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**Civil Service and the Adverse Effects on Municipalities:
Considering Alternatives**

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ABSTRACT

Many Texas law enforcement agencies operate under a governing body called the Texas Civil Service Commission. The adoption of civil service is optional and is usually decided by the police officers' association, which must be approved through citizens' vote. Civil service outlines administrative rules, which are intended to fairly regulate processes such as hiring, promotions, and disciplinary action, thus removing the agency from the Texas at-will employment status. Research suggests that civil service generally improves officer treatment through structure (Whitton, 2011; Castillo, 1993; Walters, 2002). However, these agencies experience problems with respect to sustaining disciplinary action up to termination. The rigidity of civil service creates a financial burden on a city with hiring, promotions, and firing, often rendering them vulnerable to damaging effects of the inability to discipline or remove incompetent and troublesome officers. The focus of this research is on the problems it creates for a civil service agency with strong emphasis on adopting a less restrictive governing process as opposed to civil service. The suggestion made is for city administrators and their law enforcement agency administration to come together with police officer associations to sculpt contracts that will serve to provide police officers with similar protection while also providing the agency administration with flexibility to adequately control regulations of employment processes. Through a devised system of checks, balances, and obligations from each stakeholder group, a fully supportive covenant stands to better regulate an agency while protecting the interests of all. Rather than operate under ridged rules outlined by the state of Texas, this process would allow the creation and refinement of rules for an agency that would work best for their unique setting.

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INTRODUCTION

Law enforcement is an occupation historically associated with high controversy, constant media attention, and political influence. With such sensitive and unpredictable factors involved, it would seem that standardization of all operations with police agencies, to include the absolute unbiased treatment of its officers, would be crucial in running such an organization. Although unique in many ways that may seem difficult to compare to most other professions, law enforcement is simply a business, and that which requires the impartial treatment of superior legal protection of all police officers if a police department expects to operate as a professional organization.

The fact that Texas is an “employment-at-will” state makes the balancing of operating an agency that seeks the best interest of both the employee (officer) and the department a difficult task. Lacking a written contract with an employer in Texas allows the employer to terminate an employee for “good cause, bad cause or no cause at all...at any time, with or without warning, and with or without cause” (Texas Municipal League, 2005, para. 1). The only provisions in place for officer protection from wrongful termination are for issues arising out of age, race, gender, nationality, disability or any other federally protected classification (Texas Municipal League, 2005, para. 2). Since law enforcement may arguably be the most politically influenced occupation not under direct government control, problems with disparity in officer treatment and fairness would seem likely.

According to Brooks (2011), in 1947, Texas state legislators recognized the importance of implementing a structured governing system for police agencies and created the Texas civil service statute that was later converted in 1987 to what is known

today as chapter 143 of the Texas Local Government Code (TLGC). Brooks (2011) stated that “civil service laws are designed to develop a public workforce less susceptible to the whims of patronage employment practices and dismissals without notice or cause” (para. 1). A second related aim is to “promote hiring and promotion decisions based on personal merit” (Brooks, 2011, para. 1). What legislators may have been eluding to is that if municipal police agencies cannot properly regulate themselves, then the government will regulate for them by implementing an option for police unions to adopt a “fundamental framework” for Texas cities (Brooks, 2011, para. 3).

As stated by Castillo (1993), employees must be able to work in a favorable environment, one that is fair and allows achievement and growth if organizational efficiency and success is expected. It can be deduced that civil service adoption is often the product of unfair treatment of officers, faulty hiring and promotional practices, and poor standards all together. Although Texas civil service has accomplished what it originally set out to do and provides superior officer protection, it does little to protect the police department itself and the city by placing large financial burdens and tough restrictions on them. While civil service corrected many of the operational problems within police organizations, it also created many more. The research in this paper will demonstrate how police agencies under civil service governance have their hands tied in thick bureaucracy resulting in delays in new recruit selection and hiring, unqualified new hires, gross arbitration costs for disciplinary action, high rates of reinstated officers who were terminated for legitimate reasons, and more.

