

Recent State Cases of Interest to Cities

Laura Mueller

Assistant General Counsel

Texas Municipal League



Stopped Warning People: No Liability

Suarez v. City of Texas City, No. 13-0947, 2015 WL 3802865 (Tex. June 19, 2015).

Recreational liability equation: *Extreme risk of harm from concealed conditions + city knowledge + ignore = liability*

Put up sign of common danger + fail to replace sign of common danger \neq liability



Welcome to
Texas City, Texas
Our City by the Bay!



Tried to Help: Liability

Harris Cnty. Flood Control Dist. v. Kerr, No. 13-0303,
2015 WL 3641517 (Tex. June 12, 2015).

- Entities did not go far enough in flood planning.
- Approval of development could be enough to “cause” flooding.
- New development is public use.

“... nor do we mean to imply that government entities have a duty to prevent all flooding.”

Tried to Help Through Flood Planning: Liability

Harris Cnty. Flood Control Dist. Part II: Justice Willett makes an excellent point:

“Today’s decision will encourage governments to do nothing to prevent flooding, rather than studying and addressing the problem.” --Twitter Laureate of Texas Justice Don Willett

Waiting on Rehearing



Who Are You?

or more things I learned about the PIA while not on my summer vacation

Not someone who is going to release my super secret documents.

Not a public entity, exempt from PIA: Greater Houston P'ship v. Paxton, No. 13-0745, 2015 WL 3978138 (Tex. June 26, 2015).

Not a public entity, protected from the PIA: Boeing Co. v. Paxton, No. 12-1007, 2015 WL 3854264 (Tex. June 19, 2015).



Police Put People in Jail *On Purpose with the intent to imprison*

City of Laredo v. Reyna, No. 04–15–00147–CV, 2015 WL 4479834
(Tex. App.—San Antonio July 22, 2015) (mem. op.).



Supreme Court, tell me how you really feel.

Patel v. Texas Dep't of Licensing & Regulation, No. 12-0657, 2015 WL 3982687 (Tex. June 26, 2015)



Democracy is two wolves and a lamb voting on what to have for lunch. Liberty is a well-armed lamb contesting the vote.



The Court runs the risk that what passes for constitutional analysis around here will be seen as just picking words out of the air.



Torts

Northcutt v. City of Hearne, No. 10-14-00012-CV, 2015 WL 4727197 (Tex. App.—Waco July 30, 2015) (mem. op.)

How you know the court is with you: “Without a number of unreasonable assumptions and stacked inferences, . . .”



Officer’s car created a condition, did not cause an accident:

- No evidence of negligence
- Other cars didn’t feel the need to swerve

Following the Law is a Service to the City

JNC Land Co., Inc. v. City of El Paso, No. 08–13–00165–CV, 2015 WL 3952680 (Tex. App.—El Paso June 26, 2015).

Ordinances are part of city contracts.

And following city ordinances is a “service” to the city under Section 271.152.

Immunity Waived.



Democracy in Action

Dacus v. Parker, No. 13-0047, 2015 WL 3653295 (Tex. June 12, 2015).

Be Specific.

In re Woodfill, No. 14-0667, 2015 WL 4498229 (Tex. July 24, 2015) (per curiam).

City must repeal ordinance or have vote on it.

In re Williams, No. 15-0581, 2015 WL 4931372 (Tex. Aug 19, 2015) (per curiam).

Question must be yes or no on the ordinance itself, not on its repeal.



Democracy in Action: Part II

City of Ingleside v. City of Corpus Christi, No. 14-0548, 2015 WL 4498005 (Tex. July 24, 2015) (per curiam).

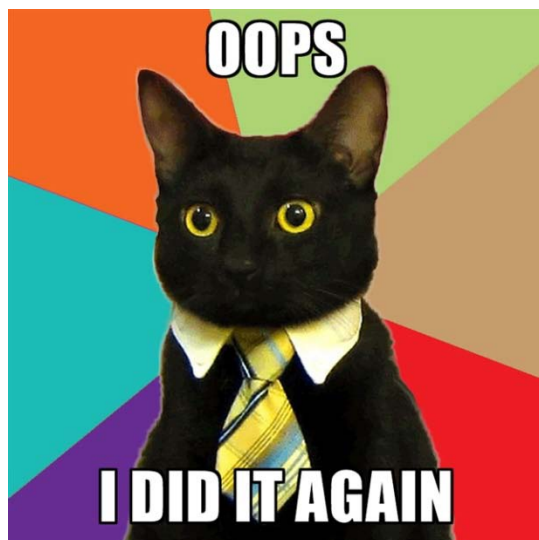
A court can decide where a city boundary is by defining “shoreline”.



Please prosecute me, I may have done something
illegal.

ACE Cash Express, Inc. v. City of Denton, No. 02-14-00146-CV,
2015 WL 3523963 (Tex. App.—Fort Worth June 4, 2015) (mem.
op.).

Same as whistleblower, if you want it to stick, tell the police.



It's Not a Taking.

Church v. City of Alvin, No. 01-13-00865-CV, 2015 WL 3916708 (Tex. App.—Houston [1st Dist.] June 25, 2015)(mem. op.).

- Impaired Access
- Drainage issues
 - Caused by a bridge built by TxDOT. City provided the rights of way.

Sued city.



When It Is Okay to Fire Someone

City of Arlington v. Kovacs, No. 02-14-00281-CV, 2015 WL 4776100 (Tex. App.—Fort Worth Aug. 13, 2015).

- sexually assaulted someone he detained in the front seat of his police car
- evidence of assault of live-in girlfriend
- retaliatory comments against officers who arrested him in assault case

Arbitrator says officer should be reinstated after criminal charges are dropped/no-billed.



Court Said Arbitrator Exceeded Authority

City of Arlington v. Kovacs

“1) whether the employee violated the personnel rules, *as charged*, and [if so] 2) whether the disciplinary action as imposed is reasonable.”

Charges were that Kovacs was arrested or arrested and charged for various activities.

No room for post-termination information.

Jurisdictional Arguments

Anytime. Anyplace.

City of Bertram v. Reinhardt, No. 03-14-00269-CV, 2015 WL 4899946 (Tex. App.—Austin Aug. 12, 2015).

Whistleblower checklist:

- ✓ Observe illegal activity
- ✓ Tell law enforcement
 - ✓ Get fired
- ☐ Initiate grievance procedure
 - ✓ Sue