



S.W.2d 17, 19 (Tex. 1974); *see also Newsome v. State*, 922 S.W.2d 274 (Tex. App.—Austin 1996, writ denied) (“In the modern context, the State uses quo warranto actions to challenge the authority to engage in certain practices specifically enumerated by statute.”). The applicable law appears in Tex. Civ. Prac. & Rem. Code §§ 66.001, *et seq.* Additional procedures are found in Tex. R. Civ. P. 780, *et seq.*

A quo warranto is available when a person unlawfully holds an office created by the authority of the State. Tex. Civ. Prac. & Rem. Code § 66.001(1). Because the Commission was created by authority of the State, Tex. Local Gov’t Code § 211.007; Austin, Tex., Charter art. X, § 2; Austin, Tex., Code of Ordinances § 2-1-166, Commission members may be challenged by quo warranto. The Attorney General, on his own motion, is authorized to proceed in the name of the State by quo warranto. Tex. Civ. Prac. & Rem. Code § 66.002(a)-(c). “If there is probable ground for the proceeding, the judge shall grant leave to file the information, order the information to be filed, and order process to be issued.” *Id.* § 66.002(d). When the information is filed, the clerk shall issue citation as in civil cases, commanding the defendant to appear and answer. Tex. R. Civ. P. 780. The case then proceeds the same as a civil case. Tex. R. Civ. P. 781.

Upon a finding that a person unlawfully holds an office, the court “shall enter judgment removing the person from office . . . ,” “shall enter judgment for costs . . . ,” and “may fine the person for . . . unlawfully holding . . . the office.” Tex. Civ. Prac. & Rem. Code § 66.003(1)-(3).

Probable grounds are determined from the petition. *State ex rel. Manchac v. City of Orange*, 274 S.W.2d 886, 888 (Tex. Civ. App.—Beaumont 1955, no writ) (“If the petition sought to be filed stated a cause of action, the court was in error in refusing permission to file it.”); *see also Ramirez v. State*, 973 S.W.2d 388, 393 (Tex. App.—El Paso, 1998, no pet. h.) (“[W]e will accept as true the allegations contained in the State’s petition. If the petition states a cause of action, the trial court did not err in granting permission to file it.”)

This petition, including the attached Information, states a cause of action. The City of Austin is governed by its Charter. The Charter requires the Commission to “have a number of members equal to the number of members on the council plus two (2) additional members, a minimum of two-thirds of the members who shall be lay members not directly or indirectly connected with real estate and land development.” Austin, Tex., Charter art. X, § 2. The Charter also requires that the two-year terms of the Commission members be staggered between odd and even years. *Id.* The City of Austin Code provides that such terms are to begin on March 1. Austin, Tex., Code of Ordinances § 2-1-22. These requirements are also set forth in the Commission’s Bylaws, Art. 3(A), (C), which the City Council approved as recently as Oct. 6, 2016, Bylaws of Planning Comm’n art. 3(A), approved by Austin City Council on October 6, 2016, at [www.austintexas.gov/edims/document.cfm?id=265449](http://www.austintexas.gov/edims/document.cfm?id=265449), and [id=264201](http://www.austintexas.gov/edims/document.cfm?id=264201).

As set forth in detail in the attached Information, the City Council’s appointment of 12 of 13 members in a single year, 2017, to non-staggered terms (for all 13 members) beginning on July 1, 2017, with 8 of such members directly or

indirectly related to real estate and land development was in direct violation of the City Charter, the City Code and the Commission's Bylaws.<sup>1</sup> As a result, the members of the Commission unlawfully hold seats on the Commission, Tex. Civ. Prac. & Rem Code § 66.001(1), and must be removed, *id.* § 66.003(1).

### **Request**

The State respectfully requests that the Court grant leave to file the Information, order the Information to be filed, and order citation and process to be issued.

Respectfully submitted this 2nd day of July, 2018.

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<sup>1</sup> Commission previously had nine members directly or indirectly related to real estate and land development, but in early June 2018 Stephen Oliver resigned from the Commission.

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