

RECENT STATE CASES OF INTEREST TO CITIES

Presented by

Barbara Boulware-Wells
Akers & Boulware-Wells, LLP
816 Congress Avenue, Suite 1725
Austin, Texas 78701
(512) 404-7880

www.txcityattorney.com

ANNEXATION AND LAND USE

- ▶ Hardee v. City of San Antonio, No. 04-07-00740-CV (Tex.App.—San Antonio, May 21, 2008)
- ▶ What ordinance did the developer ask about?



The tree ordinance >>

Developer had sought, via letter, verification that the City's tree ordinance did not apply to four projects.

- ▶ City argued that the letter was not an application for a permit
- ▶ In order to secure the vesting status, City requested that developer submit through the vested rights permitting process.
- ▶ The City alleged that at the time of the lawsuit, the City had not been given the opportunity to make a final determination as to the property land use regulations applied (each of the projects involved different dates);
- ▶ The City had not issued nor denied any permits.

Town of Fairview v. H. Roger Lawler, No. 05-07-01617-CV (Tex. App.—Dallas May 2, 2008)



- ▶ Mr. Lawler did not want his property annexed and sued under Section 43.033, Local Government Code, arguing that annexation was void under Section 43.141 because it was a reannexation after having been disannexed and it was not on City's 3-year annexation plan.

- ▶ City argued it was not disannexed for failure to provide services, but under 43.033 and quo warranto was only proceeding.
- ▶ City's plea to the jurisdiction was denied by trial court;
- ▶ Court of appeals held quo warranto was only proper procedure and ten year waiting period only applied for failure to provide services under 43.141.

Chappell Hill Bank v. Smith, No 14-07-00099-CV (Tex App.—Houston (14th Dist) May 8, 2008).



- ▶ Chappell Hill Bank and Smith each own property facing main street.
- ▶ Bank sought declaratory judgment stating that a certain strip of land running behind its property and that of Smith's and other owners' property is a public alley and a mandatory injunction ordering Smith to remove all obstructions from alley, a prohibitive injunction enjoining Smith from obstructing alley in the future and recovery of attorney's fees.

- ▶ Court of appeals held quitclaim deed executed by all lot owners in block relinquished right to private easement, by purchasing second lot after executing quit claim deed as owner of first lot did not acquire by dedication a private easement in entire alley and lack of active de facto municipal government gave county de jure control over streets and alleys so that streets and alley became county roads.

EMINENT DOMAIN, INVERSE CONDEMNATION AND TAKINGS

- ▶ **Texas Bay Cherry Hill, L.P. v. City of Fort Worth**, No 2-06-325-CV (Tex App.—Fort Worth, May 29, 2008)

- ▶ Cherry Hill owned Cherry Hill apartment complex in the Woodhaven neighborhood. Woodhaven is primarily comprised of low income multi-family apartment complexes and a small group of higher-income homes.
- ▶ This area became the demonstration area for the redevelopment plans the City adopted.

- ▶ A consultant was hired to assist with the redevelopment plan.
- ▶ The Plan, the report from the City Manager and resolution adopting the Plan all stated the City will not use condemnation to acquire property under the Plan.

- ▶ During this same time, the City sued Cherry Hill to abate common nuisances and the parties ultimately entered a Rule 11 settlement agreement.
- ▶ Thereafter Cherry Hill filed suit against the City and others (including Haskins, a councilmember) alleging a conspiracy to diminish the apartment complex's value by disparaging it and tortuously interfering with a business relationship.
- ▶ The City answered and filed a plea to the jurisdiction and motion to dismiss.
- ▶ Cherry Hill amended the pleadings and added an inverse condemnation claim, alleging the Plan was an unlawful urban renewal.

- ▶ Court's holding:
- ▶ City's adoption of plan is governmental function and the City is immune from suit for intentional tort allegations.
- ▶ Cherry Hill's declaratory judgment action and request for injunction is not ripe.
- ▶ Haskins, as a member of the City Council, is found to be a City employee under the Tort Claims Act and Cherry Hills claims against the City bar any suit against Haskins regarding the same subject matter.

