



ULTRA VIRES IN TEXAS

Federal Sign – action against a state official for ultra vires acts is not a suit against the state that is barred by immunity

IT Duty – declaratory judgment actions against officials to establish contract validity, enforce contract performance, or impose contract liability is a suit against the state, barred by immunity

ULTRA VIRES SINCE HEINRICH

Texas Parks & Wildlife Department v. Sawyer Trust: suit to recover possession of property or land held by the public entity (and thus to determine title to real property?) is an ultra vires suit

Texas Lottery Commission v. First State Bank: Retail v. Texas Department of Licensing & Regulation: ultra vires suits are only those challenging actions by public officials; exception does not apply to challenges to validity of statutes (remedy reviewed by Declaratory Judgment Act)

City of Galveston v. COM Smith, Inc.: claim seeking relief with respect to past, non-recurring acts is not a valid ultra vires suit for prospective relief

RELIEF
Prospective ONLY

THE RESPONSE

Motion to Dismiss/
Plea to the Jurisdiction

"Answer"

Counterclaim?

HEINRICH - 2009

Purpose: Does this suit do not even come close to public entity duty to respond to that government's role to protect and enforce existing policy.

Proper parties: Public officials, suits in their official capacities.

Status of the public entity: A public entity can't act without authority and therefore retains authority to act.

Relief sought: Suits against public entity and officials based on official capacity. Through public officials, law enforcement, fire, police, for all essential services, against the state.

Actions subject to ultra vires suit: The suit must allege and ultimately prove, that the official acted without legal authority or failed to perform a purely ministerial act.

Damages available: No retroactive monetary damages are available. May only obtain a prospective declaratory judgment against the public officials who have acted without their legal authority.

WHAT AN ULTRA VIRES SUIT LOOKS LIKE

Proper Parties

Allege an ultra vires act?

What kind of relief requested?

TRIAL & POTENTIAL RELIEF

Declaratory Judgment suit trial

Relief: prospective ONLY

- Injunction (barring continued ultra vires action)
- Mandamus (compelling action to bring official into compliance with the law)

6.16 2016 TEXAS CITY ATTORNEYS ASSOCIATION 2016 SUMMER CONFERENCE

JOSÉ DE LA FUENTE



ULTRA VIRES

What's a nice Latin term like you doing in a place like Texas?

Latin? In Texas?

Bona Fide ■ "In good faith"

Res Ipsa Loquitur

"The thing speaks for itself."

APPEAL

CPRC §51.014

Full appeal after trial





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6.16
2016

TEXAS CITY ATTORNEYS ASSOCIATION
2016 SUMMER CONFERENCE

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Lloyd
 Gosselink
ATTORNEYS AT LAW

*ULTRA
VIRES*

*What's a nice Latin
term like you doing in
a place like Texas?*

INTRA

VIRES

ULTRA

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Federal Sign – action against a state official for *ultra vires* acts is not a suit against the state that is barred by immunity

IT-Davy – declaratory judgment actions against officials to establish contract validity, enforce contract performance, or impose contract liability is a suit against the state, barred by immunity

HEINRICH - 2009

Purpose: *Ultra vires* suits do not exert control over the public entity; they do not seek to alter government policy but rather to enforce existing policy.

Proper parties: Public officials, sued in their official capacities.

Status of the public entity: A public entity can never act outside its authority and therefore remains immune from suit.

Relationship between public entity and official sued in official capacity: Though public officials are the proper defendants, “the suit is, for all practical purposes, against the state.”

Actions subject to *ultra vires* suit: The suit “must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.”

Damages available: No retrospective monetary damages are available. May only obtain a prospective declaratory judgment against the public officials who have acted outside their legal authority.

ULTRA VIRES SINCE HEINRICH

Texas Parks & Wildlife Department v. Sawyer Trust:

suit to recover possession of property unlawfully held by the public entity (and thus to determine title to real property?) is an *ultra vires* suit

Texas Lottery Commission v. First State Bank; Patel v. Texas Department of Licensing & Regulation: *ultra vires* suits are only those challenging **actions** by public officials; exception does not apply to challenges to validity of statutes (immunity is waived by Declaratory Judgment Act)

City of Galveston v. CDM Smith, Inc.: claim seeking relief with respect to past, non-recurring acts is not a valid *ultra vires* suit for prospective relief

Ministerial acts **ONLY**

...

okay, discretionary
acts too

Houston Belt & Terminal

Railway Co. v. City of Houston:

discretionary acts of public official
can be subject to *ultra vires* claim
if act is beyond the scope of the
discretion granted to the official

WHAT AN *ULTRA VIRES* SUIT LOOKS LIKE

Proper Parties

Allege an *ultra vires* act?

What kind of relief requested?

THE RESPONSE

**Motion to Dismiss/
Plea to the Jurisdiction**

"Answer"

Counterclaim?

TRIAL & POTENTIAL RELIEF



Declaratory Judgement suit trial

Relief: prospective ONLY

- **Injunction** (barring continued *ultra vires* action)
- **Mandamus** (compelling action to bring official into compliance with the law)

APPEAL

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