



RECENT STATE CASES
OF
INTEREST TO CITIES

Presented to:
TEXAS CITY ATTORNEYS ASSOCIATION
TEXAS MUNICIPAL LEAGUES
ANNUAL CONFERENCE
San Antonio, Texas
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&
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Powers v City of Conroe Animal Control, No. 09-07-591 CV
2008 WL 2917052 (Tex. App.—Beaumont July 31, 2008,
pet. dism'd) (mem. op.).

- **P sued City, Animal Control, Officer, Judge**
- **Attacked and injured by neighbor's dog**
- **Ds were negligent & derelict in duties in failing to enforce law & protect her**
- **Holding:**
 - 1) immunity for gov't functions;
 - 2) animal control/police protection = gov't functions;
 - 3) no waiver from immunity

City of Dallas v. Kenneth Reed,
258 S.W.3d 620 (Tex. 2008).

- Premises liability – special vs. premise defect?
- P alleges City liable for injuries caused by 2 inch elevation difference between traffic lanes
- Holding:
 - 1) not special defect;
 - 2) no recovery for premise defect as City lacked actual knowledge of dangerous condition

City of Austin v. Trudy Leggett, 257 S.W.3d
456 (Tex. App.—Austin 2008).

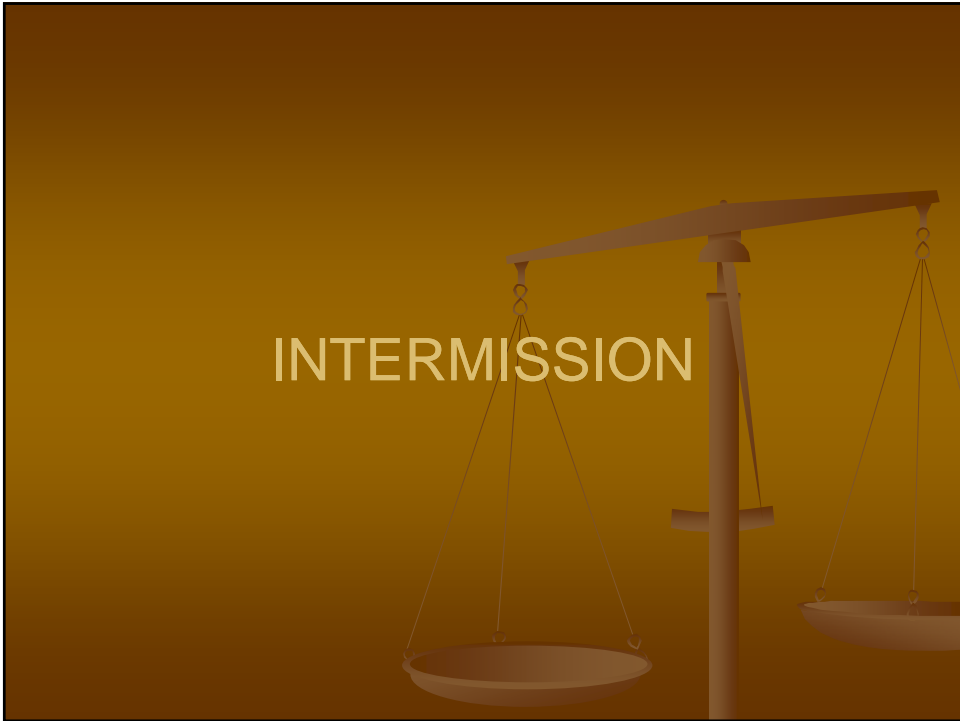
- Premises liability – special vs. premise defect?
- Drowned during heavy rains & flooding
- P alleged City's negligent design & maintenance of detention pond
- Holding:
 - 1) relevant "dangerous condition" is time & place where injury occurs, not antecedent condition;
 - 2) no special defect – not "unexpected & unusual";
 - 3) no premise defect – no actual knowledge by City

Love Terminal Partners, L.P. et al. v. City of Dallas et al., 256 S.W.3d 893 (Tex. App.— Dallas 2008).