City of Dallas v. VRC LLC, No 05-06-01056-CV (Tex App.—Dallas, May 19, 2008)

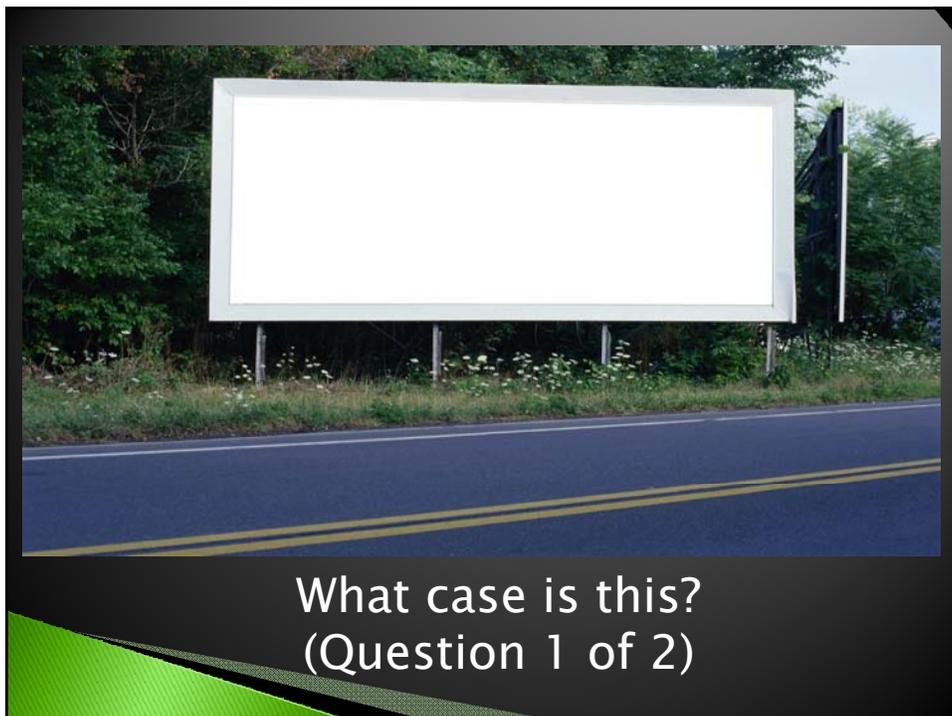
- ▶ What type of entity does this case involve?



Storage Facility for Towed Vehicles >>

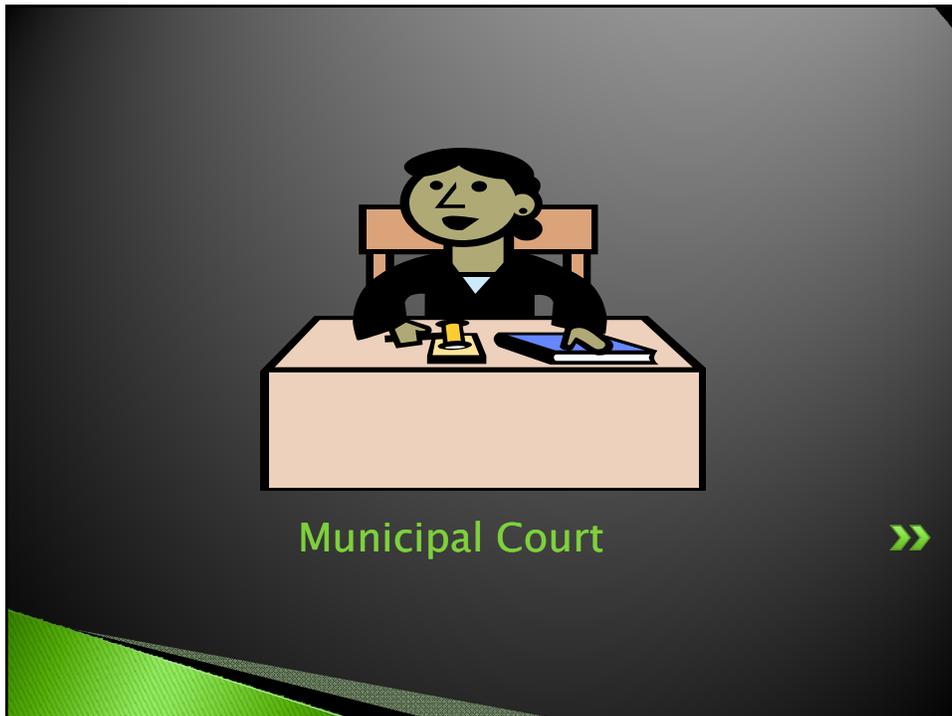
- ▶ Storage facility for towed vehicles brought action against City alleging a constitutional takings claim and asserting a declaratory judgment action pertaining to the fees.
- ▶ City had allegedly taken vehicles involved in a crime. Thereafter the City disposed of the vehicles and retained all fees.
- ▶ City asserts that VRC failed to assert a viable takings claim against it which would overcome the City's governmental immunity.

