

Recent State Cases of Interest to Cities

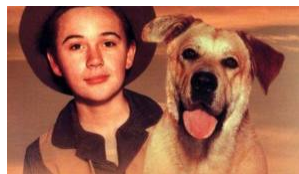
Laura Mueller
Assistant General Counsel
Texas Municipal League



Strickland v. Medlen

Supreme Court of Texas
April 5, 2013

- Can't Buy Me Puppy Love



Strickland v. Medlen

- Justice Willett

Why this case should have been a short *per curiam*:

“Under Texas common law, the human-animal bond, while undeniable, is uncompensable, no matter how it is conceived in litigation . . .”



Patterson v. City of Bellmead

*Waco Court of Appeals
March 21, 2013*



This many puppies should be illegal, oh wait . . .

Two choices: (1) pay \$300 kennel fee; or (2) engage in expensive litigation with city because you believe you have a constitutional right to have as many pets as you want.



Patterson v. City of Bellmead

- Litigation for the win.

“Large concentration of dogs can be dangerous and unsanitary. As a result, a municipality may rationally conclude that limiting the number of dogs in any given dwelling will protect the health and safety of its residents.” quoted from *Koorn v. Lacey Twp.*, 78 Fed. Appx. 199 (3rd Cir. 2003).



Patterson v. City of Bellmead

- Regulating pets:
 - Not an equal protection problem
 - Dog ownership is not a fundamental right
 - Not part of suspect class
 - No proof of invidious discrimination
 - Legitimate city interest



City of Round Rock v. Rodriguez

Supreme Court of Texas

April 5, 2013

First Power Point at the Supreme Court.

Non-collective bargaining fire department– but was a member of a union

City said no to having representative in “investigatory interview” when fire fighter was investigated for lying about why he used his sick leave



City of Round Rock v. Rodriguez

- Supreme Court agreed with City
 - Public employees do not have NLRA/*Weingarten* rights
 - State law does not give them those rights
 - Legislature would have to make that decision
- Senator files bill overturning case on April 25, 2013 (late)
 - TML and Round Rock testified against it on April 29, 2013
 - Rodriguez and his attorney Craig Deats testified for it
 - Deats: its not a big deal for cities to have to allow a rep in every hearing but it is an important right for employees

My take on case and bill: public safety already has enough rights, if you want representation rights then let the voters decide . . . And also stop lying to your boss. . . They hate that.



Booker v. City of Austin

*Austin Court of Appeals
March 13, 2013*

- How to fire an employee
 - Same person hires and fires
 - Show ample evidence from multiple sources about how subpar their performance is and most importantly. . .
 - Get them to admit they were a bad employee and
 - Make sure they do not file their retaliation claim on time



Alcala-Garcia v. City of La Marque

*Houston Court of Appeals- 14th District
Nov. 1, 2012*

Classic argument: I don't have to follow the administrative procedures before I file my claim because it would be useless . . .

"Mayor informed them that the City had adopted a grievance procedure, but because any grievance would be heard by the same entity that had terminated their employment, she opined that it would be 'nonsensical' for appellants to invoke it."

Court still held that they had to follow the procedure and dismissed their case.

Fail.



City of Watauga v. Russell Gordon

Fort Worth Courts of Appeals
November 21, 2012



City of Watauga v. Russell Gordon

- Use of tangible personal property
- Intentional tort?
 - Intended to use cuffs
 - Used them “properly”
 - Fact issue whether injury causing activity was intentional
- City loses



City of Houston v. Cogburn

Houston Court of Appeals, 1st District

March 19, 2013



- When Parking Meters Attack
 - Words you don't want to see in the opening paragraphs of a Texas Tort Claims Act case:
"He will never recover totally from his injuries."



City of Houston v. Cogburn

- Person injured on tree roots and other "corruption excavated at the site"
- City did not own property on which he was injured but had easement
- Property owner had obligation to maintain the property with easement
- Tree roots are naturally occurring

Court still held in plaintiff's favor because the city "exercised control" over the site and he had to walk across site to use the parking space

Court also held that maybe the tree roots were not "naturally occurring", maybe the city planted a whomping willow there to attack, or maybe just did some excavation

City lost.



LIT HW 1, L.P. v. Town of Flower Mound

Fort Worth Court of Appeals

January 31, 2013

Attorney Advice: Flower Mound's attorney stated that "the Board must decide if the Building Official interpreted the code correctly or incorrectly. He said [LIT] had the burden to establish that the interpretation was incorrect."