- Impact of federal law (Wright Act) on Tx. Open Meetings Act
- Void action due to secret, closed door meetings
- Court assumed that City violated TOMA
- Holding:
 - 1) TOMA provides for voidable actions:
 - 2) moot challenge as agreement is federal law which City must follow

Rogers v. City of McAllen, No. 13-07-00278-CV, 2008 WL 3867679, (Tex. App.-Corpus Christi August 21, 2008)

- Terminated Fire Chief sues City for violating Tx. Open Meeting Act
- Meeting agenda included notice of employment action against Chief
- P alleges:
 - 1) agenda item didn't provide fair notice;
 - 2) no attorney fees
- Holding:
 - 1) sufficient meeting notice to allow termination;
 - 2) upheld attorney fees



City of Santa Fe v. Boudreaux 256 S.W.3d
819 (Tex. App.-Houston [14 Dist.] 2008 no
pet.)

- Officers sued to compel enforcement of collective bargaining agreement provision.
- CBA provided for disciplinary appeals to be heard by Citizens Review Committee.
- City argued provision was unconstitutional
- Holding: Court applied the Boll Weevil factors and found the Committee to be an unconstitutional delegation of legislative power

Carmela Bustillos v. City of Midland, No. 11-07-00038-CV 2008 WL 2058551 (Tex.

App.—Eastland May 15, 2008).

- P sued for injuries sustained when she stepped into an uncovered water meter which she alleged was a special defect
- City filed Plea to the Jurisdiction arguing that uncovered meter did not constitute a special defect
- Holding: P was not ordinary user of alley and uncovered meter was not special defect

City of San Antonio v. Michael Cancel, 261 S.W.3d 778(Tex. App.—Amarillo July 28, 2008)

- P filed suit alleging that he had been the victim of same-sex sexual harassment
- P alleged hostile work environment and sought damages for mental anguish and emotional pain and suffering
- Holding:
 - claims of same-sex sexual harassment are actionable under the Texas Commission on Human Rights Act (TCHRA); and
 - male city employee was not subjected to such frequent or severe sexual harassment by male director that would create a hostile or abusive work environment to a reasonable person in employee's position.

AVM-HOU, Ltd., v. Capital Met. Trans. Auth., 262 S.W.3d 574(Tex. App.—Austin 2008 no pet.)

- P filed suit seeking compensation for the taking of its business after it had been awarded a condemnation award.
- Transportation Authority filed MSJ arguing no cause of action for lost profits and/or good will of business acquired by eminent domain.
- Holding: No action for inverse condemnation lies for loss of the buisness

Ryan Services, Inc. v. Spenrath, No. 13-08-00105-CV, 2008 WL 3971667 (Tex. App.- Corpus Christi, August 28, 2008)

- P sought TRO to require City to repeal annexation Ordinances or submit it for referendum
- City filed Plea to the Jurisdiction arguing proper method for bringing annexation challenge was quo warranto
- City's PTJ was granted
- Holding:
 - Proper method for challenging voidable annexation through quo warranto
 - relying on the "political question" rationale behind the judicial branch not interfering with annexation, annexations do not present a justiciable matter under due process constitutional amendments

REALLY RECENT CASES

- *TWC v. City of Houston* --- S.W.3d ----, 2008 WL 4670914 (Tex.App.-Houston [1 Dist.] Oct. 23, 2008) – inability to complete fire training program was not misconduct despite completion being a condition of employment.
- *City of Temple v. Taylor* --- S.W.3d ----, 2008 WL 4603587 (Tex.App.-Austin Oct. 16, 2008) – City was entitled to reduce back-pay award.
- *City of San Antonio v. Canales*,---S.W.3d---, 2008 WL 4425913 (Tex.App.-San Antonio Oct. 1,2008)(mem. Op.) – City waived immunity for negligently implementing demolition policy during emergency fire.