- ▶ Court of appeals agreed, finding that liens are property for purpose of a takings claim; operator of facility brought justiciable issue but vehicle owners were not interested parties who needed to be joined.



City of Argyle v. David Pierce and Clear
Channel Outdoor, No. 2-07-255-CV
(Tex App.—Fort Worth, May 15, 2008)

This case has involved which
courts?
(Question 2 of 2)



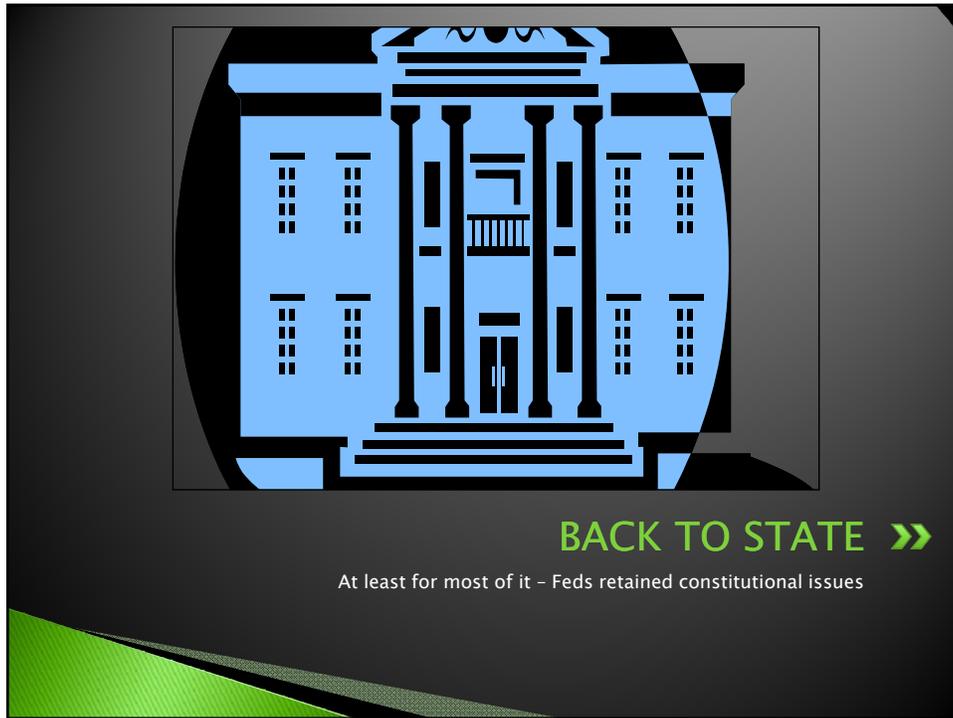


STATE COURT >>



Federal Court

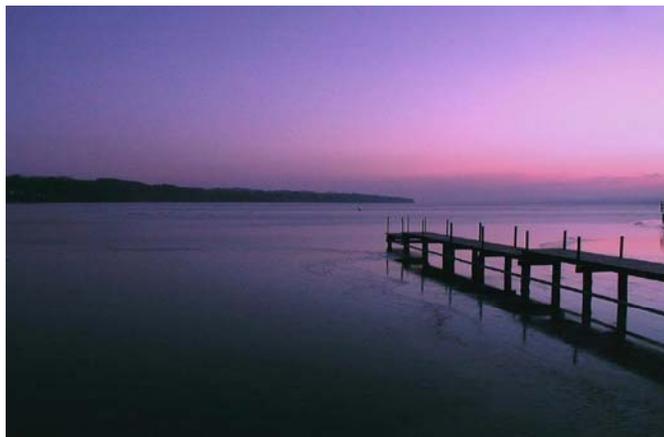
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- ▶ Pierce and Clear Channel erected an off-premises outdoor advertising sign and sued the City when it attempted to enforce its sign ordinance in the City's municipal court.
- ▶ Pierce and Clear Channel brought a declaratory judgment action.
- ▶ City's plea to the jurisdiction was denied by trial court without any reasons being given.

- ▶ The City argued that a declaratory judgment action was not appropriate as a civil court has no jurisdiction ruling on a penal ordinance.
- ▶ Supreme Court found that Pierce and Clear Channel were not challenging constitutionality or enforceability of ordinance, but rather that their conduct was not a violation of ordinance and thus could bring the declaratory judgment action.
- ▶ Pierce and Clear Channel also asserted an inverse condemnation action citing to four property interests the city is alleged to have taken.
- ▶ Court found that no valid property interest was asserted by Pierce and Clear Channel and thus, governmental immunity applied as to the inverse condemnation action.

Canyon Regional Water Authority v. Guadalupe-Blanco River Authority, No. 06-0873 (Tex., May 16, 2008)



- ▶ This case involves whether the state water authority has properly relied on its existing easement as authority to construct a second water intake and pipeline to draw water from a lake to meet growing consumption demands.
