

MINUTES OF SPECIAL MEETING
OF SEPTEMBER 13, 2005
CITY COUNCIL OF THE CITY OF MEADOWS PLACE, TEXAS

The special meeting of the Meadows Place City Council was called to order at 6:08 p.m. by Mayor Mark McGrath at Meadows Place City Hall, One Troyan Drive, Meadows Place, Texas, with notice of said meeting giving the time, place, date and subject thereof having been posted as prescribed by Article 6252-17, V.T.A.C.S. with the following members present and in attendance:

Mayor:	Mark McGrath
Aldermen:	Terry Henley Charles Jessup Joe McCann David Piwonka Rick Staigle

thus constituting a quorum.

Also present were City Attorney J. Grady Randle and Municipal Court Judge Gene Frohbieter.

Mayor McGrath read agenda item two as follows: "Adjourn into Executive Session pursuant to Sec. 551.074: Personnel Matters to deliberate on the evaluation, duties, discipline or dismissal of a public officer i.e. presiding municipal judge. The public officer who is subject to this hearing may request a public hearing." Judge Frohbieter requested the hearing be held in public.

Mayor McGrath explained a packet of three letters, copies of which were given to Council. The first, dated June 27, 2005 from Mayor McGrath to Judge Frohbieter explained that he, as Mayor, was making some changes in court procedures and that Judge Frohbieter would not be called for future dockets until further notice. Due to the fact Mayor McGrath left town for a vacation immediately following the June 28th Council meeting, he did not personally speak with Judge Frohbieter until after returning on July 3rd. At that time he explained to Judge Frohbieter that he would like for Associate Judge Bret Kisluk to get exposure to day court trials. Judge Frohbieter said he was not opposed to Judge Kisluk obtaining exposure but he (Judge Kisluk) should attend as an observer and not as a judge on July 27th. Mayor McGrath agreed to have Judge Frohbieter preside and Judge Kisluk observe on July 27th with the understanding Judge Kisluk would begin presiding at day court trials beginning in August.

The second letter, dated Monday, August 22, 2005, was from Judge Frohbieter. In it he told the Mayor that he had assigned himself to continue taking the Wednesday afternoon dockets, believing it would make for a better Court operation and contribute to the independence of the Courts. He also stated in the letter "One of the duties of the Office of Presiding Judge is to oversee the procedures in the Municipal Court. The Preamble to the Code of Judicial Conduct as promulgated by the Supreme Court states: *Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us.*"

Mayor McGrath then sent Judge Frohbieter a letter (the third letter in the packet, dated August 23, 2005,) stating his opinion as to the role of presiding judge differs from that of Judge Frohbieter, and that, after consulting with the City Attorney, it was within his powers as Mayor to call judges for a docket. He advised Judge Frohbieter he was not calling him for the August 24, 2005 docket and that if he did show up he would be asked to leave the premises. If he did not leave, he would be escorted off premise by a police officer. He told Judge Frohbieter he would inform him at a later time of any future dockets he chose to call him for.

Mayor McGrath then asked City Attorney Grady Randle to address the situation. Mr. Randle said that historically, and with current city ordinance and state law, the Mayor has the right to assign court dockets to whichever judge he chooses. Mr. Frohbieter was appointed by City Council for a two year period and he can be removed by City Council. A District Judge can be removed for incompetency; official misconduct; or visual intoxication. As a Municipal Judge, Mr. Frohbieter enjoys some separation on legislative vs. judicial issues but not as much as a District Judge. The Mayor can choose a "soft firing" of the judge by not calling him for any dockets. In Meadows Place, the City Secretary is also the Court Clerk. She works for Council. The Mayor, as head of Council, controls the City Secretary/Court Clerk. The clerk controls the court docket. An example of this is the last time the Federal Courts shut down. The Federal Judges could not work because the clerks could not be paid and therefore would not come into work. This is not a "black and white" case. However, Chapter 29 of the Government Code says if you have the power to appoint, you also have the power to remove. The Texas Municipal League advises that a Municipal Judge can be removed for lack of confidence by a two-thirds vote of Council (four out of five members must vote yes.)