As what may be viewed as a double-edged sword, more and more Texas police department unions are adopting civil service, which is usually due to discontent with

either actual or perceived unfair treatment from administrators or simply to safeguard officers for future issues. Another notable factor for a union's sudden push for civil service is due to an increase in population to at least 10,000, which is the requirement for a city to be eligible for civil service adoption (Tex. Local Government Code § 143.041). As of the current year 2016, there are over 200 Texas cities eligible for civil service and many more are rapidly approaching that eligibility (Texas Cities by Population, 2016). The time for these cities to begin considering implementing a governing model to eliminate the need for civil service is now.

This paper focuses on the subject of fallacies with the civil service system by pointing out where exactly it has failed. Although it will not provide a predetermined solution for the problems, it will allude to suggestions for approaching such a solution. The research herein also focuses on the Texas civil service system though some references may be used from outside state agencies and even municipal fire departments who are governed under the same or similar civil service models. It is important to note that this research is not intended to dismiss the value of civil service, but rather to point out its fallacies, why it is failing, and to suggest why a refined model of governance should replace it. Primarily, this paper will push for municipal police agencies to search for a self-governing model that will work efficiently and effectively which serves to balance the best interest of the officer, the police department, and the city for which it serves. In advocating for such a system, this paper will suggest that municipalities should explore internal governing models before adopting civil service.

POSITION

The vast majority of research will show that the adoption of civil service has and will continue to cause as many problems as it has solved. For example, selection and hiring of new officers is substantially delayed and better qualified applicants are often passed over because they did not meet a particular prerequisite. Civil service rules have strict provisions in place and in regard to hiring, applicants must be placed in order on an “eligibility list” according to the applicant’s examination scores. Most civil service agencies in Texas post their applicant testing process online, which usually consists of at least a physical assessment test and a written exam. This rule will place priority on a candidate who is more physically fit and who scores higher on a written exam over a candidate who is more qualified. Civil service rules also requires the exhausting of a list in order of ranking, which will naturally create delays in the entire selection and hiring process (Tex. Local Government Code § 143.041). As explained by Castillo (1993), “Although civil service is designed to hire the most qualified, by its own standards, the system often blocks out the most qualified” (p. 9). Castillo (1993) further explained that these standards inevitably make the hiring process very long, often pushing away more desirable applicants.

Civil service regulations also place the burden of large arbitration costs for officer terminations on those respective cities. These regulations grant the officer the right to appeal a termination, which can take months and in excess of a year in some cases; it also forces a city to incur huge legal fees as they are proportionate to the length of the arbitration. Difficulty in terminating an officer for continued policy violations are revealed in an article about the termination of a police sergeant in Kyle, TX in May of 2015; that

arbitration was still ongoing as of May 2016 (Leos, 2016, para. 9). In a clear example of how civil service can damage a department, before this particular arbitration could be finalized with a determination, the private hearing examiner passed away, which rendered any and all findings of that examiner invalid. This hearing would have to be reset and reheard in a new trial (Leos, 2016, para. 14). Due to a technicality for which TLGC Ch. 143 does not have a safeguard in place for, this arbitration will continue, extending the total time in arbitration well past a year and further adding to legal costs for this single hearing. To add, this department will be unable to fill that position until a final disposition of this hearing is determined.

