

Affirmed and Majority and Concurring Opinions filed August 9, 2011.



In The

Fourteenth Court of Appeals

NO. 14-10-00301-CR

ISRAEL RUIZ-ANGELES, Appellant

V.

STATE OF TEXAS, Appellee

**On Appeal from the County Criminal Court at Law No. 14
Harris County, Texas
Trial Court Cause No. 5476**

CONCURRING OPINION

Under applicable precedent, Texas Government Code section 62.021 does not apply to the jury selection process in municipal court trials; therefore, the trial court was not required to comply with this statute. The majority reaches this conclusion based upon a different analysis, under which the majority concludes there is an irreconcilable conflict between section 62.021 and article 45.027 of the Texas Code of Criminal Procedure. Because there is no such conflict, I respectfully decline to join the majority's analysis, but I concur in this court's judgment.

Government Code section 62.021 does not apply in this case.

Appellant bases the alleged error asserted in his first issue upon the premise that Texas Government Code section 62.021, entitled “Dismissal of Juror Removed From Panel,” applies to municipal courts in Harris County. In *Cantu v. Samples*, the court held that a group of statutes did not apply to the selection of jurors in municipal court criminal trials; this group of statutes included the predecessor statute to section 62.021. See 581 S.W.2d 195, 196 (Tex. Civ. App.—San Antonio 1979, no writ). In 1995, the Court of Criminal Appeals cited *Cantu* with approval and concluded that the provisions of Chapter 45 of the Code of Criminal Procedure apply to criminal proceedings in municipal court and that statutes outside of this chapter do not apply in the municipal court context unless they specifically state that they apply to municipal courts. See *Huynh v. State*, 901 S.W.2d 480, 482–83 (Tex. Crim. App. 1995); *Cantu*, 581 S.W.2d at 196. Under this authority, Texas Government Code section 62.021 does not apply to the case under review and therefore appellant’s first issue lacks merit.¹ See *Huynh*, 901 S.W.2d at 482–83; *Cantu*, 581 S.W.2d at 196.

Government Code section 311.026 does not apply in this case.

Rather than rely upon the foregoing precedent to conclude that Government Code section 62.021 does not apply in the case under review, the majority relies upon

¹ Appellant notes that when the Legislature created the Government Code, it included one section in Chapter 62 that specifically applies to municipal courts. See Act of May 17, 1985, 69th Leg., R.S., ch. 480, 1985 Tex. Gen. Laws 1720, 2017 (current version at TEX. GOV’T CODE ANN. § 62.501 (West 2005)) (stating that “[t]o be eligible to serve on a jury of a municipal court, including a municipal court of record, a person must be resident [sic] of the municipality for which the court is established”). Section 62.501, entitled “Qualification,” specifically states that it applies to municipal courts, and this statute was part of the Government Code when the Court of Criminal Appeals decided the *Huynh* case. See *Huynh*, 901 S.W.2d at 482–83. There are many other sections in Chapter 62, including section 62.021, and none of these other sections specifically states that it applies to municipal courts. See TEX. GOV’T CODE ANN. § 62.001, *et seq.* (West 2005).

Government Code section 311.026, entitled “Special or Local Provision Prevails Over General,” which reads in its entirety as follows:

(a) If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.

(b) If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

TEX. GOV’T CODE ANN. § 311.026 (West 2005). The rule of statutory construction contained in section 311.026(b) applies only if the general provision and the special provision irreconcilably conflict with each other. *See id.*; *Lomax v. State*, 233 S.W.3d 302, 311–12 (Tex. Crim. App. 2007). Two statutes irreconcilably conflict when only one of them can apply to a particular situation. *See Lomax*, 323 S.W.3d at 312. Under article 45.027(b) of the Code of Criminal Procedure, a prospective juror in a municipal court “shall remain in attendance . . . until discharged by the court.”² TEX. CODE CRIM. PROC. ANN. art. 45.027 (West 2006). Government Code section 62.021, if it applied to municipal courts in Harris County, would require the municipal court to discharge all prospective jurors who were not selected as jurors after service on their first venire panel.³ *See* TEX. GOV’T CODE ANN. § 62.021 (West 2005).

² The statute, entitled “Jury Summoned,” reads in its entirety as follows:

(a) If the accused does not waive a trial by jury, the justice or judge shall issue a writ commanding the proper officer to summon a venire from which six qualified persons shall be selected to serve as jurors in the case.

(b) The jurors when so summoned shall remain in attendance as jurors in all cases that may come up for hearing until discharged by the court.

(c) Any person so summoned who fails to attend may be fined an amount not to exceed \$100 for contempt.

TEX. CODE CRIM. PROC. ANN. art. 45.027 (West 2006). In the context of this statute and construing it as a whole, the only reasonable meaning of “juror” as used in subsection (b) is “prospective juror.” *See* WEBSTER’S THIRD NEW INT’L DICTIONARY 1227 (1993 ed.) (stating as second definition for “juror,” “a person designated and summoned to serve on a jury”).

³ The statute reads in its entirety as follows:

One statute requires prospective jurors to remain until the court discharges them, and the other statute requires certain courts to discharge prospective jurors after service on their first venire panel. There is no irreconcilable conflict between these statutes. *See* TEX. GOV'T CODE ANN. § 311.026; *Lomax*, 233 S.W.3d at 311–12. Therefore, the rule of construction set forth in Government Code section 311.026(b) does not apply. *See* TEX. GOV'T CODE ANN. § 311.026; *Lomax*, 233 S.W.3d at 311–12. If Government Code section 62.021 applied to the trial court in the case under review, then this section would not conflict with article 45.027 and would require the trial court to dismiss prospective jurors after service on their first venire panel. *See* TEX. GOV'T CODE ANN. § 62.021. But, as discussed above, Government Code section 62.021 does not apply to municipal courts. *See Huynh*, 901 S.W.2d at 482–83; *Cantu*, 581 S.W.2d at 196.

The trial court's judgment should be affirmed. But this court should not conclude that Government Code section 62.021 irreconcilably conflicts with article 45.027 of the Texas Code of Criminal Procedure.

/s/ Kem Thompson Frost
Justice

Panel consists of Chief Justice Hedges and Justices Frost and Christopher. (Christopher, J., majority).

Publish — TEX. R. APP. P. 47.2(b).

In a county with a population of 1.5 million or more, a prospective juror removed from a jury panel for cause, by peremptory challenge or for any other reason, must be dismissed from jury service. After dismissal, the person may not be placed on another jury panel until his name is returned to the jury wheel and drawn again for jury service.

TEX. GOV'T CODE ANN. § 62.021 (West 2005).