Judge Frohbieter was then invited to speak. He thanked Council for the opportunity to be here. He said that, among other offices, he has served as both an Associate Judge and a Presiding Judge in the City of Bellaire for a total of twenty years. He served as an Associate Judge in Meadows Place for ten plus years and was appointed as Presiding Judge here eight months ago. He has lectured at numerous seminars and he believes he knows the law. In Meadows Place the branches of governments are representative as follows: Legislative – City Council; Executive – the Mayor; Judicial – Judge Frohbieter. On advice from Mr. Ryan Turner of the Texas Municipal Courts Training Center, he has the right to appoint dockets although he agrees this is an interpretation and not a state law.

He believes the issue at point is the jurisdiction of the Municipal Court. Some cases had been filed in Meadows Place Municipal Court. A hearing was held. It was his findings of fact and conclusion of law that, because the cases were punishable by fines over \$500.00 and not exceeding \$2,000.00, they should be heard only in County Court. Municipal Court is a creation of the Texas Legislature and therefore all its powers flow from the Texas Legislature. The Texas Legislature allows Municipal Courts to hear those cases that are punishable by fine only, and only if the fine is under \$500.00. An exception is made if the case involves fire safety, zoning or public health and safety (including the dumping of refuse.) Cases outside of those categories can only be heard in Municipal Court if they have fines less than \$500.

As of September 1, 2005, the Legislature has required that in offenses punishable with a fine over \$500, it must be proven that the defendant was in a culpable mental state. This would be very difficult to do. As a result of this law, some courts are dropping all of their fines to under \$500.

Mr. Frohbieter does not believe the Municipal Court can be run out of the Mayor's office if it wants to be regarded as credible. He said he is not aware of any misconduct charges alleged against him. He has consulted with the presiding judge of the 2nd Judicial Administrative Region and with the chief legal council to the Texas Municipal Courts Education Center. He believes the city's fine schedule has fines that we cannot carry out. He would like this court to be run properly, one we can be proud of. While he did not research the matter, he thinks Council has the authority to remove a Municipal Court Judge. If he is still in office, he intends to preside over the September 28, 2005 jury trial docket.

Mayor McGrath agreed that there have not been any complaints against Judge Frohbieter. He feels there is just a difference of opinion and the city staff is caught in between. Mayor McGrath said he has complete confidence in the City Attorney and his TML sources. He asked Judge Frohbieter if he has a problem with Judge Kisluk getting experience with trial dockets. Judge Frohbieter answered in the negative but still believes he has the authority to assign dockets and he will continue to assign the

trial dockets to himself. He feels that any judge should be competent to handle any docket.

Councilmember Jessup said he was impressed with what Judge Frohbieter has said. But the Mayor and the Judge do not get along and something must be done. He asked why Judge Kisluk could not run the trial dockets for awhile. Judge Frohbieter answered that it was a matter of would the judge run the court or the mayor? Mayor McGrath said he resented the fact Judge Frohbieter thought he wanted to run the court.

Councilmember Staigle asked how Judge Kisluk could get experience without sitting on the bench. Judge Frohbieter said it was not difficult to preside as a judge. The issue here is that it is the presiding judge, in his opinion, who needs to assign the docket.

Councilmember Henley asked if Judge Kisluk has ever presided over a trial docket. Judge Frohbieter said, to the best of his knowledge, he has not presided over a jury docket.

Councilmember Jessup thought that, as a matter of principal, and to eliminate tension, the issue could be solved by Judge Frohbieter appointing Judge Kisluk to trial dockets. Judge Frohbieter answered that he has confidence in Judge Kisluk and has assigned him to preside at the two evening arraignment dockets. But he does not feel it would be in the best interest of the city to appoint him to trial dockets.

Mayor McGrath said it is unfortunate that an innocent change he made has ballooned into what it is today. He, therefore, has a hard time working with Judge Frohbieter.

