City civil service employees and candidates seeking City employment
- Not an advocate for the City, its employees or applicants



PURPOSE

- *Ensure fairness*
- *Ensure economy and efficiency in the selection process and personnel system*
- *Hear grievances by or against classified employees*



AUTHORITY OF THE CSC

Functions of the Commission include both advisory and quasi-judicial authority.

- *Recommend to the Council adoption of Civil Service Rules, and appropriate amendments*
- *Investigate matters concerning enforcement and effect of the Civil Service provisions of the Charter as permitted by Civil Services Rules and Policy*
- *Hear and determine appeals or complaints as permitted by Civil Service Rules*
- *Appoint Hearing Officers*



AUTHORITY

Advisory authority includes:

- *Making recommendations to Council regarding Civil Service Rules (Ordinance 8065)*

Quasi-Judicial authority includes:

- *Investigating, hearing and determining disciplinary appeals (Rule 8)*
- *Hearing and ruling on appeals from disqualifications (Rule 5)*
- *Hearing and determining grievances that the commission has the jurisdiction and authority upon which to issue a remedy (Rule 14)*



AUTHORITY

- *Grievances alleging discrimination and harassment are outside the jurisdiction of the CSC.*
- *Complaints alleging discrimination and harassment have an investigation process and procedure that is separate from the purview of the CSC.*



PERSONAL LIABILITY

- *As a general rule, quasi-judicial officers cannot be held personally liable for erroneous acts while honestly exercising in good faith the judicial or quasi-judicial functions of their offices.*
- *If a commission member acts in bad faith because of an improper reason or for an improper purpose, then the action could be considered to be outside the scope of his or her authority and could possibly subject the commissioner to personal liability.*



PERSONAL LIABILITY

- *Generally, the thought process behind a decision that is made from the dais during a properly called meeting is protected from inquiry. If evidence is developed, however, that the action was taken because of an improper or illegal reason, then liability could be found.*
- *If a commissioner takes action or makes statements that are not from the dais, he or she could be found personally liable if the actions or statements are found to have damaged someone.*
- *Action taken in a personal capacity, even in the name of the commission, may not be protected if it is determined to have been without authority.*



PERSONAL LIABILITY

- *Legal guidance is provided to the Commission by the City in the form of the Legal Advisor to the Commission. In general, if acting in accordance with the advice of counsel you are protected from liability.*



PERSONAL LIABILITY

Applicable Law:

- The boundaries of authorized conduct are drawn by and from common law, civil statutes and penal statutes.
- Acts by a commission member, or by the Commission as a whole, which are beyond the authority of the Commission granted by Charter, ordinance or statute would be *ultra vires* – *i.e.*, beyond or outside one's legal power or authority.



PERSONAL LIABILITY

Applicable Law, cont.:

- Acts prescribed by statute are both civil and penal in nature and have broad application affecting public officials.
- The penal code, for example, prohibits intentionally or knowingly doing any of the following:
 - 1) an unauthorized exercise of official power;
 - 2) an act which exceeds his power;
 - 3) refraining from performing his duty;
 - 4) violating a law relating to his office; and
 - 5) taking or misapplying anything of value belonging to the governmental body.



CITY ETHICS ORDINANCE

The Commission is required to work only within the framework of the City's ethics ordinance.



CITY ETHICS ORDINANCE

Commission members are subject to the same sanctions as other city officials who are found to have violated the code.



LEGAL ADVISOR TO THE CSC

Provides Legal Advice

- The legal advisor to the Commission is responsible for providing legal advice to the Commission on the interpretation and application of the Civil Service provisions in the Charter, Civil Service Rules and City Policies.
- The Commission's legal advisor is not involved in management or policy decisions.
- Like the Commission, the legal advisor to the Commission must be neutral. The advisor does not act as an advocate for the City.



Texas Disciplinary Rules of Professional Conduct (the “Rules”)

Conflict of Interest

- There is no absolute prohibition against the City Attorney’s Office representing both the City and the City’s sub-entities.
- The City Attorney’s Office has provided legal representation to the Commission for at least the past thirty-five years.



The Rules

Conflict of Interest, cont.

- The general conflict of interest rule prohibits a lawyer from representing a person if the representation of that person involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or reasonably appears to be or become adversely limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interests. (Tex. R. Prof. Conduct 1.06)



The Rules

Government Lawyers

The Rules recognize that the application of the rules must take into account factors peculiar to the governmental context. The Rules acknowledge this difficulty in the *Preamble to the Rules*, which provides:



“The responsibilities of government lawyers, under various legal provisions, including constitutional, statutory and common law, may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. Lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the public interest in circumstances where a private lawyer would not be authorized to do so. These rules do not abrogate any such authority.”



Application of the Rules to CSC's Legal Advisor

- Applying the general rule that the City attorney's client is the City, there should be no conflict of interest when the City attorney represents any of its sub-entities, to include the Commission.
- This Office recognizes that a potential for a conflict of interest could arise when a sub-entity of the City has independent authority, acting in a *quasi-judicial capacity*.



CSC as Quasi-Judicial Body

- This Office recognizes that the CSC is a quasi-judicial body with independent authority in certain personnel actions – *e.g.*, terminations, suspensions, demotions...
- This office has established an ethical wall to avoid any conflicts of interest.
- Different lawyers are assigned to represent the Commission and the City.
- The lawyers are appropriately screened from one another in the performance of their duties to the Commission and the City.