According to the City of Kyle (n.d.) budget report for fiscal year 2015-2016, this city added \$131,631 to their "Civil Service" line item which is used for arbitration and other legal fees involving officer disciplinary enforcement. In reviewing their fiscal year 2016-2017 proposed budget, it shows they added \$50,000 to this same line item. In further review, the total budget for this police department was just over six million for fiscal year 2015-2016. The total spent on civil service legal fees was approximately 2% of the entire police department's budget for that year, revealing the financial impact incurred by small to medium sized police department due to civil service regulation (City of Kyle, n.d., p.131). To add, nothing within the civil service statute precludes a terminated officer from suing their department. In fact, many officers file lawsuits against their former departments for wrongful termination, which will naturally equate to an increase of legal fees. Leos (2017) explained how a police sergeant who was terminated from employment for numerous policy violations filed a federal lawsuit against the city who fired him. Lawsuits of this type, if ruled in favor of the plaintiff, can

cost a city millions of dollars. As demonstrated by Aelee Law (n.d.), “Texas appellate court affirms award of \$100,000 actual and \$1 million in punitive damages” to a city employee for wrongful termination, and in a separate case, a state of Texas employee was awarded \$13.5 million by a jury in a wrongful termination suit (para. 40).

Actual costs incurred from arbitration are not limited to attorneys’ fees and legal processes; for example, they will also include back pay to be awarded to an officer if that officer is reinstated for employment (Tex. Local Government Code § 143.041). Castillo (1993) explained that the rules outlined in civil service make disciplinary enforcement process very difficult. Because many cases of handed down disciplinary actions have resulted in large legal bills, civil service is viewed as a “system which allows them very little flexibility and often leads to a decision against appropriate disciplinary measures” (Castillo, 1993, p.15).

Combined with high costs for arbitration is also the high probability that even after a long and drawn out process, there is a substantial probability that the officer who was terminated from employment may get their job back meaning that the city would be forced to reinstate that officer, and to include back pay. In Beaumont, TX a police officer was terminated from employment after his police department determined that he had cheated on the entrance exam four years prior. The City of Beaumont v. Spivey (1999) case was taken to the Texas Court of Appeals which ultimately reinstated this officer. Per court records, the focal point relied mainly on technicalities due to the department not following civil service rules rather than the act that the officer was accused of. This reinstatement did not get ruled until four years after the termination and was ordered to

“reinstate Spivey as a city police officer with full seniority, back pay, and benefits, and awarded Spivey attorney's fees” (City of Beaumont v. Spivey, 1999, para. 2)

An article by *CBS News* discussed the difficulty in firing police officers, even for egregious acts, the process in trying to terminate officers has become an aggravating issue (“How fired police officers,” 2013). The “How fired police officers” (2013) article states, “officers appeal their cases to state arbitrators, civil service boards, or commissions—and many times end up back on the job” (para. 7). In Philadelphia, PA “nine out of 10 cops” terminated from employment are likely to have those termination decisions reversed (“How fired police officers,” 2013, para. 6). A particular case in Waco, TX that involved an Assistant Chief of Police who was fired after he was arrested and charged with driving while intoxicated was overturned. The termination was overruled through arbitration on the account that the hearing examiner exceeded his authority—a technicality (City of Waco v. Kelley, 2010).

The TLGC chapter 143.056e maintains provisions that in layman’s terms says that an officer who is fired for a criminal offense who is found not guilty of the offense still maintains the right to appeal the termination (Tex. Local Government Code § 143.056). In a logical sense, the officer should be able to appeal the termination to get reinstated if found not guilty of the crime for which they were charged. However, nothing is outlined in civil service to safeguard the terminating police department if the not guilty verdict was due to a process infraction or technicality and not necessarily because the crime did not happen. In Columbus, Ohio, police and fire fighters are governed by civil service. According to Sullivan (2012), a Columbus, Ohio firefighter appealed his termination after being fired for fondling a 16-year-old girl for which he was formally

charged. The arbitrator ruled in this appeal in favor of the firefighter, reinstating his job, saying “even though he never denied fondling the girl, the city failed to prove wrongdoing” (Sullivan, 2012, para. 3). It was also pointed out, revealing continued difficulty for administrators governed by civil service platforms, that approximately 54% of Columbus police officers and firefighters who were terminated from employment got their jobs back through civil service backed arbitration. In the City of Austin, TX, a police officer was suspended once and fired twice for separate policy violations (Bien, 2015). The police chief who fired the officer went on record saying “[the officer] clearly neglected his duty and withheld pertinent and/or material information from his supervisors and the investigator” (Bien, 2015, para. 6). Although the second termination was still pending an appeal from the officer, this is a clear example of the difficulty police administrator’s face in trying to enforce disciplinary action (Bien, 2015).

