

**2011 STATE CASES OF INTEREST TO CITIES**

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**City of Elsa v. Gonzalez**

**Background**

- Mayor of Elsa was appointed assistant director of County Program; unable to hold both positions
- After Council accepted resignation, Mayor reported to area organizations
- On separate occasion, meeting notice had incorrect day and was corrected less than 72 hours prior to the meeting

**Arguments**

- Former City Manager filed Whistleblower Claim for having been fired, claiming it was retaliation for having:
  - 1) reported to area authorities the Mayor's resignation and
  - 2) objected to a meeting due to a violation of the open meetings act.

**Holding**

- CM did not meet the jurisdictional requirements—case dismissed
- 1) Court held that the CM's reporting of the Mayor's resignation did not constitute his reporting of a violation of law as required by the Whistleblower Act
- 2) The CM only reported the violation of the open meetings act to the Council—which was not an appropriate authority

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**Cooke v City of Alice**

**Background**

- Section 143.045 and 143.046 of TX Civil Service Act govern accrual and use of sick and vacation leave for police and firefighters
- Minimum of 15 days sick and vacation leave a year
- The City's rules stated that police officers would accrue a day of sick and a day of vacation leave every eight (8) hours worked, however they would use sick or vacation leave based on the actual number of hours missed.

**Arguments**

- Cooke worked four 10-hour shifts vs five 8-hour
- Sued City saying they violated Civil Service Act by defining work days as 9 hours

**Holding**

- Working day not defined
- If City were to define work day as the actual number of hours an officer works (i.e. Cooke would earn 10 hours of leave for his 10 hours shifts), Cooke would earn 30 extra leave hours a year, which would result in unequal treatment of officers

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### Edinburg v. A.P.I Pipe and Supply

**Background**

- 2003 City acquired 9.8 acres of ROW through condemnation proceedings
- 2004 Court entered Nunc. Pro Tunc. Judgment giving City easement only
- 2004 API purchased from original owner 34 acres including the City's 9.8
- 2005 City granted TxDOT an easement

**Arguments**

- 2006 API filed suit against City and TxDOT for inverse condemnation because TxDOT was keeping the soil they removed from the drainage channel
- City and TxDOT filed pleas to the jurisdiction and argued API lacked standing/interest in property

**Holding**

- Standing : API has interest in the property as good faith purchaser
- Scope of Easement: City argues that they are typically allowed to keep the soil they remove during highway excavation, Court agrees, however only agrees to the soil above grade—the soil at issue here was below grade and Court found API did have an interest in that soil
- Immunity: API has an interest in the property as necessary for inverse condemnation

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### City of El Paso v Bustillos

**Background**

- Residents of subdivision were bought out of homes after neighborhood flooded
- Bustillos and Campos applied for relocation assistance
- Denied due to lack of proof of landlord/tenant relationship

**Arguments**

- Bustillos and Campos sued alleging due process and equal protection violations
- City filed plea to jurisdiction—argued this was a suit for monetary damages

**Holding**

- Court disagreed with the City
- While payment of damages could result from this review, Bustillos and Campos properly plead a violation of their constitutional rights
- City's immunity was waived

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### City of Fort Worth v. Davidsaver

**Background**

- Exam said bonus points would be added for seniority pursuant to the guidelines of the Local Government Code.
- Instead, seniority points were added according to the procedures contained in the Meet and Confer Agreement between the City and Police Officer Association.