- ▶ The court of appeals held that the easement did not grant the right to construct a second water intake and pipeline.
- ▶ The court also held that the Water Authority is authorized to condemn an easement necessary to construct and maintain its second water intake and pipeline.
- ▶ The condemnation would not practically destroy or materially interfere with any existing public use of Lake Dunlap.

PUBLIC INFORMATION AND OPEN MEETINGS

- ▶ **Carlos Blanco, Jr. and Mariagloria Gonzalez v City of Laredo**, No. 04-07-00368-CV (Tex. App.—San Antonio, April 9, 2008)

HAVE I RECEIVED ALL THE DOCUMENTS?

- ▶ Only have to give documents existing at time of request and there was insufficient proof that the City had failed to do so.
- ▶ Interesting note to this case: trial court wrote letter to City indicating that in light of the court hearing so many Open Meeting and Public Information cases regarding the City, the court suggests the City review its policies and perhaps modify some of the procedures, as well as obtaining training and/or workshops on the matter.

City of Galveston v. Nancy Saint-Paul, No. 01-06-00580-CV (Tex. App.—Houston (1st Dist), Feb. 14, 2008)

- ▶ Ms. Saint-Paul alleged City had inadequate agenda notices for three meetings during which an Option Agreement, Attornment Agreement, and a Replacement Agreement involving Pelican Island were discussed.
- ▶ The underlying matter involving the agreements became a topic for media attention in Galveston and Houston.
- ▶ Court of Appeals reversed the trial court, holding that the notice was sufficient and because the City should have been regarded as the prevailing party, remanded for attorneys' fees determination.

SOVEREIGN IMMUNITY



City of Aspermont v. Rolling Plains Groundwater Conservation Dist., No. 11-07-00009-CV (Tex. App.—Eastland, May 8, 2008)

City transported water out of district and failed to pay fees for such water.