Due to the time being after 7:00 p.m., and the fact another meeting was scheduled to begin at 7:00 p.m., Mayor McGrath asked Council to recess this meeting so that the 7:00 p.m. meeting could be held. Councilmember Staigle made a motion, seconded by Councilmember McCann to recess the meeting and with unanimous approval the meeting was recessed at 7:09 p.m.

The meeting was reconvened at 7:16 p.m.

Councilmember Piwonka asked City Attorney Grady Randle if he had any comments. Mr. Randle said that in this case, the separation of powers issue does not apply and while he respects the opinions of Mr. Frohbieter, he disagrees on his interpretations.

Councilmember Jessup noted that Mr. Frohbieter is knowledgeable, thorough and has served the city well. And, he is very confident that Mayor McGrath can run our city and has always acted in the best interests of the city. He is concerned with the precedent Council will set if they vote to terminate the appointment of the Judge, but if the Mayor cannot work with him, then something needs to give. Judge Frohbieter said he could work with the Mayor. Mayor McGrath said in the past that was true but this misunderstanding of who would preside over the July and August dockets was uncharacteristic of Mr. Frohbieter and could be a problem in the future. So could the difference in opinions Mr. Frohbieter has with the City Attorney. Both Mr. Frohbieter and Mayor McGrath felt they were obligated to stand on their beliefs in the matter and Mayor McGrath said he is inclined to go along with the City Attorney's interpretation.

Councilmember Henley said he was concerned about the precedence that will be set. There is no evidence of either Mr. Frohbieter or Mayor not doing a good job. In fact, they are both doing an outstanding job and there must be a way to resolve the issue and move on.

Mayor McGrath said precedence would be set if this was the sort of city that was consistently in turmoil with staff and judges being dismissed often. This city does

not do things will-nilly. Regardless of what is done, each process is thoroughly thought out.

Mr. Frohbieter asked where Mr. Randle finds that the Mayor has the authority to set dockets. Mr. Randle said that the City Secretary is the Court Clerk. She answers to the Mayor no matter what "hat" she is wearing. Mr. Frohbieter disagrees.

Councilmember McCann asked Mr. Randle what council's choices were. Mr. Randle said they could terminate Judge Frohbieter's appointment with a vote of no confidence.

Councilmember Staigle told Mr. Frohbieter that we would like our associate judge to get some trial court experience. Mr. Frohbieter said that was no problem, but he would still take the September Docket. Asked if it was a pay issue, Mr. Frohbieter said no, it was a personal issue. It was the way the message was delivered.

Mayor McGrath agreed the letter was brisk, due to the time frame when it was delivered. It has now become a jurisdictional disagreement. Councilmember Piwonka made a motion to terminate Judge Frohbieter for lack of confidence. Councilmember McCann seconded this motion. The motion carried with Councilmembers Jessup, McCann, Piwonka and Staigle voting "aye" and Councilmember Henley voting "nay."

Moving to the next agenda item, Mayor McGrath read the following caption: A Proclamation by the Mayor recognizing the Fort Bend County Fair Association staff, volunteers, exhibitors, and all participants for their leadership, support, and hard work in hosting this annual, quality family event. Due to the fact his voice was beginning to fail him, he asked Councilmember Henley to read the proclamation. Councilmember Henley read the entire proclamation. Councilmember McCann made a motion, seconded by Councilmember Henley to issue the proclamation as read. The motion carried unanimously. Mayor McGrath said the County Fair starts on Friday, September 23rd. On Thursday evening, September 22nd, at the Fort Bend Mayors and Council Association meeting, all cities will present their proclamations. Due to a prior commitment, Mayor McGrath asked Councilmember Henley to deliver the city's proclamation for him. Councilmember Henley agreed to do this.

There being no further business to consider, Councilmember Staigle made a motion, seconded by Councilmember Henley to adjourn the meeting. With unanimous approval the meeting was adjourned at 7:56 p.m.

Elaine Herff, City Secretary