**Arguments**

- Officer Davidsaver complained to the Police Officer Association
- Association forwarded his complaint to the dispute resolution committee for review.
- Prior to review Davidsaver sued the City, the Police Officers Civil Service Commission and the Police Officer Association

**Holding**

- Fort Worth properly recognized bargaining agent and entered into a Meet and Confer agreement
- Davidsaver doesn't have standing to sue; not party to agreement

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### City of Carrollton v HEB Parkway South, Ltd

**Background**

- Developer submitted plat for single family subdivision
- City required HOA enter into perpetual maintenance agreement for flood plain area
- Developer spent a year trying to change laws
- Finally reached a development agreement with City
- Developer built improvements

**Arguments**

- Developer filed inverse condemnation
- City argued court lacked subject matter jurisdiction because case was not ripe

**Holding**

- Court ruled in favor of City because developer had not followed proper procedures , therefore the case is unripe
- the improvements have already been constructed, and it is now too late to obtain a variance in order to avoid constructing the improvements, the issue can never become ripe

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### City of Dallas v Jones

**Background**

- Jones' bought lot intending to build a house
- During construction found a 60-inch storm drainage pipe and 1.5-inch sewer line running through the center
- City suspended building permit; Jones' sued to quiet title

**Arguments**

- Pipes built pre-Texas Tort Claims act, must analyze with Common Law
- City is only immune if it was using its "discretionary powers of a public nature involving judicial or legislative functions."
- Under common law construction is considered proprietary, not discretionary

**Holding**

- However...Court held that the City's actions were not construction in nature, but rather planning and designing, thus using its discretionary powers which are protected by immunity

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### City of Round Rock v. Rodriguez

**Background**

- Rodriguez sued the City when he was denied associational representation at an internal investigatory interview
- RR Fire Fighters Association also sued to gain the right to represent at investigations

**Arguments**

- City argued
  - Neither the association or the FF had standing
  - "Weingarten Rights" not provided by public employers
- *National Labor Relations Board v. J. Weingarten, Inc.*, 420 U.S. 251 (1975) held that an employee has a right to union representation when involved in an interview that may lead to discipline under Section 7 of the National Labor Relations Act

**Holding**

- Both FF and Association had standing
- Representation at Investigations
- The "Weingarten rights" are available to all public employees, even those in cities without collective bargaining

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### Kirby Lake Development v. Clear Lake City Water Authority

Background	<ul style="list-style-type: none"><li>• Kirby Lake Development, agreed to build and pay for water and sewer facilities and lease to the Authority free of charge.</li><li>• If voters approved a bond for financing, the Authority would then reimburse the Developers for 70% of their development costs.</li><li>• 1998 bond failed, 2004 bond didn't include reimbursement language</li></ul>
Arguments	<ul style="list-style-type: none"><li>• Developers sued the Authority, arguing that the agreement required it to place the bond authorization on every election ballot until the proposition passed.</li><li>• Also argued that by continuing to possess the facilities the Authority resulted in an inverse condemnation.</li><li>• The Authority argued (1) governmental immunity; (2) the agreement required the bond authorization on one ballot; and (3) the agreement was invalid under the reserved powers doctrine if it required that the bond authorization be included on every election ballot.</li></ul>
Holding	<ul style="list-style-type: none"><li>• Immunity: The Court Chapter 271 of LGC, waived the Authority's governmental immunity</li><li>• Bond Elections: Contract said "any bond election"—Court held any to mean every</li><li>• Reserved Powers Doctrine: Contract did not limit the Authority's ability to choose the time, place, order, number of propositions, or whether to hold an election at all, it was simply an agreement to pay a debt.</li><li>• Taking: Although City was still using facilities rent free, no taking because KLD consented</li></ul>

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### Multi-County Water Supply Corporation v. City of Hamilton

Background	<ul style="list-style-type: none"><li>• 1989 contract between Multi-County and City to purchase treated water</li><li>• 2006 City began purchasing water from District—resulted in rate increase</li></ul>
Arguments	<ul style="list-style-type: none"><li>• Multi-County-wanted Court to issue an injunction to prevent the City from including operation and maintenance expenses</li><li>• City filed plea to the jurisdiction</li></ul>
Holding	<ul style="list-style-type: none"><li>• Generally interested parties to a written contract may bring a declaratory-judgment for contract interpretations</li><li>• However Cities do not waive immunity by just entering into a contract</li></ul>

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