An additional requisite of the civil service system may have a natural tendency to instill low productivity and performance within employees. Most employers, regardless of the particular state, utilize some sort of merit system to not only gauge an employee’s performance though to provide an incentive for the employee to increase productivity through pay raises. In fact, the Texas Merit Council was established sometime in the early 1970s to maintain compliance with certain agencies which enforced the utilization of a merit based system (Walter, 2002). The Texas Merit Council was later abolished in 1985. This may have paved the way for the Texas civil service system to mandate a pay scale system for officers which overrode any merit based or performance model (Walters, 2002, p. 12). Tex. Local Government Code § 143.041 mandates that all “police officers in the same classification are entitled to the same base salary.” What

this may translate to some is that regardless of whether one is a high performing and exemplary employee or the laziest who contributes little to none, they will get paid the same. Problematic issues with this pay system may be inherent to the concept since there is no monetary incentive to putting in a hard day's work. Ugah and Arua (2011) pointed this out while demonstrating the expectancy theory which says that the best influence in motivation for employees is when there is knowledge of some type of reward. However, "these positive effects tend to diminish over the long-term weakening links between individual performance and pay" (Choi & Whitford, 2013, p. 4).

Strong rapport and a healthy working relationship is crucial in any organization to operate effectively and successfully. A police department is no different in that the police union needs to work along with and not against the city administrators in order to maintain efficacy. Once such example is shown with the case of Kyle, TX, when its police union petitioned for civil service adoption with heavy opposition from city leaders. During a city council meeting, city leaders voiced their opposition to such adoption as several perceived it as a threat to the city government primarily due to increased costs and apparent limited control they will have over police officers (Peterson, 2008). Another example of such conflict was reported by Anaya (2012), who quoted a letter drafted by the San Antonio Police Officer's Association and distributed to their city council saying the "SAPOA wants to work with the city, but refuses to negotiate unless the city manager stops threatening to force a new benefits plan on officers if an agreement cannot be reached by an October 1 deadline" (para. 1). This type of turmoil can undoubtedly hold back progression and sit negatively with the community.

COUNTER POSITION

As with most laws, the civil service system was enacted into Texas law as an option for police departments for a reason, or for many reasons perhaps. Many police agencies do not yet qualify for civil service adoption due to the prerequisite of 10,000 to 1,500,000 in city population; however, many Texas cities are rapidly approaching this mark. Whether it is a police department that has already adopted civil service or that will sometime in the future, the consensus may oppose implementing a self-governing system and, for those already with civil service, would likely hold very strong opposition to repealing it. One such reason would be that without civil service, police officers would not be afforded with adequate protection from disparate treatment and legal issues since Texas is an at-will employment state. What this means is that without a contractual agreement in place, an employer may change the conditions of employment for an officer and even fire the officer for any reason so as long as it does not discriminate for federal protected classes such as race, color, religion, gender, age, national origin, disability, or citizenship (Texas Workforce Commission, n.d.). Even if a police organization has implemented a “Code of Ethics and a Code of Conduct” for themselves, Whitton (2001) says these are ineffective if those bound by them do not understand or appreciate them (p. 3).

