



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 13, 1997

The Honorable Carl E. Lewis  
Nueces County Attorney  
Nueces County Courthouse  
901 Leopard, Room 206  
Corpus Christi, Texas 78401-3680

Letter Opinion No. 97-020

Re: Whether the reappointment of a municipal judge terminates his tenure even though no other person is appointed to the position (ID# 39074)

Dear Mr. Lewis:

You have requested our opinion as to whether the vote of a city council which rejects the reappointment of an incumbent municipal court judge is an "action" sufficient to terminate the tenure of that judge even though no other person is appointed to that position. The pertinent section 29.005 of the Government Code<sup>1</sup> provides as follows:

*The judge of a municipal court serves for a term of office of two years unless the municipality provides for a longer term pursuant to Article XI, Section 11, of the Texas Constitution. A municipal court judge who is not reappointed by the 91st day following the expiration of a term of office shall, absent action by the appointing authority, continue to serve for another term of office beginning on the date the previous term of office expired. [Emphasis added].*

You inform us in your brief that the Robstown city council voted to reject the reappointment of its municipal court judge, but did not appoint a successor within ninety-one days. You suggest that in light of this provision and article XVI, section 17, of the Texas Constitution which provides that "[a]ll officers within this state shall continue to perform the duties of their offices until their successors shall be duly qualified," action sufficient to terminate the tenure of the judge requires the City of Robstown not only to reject the reappointment of the incumbent but also to provide a successor. Absent such action, you believe that the municipal court judge would continue to serve for another term of office beginning on the date the previous term of office expired. We disagree.

Based on the plain language of the statute, we believe that rejecting the reappointment of the incumbent constitutes an "action" within the meaning of section 29.005. If the legislature had intended the word "action" to be narrowly construed, we believe that it would have so provided. In the absence of language to the contrary, we conclude that the legislature intended any affirmative action taken by a city council to mean "action." Accordingly, a city council who has voted to reject

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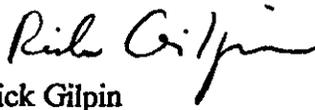
<sup>1</sup>You state that the City of Robstown is a municipality as that term is defined in chapter 29 of the Government Code. Gov't Code § 29.001.

an incumbent municipal court judge but has not provided for a successor is not required to appoint a successor within the ninety-one day period.

**S U M M A R Y**

The rejection of a re-appointment is an "action" within the meaning of Section 29.005 of the Government Code, and as such, is sufficient to terminate the tenure of a municipal court judge even though a successor is not named within the ninety-one day period.

Yours very truly,



Rick Gilpin  
Deputy Chief  
Opinion Committee