

**ORDER ISSUED: July 22, 2021**



**DOCKET NO. SCR 21-0001**

**SPECIAL COURT OF REVIEW**

**IN RE INQUIRY CONCERNING HONORABLE SARAH ECKHARDT,  
CJC Nos. 20-0148 and 20-0469**

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**ORDER**

Pending before this Special Court of Review is the plea to the jurisdiction filed by Senator Sarah Eckhardt. Through it, she seeks to dismiss the disciplinary proceeding initiated against her by the State Commission on Judicial Conduct. The proceeding arose from acts she performed when County Judge for Travis County.<sup>1</sup> Jurisdiction allegedly is non-existent because 1) she performed no judicial functions while Travis County Judge and the performance of such functions is a prerequisite to the Commission's authority to act, 2) the constitutional doctrine of separation of powers barred the Commission from sanctioning her while performing solely executive and legislative functions, as opposed to judicial functions, and 3) the doctrine of legislative immunity barred the Commission from acting. We deny the motion for the following reasons.

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<sup>1</sup> Senator Eckhardt vacated that post upon her election to the Texas Senate in July of 2020.

### *Performance of Judicial Functions*

First, the Commission levied its sanction pursuant to article V, § 1-a(6) of the Texas Constitution.<sup>2</sup> That provision states:

Any Justice or Judge of the courts established by this Constitution or created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice. Any person holding such office may be disciplined or censured, in lieu of removal from office, as provided by this section.

TEX. CONST. art. V, § 1-a(6)(A). Another article of the same Constitution provides that the "judicial power of this State shall be vested" in various courts, including "in County Courts." *Id.* art. V, § 1. Each Texas county has both such a court and a County Judge. *See id.* art. V, § 15. Furthermore, the County Judge acts as "the presiding officer of the County Court and has judicial functions as provided by law," according to the Constitution. *Id.* art. V, § 16.

Next, our Constitution charges the Commission with the responsibility of remaining "informed . . . of circumstances relating to the misconduct . . . of particular persons holding an office named in paragraph A of Subsection (6) of [§ 1-a], receive complaints . . . and make such preliminary investigations as it may determine." *Id.* art. V, § 1-a(7). It may also "issue a private or public admonition, warning, reprimand . . . or . . . institute formal proceedings and order a formal hearing to be held before it concerning a person holding an office or position specified in Subsection (6) . . . ." *Id.* art. V, § 1-a(8).

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<sup>2</sup> The sanction consisted of a public admonition. Within that admonishment, the Commission stated that it has "taken this action *pursuant to the authority conferred it in Article V, § 1-a of the Texas Constitution* in a continuing effort to protect the public and promote public confidence in the judicial system." (Emphasis added).

We cite the foregoing Constitutional provisions for this purpose. Reading them as written, *see Ex parte Woods*, 52 Tex. Crim. 575, 108 S.W. 1171, 1176 (Tex. Crim App. 1908) (stating that “[w]hat a court is to do . . . is to declare the law as written” and “[t]he meaning of the Constitution is fixed when it is adopted, and it is not different at any subsequent time when a court has occasion to pass upon it”), they illustrate that Texans vested the Commission with the authority to conduct disciplinary proceedings involving justices or judges of courts established by the Constitution. One such court is a County Court, *see id.* art. V, § 1, and one such judge is the County Judge of that court. *Id.* art. V, § 15. In other words, article V, § 1-a(6) names who may be subject to discipline while article V, § 1-a(7) identifies the entity that may investigate and levy it.

Missing from article V, §§ 1-a (6) and (7) is verbiage alluding to the nature of the work performed by the judge or justice of a court created by the Constitution. Both mention only the post or office held. So, the jurisdiction vested by the Constitution in the Commission is not dependent upon the nature of the tasks performed. It is dependent upon whether the judge or justice serves on a court created by the Constitution or legislature. This means that whether Eckhardt performed any judicial functions as County Judge for Travis County is inconsequential. The Commission's jurisdiction to discipline depended upon whether she held the post of judge of a court established by the Constitution or legislature. No one questions that she did.

### ***Separation of Powers***

Eckhardt next asserts that the constitutional doctrine of separation of powers bars the Commission from investigating or disciplining her because her duties merely were legislative or executive in nature. We disagree.

Article II, § 1 of our Texas Constitution divides the “Government of the State” into three distinct branches, i.e., the executive, legislative and judicial. TEX. CONST. art. II, § 1. It further

states that “no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, *except in the instances herein expressly permitted.*” *Id.* (Emphasis added). The highlighted passage allows for some “stepping on toes.” *See Henry v. Sullivan*, 499 S.W.3d 545, 556 (Tex. App.—Houston [14th Dist.] 2016, pet. denied) (observing that article II, § 1 of the Constitution “expressly provides for exceptions to the general rule that no member of one branch of government shall exercise a power properly attached to another branch of government”). That is, article V, § 1-a(6) “expressly permit[s]” the Commission to discipline judges of courts created by the Constitution or legislature; that includes county judges. So, the doctrine of separation of powers is of no moment either.

### ***Legislative Immunity***

Eckhardt’s final argument implicates the doctrine of legislative immunity. We again disagree.

The doctrine at issue “generally shields legislative actors not only from liability, but also from being required to testify about their legislative activities.” *In re Perry*, 60 S.W.3d 857, 860 (Tex. 2001). Its umbrella not only covers legislators but also others performing legitimate legislative functions. *Id.* at 860. Nevertheless, it finds its roots in “fundamental separation-of-powers tenets.” *Id.* at 859; *Henry v. Sullivan*, 499 S.W.3d at 556. So too is it a creature of the common law. *Camacho v. Samaniego*, 954 S.W.2d 811, 823 (Tex. App.—El Paso 1997, pet. denied) (stating that local officials acting in a legislative capacity have legislative immunity “under the common law analogous to that enjoyed by members of Congress and State legislators”). Being a creature of common law, it kneels to the authority of the Texas Constitution, which is the supreme law of this state. *Dickson v. Strickland*, 114 Tex. 176, 201, 265 S.W. 1012, 1021 (1924) (noting that common law tenants which conflict with the Constitution are void). *Id.* The bodies of

common law which so kneel include both governmental and legislative immunity. *Henry v. Sullivan*, 499 S.W.3d at 556–57 (reading article V, § 8 of the Texas Constitution as waiving governmental and legislative immunity claims by members of the commissioner’s court).

As previously discussed, our Constitution granted the Commission authority to discipline county judges. Whether we deem that grant as either a limited waiver of legislative immunity or the nullification of the common law doctrine in this particular situation, the result is the same. Eckhardt cannot and does not enjoy its protection in disciplinary proceedings initiated under art. V, § 1-a(6) of the Constitution.

Accordingly, we deny Eckhardt’s plea to the jurisdiction.

SPECIAL COURT OF REVIEW<sup>3</sup>

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<sup>3</sup> The Special Court of Review consists of The Honorable Brian Quinn, Chief Justice of the Seventh Court of Appeals, presiding by appointment; The Honorable Charles Kreger, Justice of the Ninth Court of Appeals, participating by appointment; and The Honorable W. Stacy Trotter, Justice of the Eleventh Court of Appeals, participating by appointment.