What Ordinance Stated: Flower Mound's Code of Ordinances places no such burden on the party applying for an appeal. It provides only that the Board shall hear and decide appeals, and in doing so, may "make such order, requirement, decision[,] or determination, in the board's opinion, as ought to be made." Flower Mound, Tex., Code of Ordinances §§ 78–83(1), 78–84(a).



LIT HW 1, L.P. v. Town of Flower Mound

- From the record of the meeting:
- *VICE CHAIR RICH said the mandate was to determine whether the Building Official's interpretation was in error.... [T]he Board needed to focus on the Building Official's interpretation and if it was properly administered.*
- Abuse of discretion by Board of Adjustment—used the wrong standard and had the minutes to prove it



Wight Realty Interests, Ltd. v. City of Friendswood

Houston Court of Appeals, 1st District

April 4, 2013

- City contract to either:
 - (1) buy park property and improvements from Wight or
 - (2) pay for improvements

- City did neither

- City argued that contract was void because park property was outside county



Wight Realty Interests, Ltd. v. City of Friendswood

Texas Local Government Code Section 273.001 states that park property, “must be located within the county where the municipality or other governmental entity is located.”

Court held that this applied to the city, but did not hold that the contract was void because Wight was not looking for specific performance but for payment of damages for services.

Huh? The contract was for purchasing property outside the county. But the contract is not void?



Wight Realty Interests v. City of Friendswood

Contract is void, part II:

- City didn't follow competitive bidding so contract is void?
- Court: Nope. Parks for kids is part of the "public health or safety of the municipality's residents" exception to bidding because it's for kids.



City of Harlingen v. Lee

Corpus Christi Court of Appeals
February 28, 2013

- November 19, 2008 Annexed property
- May 10, 2010 residents asked to be disannexed
- October 5, 2011 city disannexed property to be effective December 1, 2011
- January 9, 2012 Just kidding "reannexed"
- February 6, 2012 residents sued the city . . .



City of Harlingen v. Lee

- Standing to sue over disannexation under Section 43.141(b) of the Local Government Code
- “We have reviewed the relevant provisions of the Texas Local Government Code and the case law interpreting and applying those provision and have found no authority to establish that appellant has a third and distinct power to re-annex.”
- Ordinance “re-annexing” disannexed property is void.



City of Grapevine v. CBS Outdoor, Inc.

Fort Worth Court of Appeals
May 2, 2013

- Billboard has to move because of TxDOT project



City of Grapevine v. CBS Outdoor

- Court holds that CBS Outdoor had to get city permission to either change the angle or remove a piece of the billboard
- But the city has to pay the billboard company if it won't let it make changes because, really, isn't it the city's fault that the poor billboard company can't do whatever it wants
- S.B. 1383 agrees as does TxDOT



Foster d/b/a Jaguar's Gold Club v. City of El Paso

El Paso Court of Appeals
February 20, 2013

- Great Sexually Oriented Business case based on El Paso's ordinance
- El Paso:
 - Judicial decisions
 - Municipal studies
 - Crime reports
 - Affidavits
- Court to El Paso: #youredoingitright
- Court to SOB: stop complaining and being gross and follow the city's reasonable ordinance based on negative secondary effects



Southern Crushed Concrete, LLC v. City of Houston

Supreme Court of Texas

February 15, 2013

- Texas Clean Air Act v. City of Houston ordinance
- TCAA says:
- “An ordinance enacted by a municipality . . . may not make unlawful a condition or act approved or authorized under [the TCAA] or the commission’s rules or orders.” Texas Health & Safety Code § 382.113(b).



Southern Crushed Concrete, LLC v. City of Houston

- City ordinance cannot be more restrictive than state law in this case
- Industry (I mean TCEQ) wins again! Yea!



Ramsey v. Lynch

Waco Court of Appeals

May 2, 2013

- Mayor and prosecutor (Ramsey) *allegedly* fixing code enforcement violations of citizens
- Lynch alleged fixing and filed a complaint with City of Ovilla
- Ramsey sued for defamation



Ramsey v. Lynch

- Texas Citizen's Participation Act
 - Public official
 - Have to show actual malice
 - Have to prove allegations were false

The purpose of the TCPA is "to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury." Tex. Civ. Prac. & Rem. Code § 27.002



City of New Braunfels v. Stop the Ordinances Please

Austin Court of Appeals

February 21, 2013

- Part II
- “can ban”



- Stores have standing because stores sell cans and other products with disposable containers
- No taxpayer standing because haven’t shown that city has spent any funds in enforcing the ordinances