Through the strict adherence of facets such as internal policy, carefully constructed binding contracts for stipulations of employment, a city in collaboration with its police union can mirror guidelines outlined in civil service though with the ability to tailor and customize it as needed. As previously referenced, with a binding contract in place an employer would not be able to change conditions of employment or fire an

officer for no reason at all. Legal protection (counsel) is already available and has been for many years through legal firms who only serve Texas law enforcement such as the Texas Municipal Police Association (n.d.) who currently holds membership for over 24,000 law enforcement officers. Texas state law also provides police and fire departments with the option to adopt a “collective bargaining” status which affords the right to assemble as a union and enter into contract negotiations with their city for benefits and salary (Tex. Local Government Code § 174.002).

Another valid argument is that civil service was also created to eliminate cronyism, which is “the unfair practice by a powerful person (such as a politician) of giving jobs and other favors to friends” (Cronyism, n.d., para. 1). The concern would be how this would be prevented other than with civil service governing. One particular and important measure to implement protection from this is with accreditation through nationally recognized program such as the Commission on Accreditation for Law Enforcement Agencies (CALEA) (n.d.) whose purpose is “to enhance law enforcement as a profession and to improve law enforcement service delivery” (para. 1). This accreditation requires an agency to create a finite and comprehensive departmental policy and procedures manual and the commitment to adhere to aspects such as accountability, equity, and executive excellence. A similar recognition program modeled after “best practices” which “were carefully developed by Texas Law Enforcement professionals to assist agencies in the efficient and effective delivery of service, the reduction of risk and the protection of individual’s rights” is offered to Texas police agencies (Texas Police Chiefs Association, n.d., para. 1). This program was designed specifically for Texas law enforcement agencies which provides the best practices for

issues specific to Texas. Although accreditations do not guarantee the prevention of unfair practices by police administration, they are designed to eliminate them in the masses since the program obligates those departments to uphold professional standards to maintain their accreditation.

Civil service was put in place for legitimate problems which it corrected; however, it also created many other problems along the way. For those cities with police (and fire) departments who qualify for or will be qualifying in the near future for civil service, it would be advantageous for those city leaders to initiate a campaign for such a self-governing model, get police union buy-in, get it noticed by the community, and adopt such a model so that their police union never has a need to petition for civil service adoption in the first place.

RECOMMENDATION

In review, Chapter 143 of the TLGC was created to secure police departments and safeguard officer employment through proper regulation (Tex. Local Government Code § 143.041). However, it was demonstrated that civil service has fallen short of securing the administrative processes of police agencies in respect to officer employment thus revealing its failing points. It is the position of this paper to suggest an implementation of change for police agencies, one that will initiate a road map to a final destination of a near absolute balanced governing system affording both officer protection while ensuring necessary and ethical authority remains with the agency administration.

Research showed particular failing points with civil service including gross delays in hiring new officers, promotional processes often resulting in unqualified and

undesired candidates, large arbitration costs incurred for disciplinary action (since most officers appeal long suspensions and terminations), creation of unhealthy relationships between the police union and city leaders, and the high officer reinstatement rate of terminated officers. Legitimate fear is present among police officers who currently operate under civil service rules that without it, adequate officer protection would no longer be available. To add, there would be nothing to prevent the problem of cronyism and other unreasonable forms of promotion. These are valid points, and since they cannot be ignored with a properly constructed binding agreement, a police agency could operate with equality more efficiently than under civil service.

Cities and their police departments should explore an internal style of governing system before adopting civil service. Such an approach to implement a self-governing model of rules would likely be in the form of a binding contract that would mirror the outline of Texas Civil Service Ch.143 of the TLGC though one that would loosen the restrictions needed to eliminate the problems that civil service created. Specifically, all powers involved should collaborate and work in concert with each other to create a fine-tuned regulatory system of checks and balances that would be absolutely adhered to. This would start with police department policy, city policy, the city charter and then to the police union bylaws. In conjunction with a perpetual binding contract, these policies would be designed to pivot off one another so that no single person or group of people could change any policy without a majority vote of all powers. The concept is to create a well-orchestrated and balanced set of policies and procedures that maintains the best interest of all stakeholders.

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