Water district sued.

City filed plea to the jurisdiction.

Court of appeals held that city is immune from past monetary damages but subject to suit for the enforcement of the water district's rules and future fees.

City of Pasadena v. Kuhn, No. 01-07-00812-CV (Tex.App.—Houston (1st Dist), May 29, 2008)

- ▶ Kuhn's vehicle collided with emergency vehicle driving to house fire.
- ▶ Kuhn filed suit against City and Officer.
- ▶ City filed plea to the jurisdiction and
- ▶ trial court denied plea, dismissing officer from suit.
- ▶ City appealed.
- ▶ Court of Appeals held that Kuhn had not demonstrated a material fact issue regarding the jurisdictional issue and therefore the City retains its immunity and case dismissed.

TORT CLAIMS ACT

What case am I?

- ▶ A worker's compensation insurance carrier filed a subrogation suit under Tort Claims Act against City and its employee.
- ▶ At the suggestion of the city's attorney, the insurance carrier dismissed the case against the employee - the attorney had informed the carrier that it had to choose whether to sue the City or the employee.
- ▶ The suit against the employee was dismissed with prejudice.
- ▶ The city then moved to have the case against it dismissed, arguing that a final judgment had been entered against one of the parties and it was only entitled to a judgment against either the city or the employee.
- ▶ The trial court agreed with the City but the Court of Appeals reversed.
- ▶ The dismissal with prejudice against the employee was not a final judgment under the language of the Act.

**Indemnity Ins. Co. v City of
Garland, No. 05-06-01250-CV
(Tex. App.—Dallas, April 4, 2008)**

**EMPLOYMENT AND
WHISTLEBLOWER ACT**

- ▶ Another what case am I?

- ▶ The City had initiated disciplinary proceedings against employee, giving him notice of a pre-termination hearing.
- ▶ He showed upon the hearing date at the schedule time, but the hearing officer was delayed by another hearing.
- ▶ Employee left, but left a written response for the hearing.
- ▶ Despite employee not being there, the hearing officer started the hearing and issued a written termination letter.
- ▶ Employee attempted to follow additional procedures concerning the termination, but was thwarted because he allegedly had not appeared for his hearing.
- ▶ Court of Appeals held that a factual dispute existed as to whether employee followed administrative procedures necessary to bring action under Whistleblower Act.

**City of Dallas v. Kenneth Watts,
No. 05-07-00996-CV (Tex.App.—
Dallas March 31, 2008)**

What stadium am I?

- ▶ Several individuals had an altercation with security guards at stadium.
- ▶ They filed suit against the City, alleging that the guards were negligently hired (they were police officers for City and one had numerous complaints against him).
- ▶ Both trial court and court of appeals held that they were not negligently hired and the event holder would not have seen the officer's files because under 143.089, their files would not have been released unless a complaint results in disciplinary action.

RELIANT

- ▶ **Amanullah Kahn v. Houston NFL Holdings LP, City of Houston, et al., 07-20634(5th Cir. (Tex.) May 8, 2008)**

CIVIL SERVICE

Anderson v. City of San Antonio, No. 04-07-00385-CV (Tex.App.—San Antonio, May 21, 2008)

- ▶ Lawsuit filed by Anderson seeking declaratory, injunctive and monetary relief from City and Fire Chief.
- ▶ Anderson had sought to be City's third party benefits administrator (EBA) for health insurance benefits. He had been firefighter union's chief negotiator during collective bargaining agreement.
- ▶ City had concern over Anderson working for EBA and whether it would violate ethics code. Ultimately his request for outside employment with EBA was denied and Anderson ceased his employment with EBA.
- ▶ Trial court granted summary judgment as to Fire Chief under theory of official immunity, justification and privilege.
- ▶ Grant of official immunity to Fire Chief allowed City to gain derivative governmental immunity.
- ▶ Judgment of trial court was affirmed.

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