

Recent State Cases of Interest to Cities

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June 16, 2016

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Can a city . . . ???

Town of Lakewood Village v. Bizios, No. 15-0106 (Tex. May 27, 2016).

General law cities may not enforce building codes in the ETJ.



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Can a city . . . ???

Town of Lakewood Village v. Bizios

Section 214.212 ⁽¹⁾ (Building Codes)	Authority to enforce building codes in the city limits, but not the ETJ. P. 5 ²
Section 212.002 and 212.003 (Plats and Subdivisions)	"[t]he terms "plat" and "subdivision" to refer to the division and development of land, not to the subsequent construction of buildings on such land." P. 9
Sections 214.004 and 233.153	While these statutes indicate that some cities have this authority, "they do not expressly grant such authority themselves, and the Town does not rely on any other statutes." P. 11 Also, "the mere reference to "municipalities" does not qualify as an independent grant of authority to all types of municipalities, but instead only refers to municipalities of any type that otherwise have such authority." P. 12
Section 42.001 (Creation and Purpose of ETJs)	While this statute does give cities the authority to regulate for the health and welfare of residents of the city and the city's ETJ, allowing the enforcement of building codes in the ETJ were not "necessary" or "indispensable" to their other authority. P. 13

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Can a city. . . ???

Town of Lakewood Village v. Bizios

Our holding does not affect any "long-recognized powers in the Local Government Code," and whether general-law municipalities have such powers depends on whether the Code expressly grants such municipalities those powers.

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Maybe a Little Too Accommodating

Coyote Lake Ranch, LLC v. City of Lubbock, No. 14-0572 (Tex. May 27, 2016).

Ground water rights owners treated the same as mineral rights owners under accommodation doctrine, but injunction went too far.



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With Great Power Comes Less Responsibility

Houston Belt & Terminal Ry. Co. v. City of Houston, No. 14-0459, 2016 WL 1312910 (Tex. Apr. 1, 2016).

- Limited discretion means limited immunity
- With absolute power comes ability to make all kinds of terrible decisions

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With Great Power Comes Less Responsibility

Houston Belt & Terminal Ry. Co. v. City of Houston



Computer Generated Impervious Area
174,113 sf



Independent Validation of Impervious Area
178,172 sf

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Ultra Vires: *Houston Belt*

“a public officer has no discretion or authority to misinterpret the law”

- Train any decision makers.
- Get ready for the lawsuits.

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Ultra Vires before *Houston Belt*

Cameron Cty. Appraisal Dist. v. Rourk, No. 13-15-00026-CV, 2016 WL 380309 (Tex. App.—Corpus Christi Jan. 28, 2016) (mem. op.).

Wrong agency decision is not enough to find ultra vires

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Wasson and Wheelbrator

Wasson Interests, Ltd. v. City of Jacksonville,
No. 14-0645, 2016 WL 1267697 (Tex. April 1, 2016).

Wheelabrator Air Pollution Control, Inc. v. City of San Antonio, No. 15-0029, 2016 WL 1514542 (Tex. April 15, 2016).

Contracts: Proprietary v. Governmental

P v. G: It's not just for Torts anymore.

1. Common Law determines immunity.
2. Legislature waives immunity.
3. Court decides: (a) whether immunity exists; and (b) if so, whether a waiver exists.
4. No immunity for proprietary acts.

Wasson

- Lease Contract
- History of Immunity and Contractual Immunity
- Short Term Rentals!
- Compares proprietary acts to ultra vires acts
- Use Tort Claims Act to figure it out

Wheelabrator

- Utility operations are proprietary
- Immunity waived for claims for attorney’s fees related to proprietary contracts
- Not a branch of the state when providing utility services that residents want

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Assault v. Tort Claims Act

Harris County v. Baker, No. 01-15-00930-CV, 2016 WL 1600819 (Tex. App.—Houston [1st Dist.] Apr. 21, 2016) (mem. op.).

Tort Claims Act: Negligent use of personal property causing personal injury.

They hit me on purpose. I mean, it was negligence, I forget.



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Assault v. Tort Claims Act

Harris County v. Baker

- Excessive force or falling down drunk
- Use of handcuffs or cement bench did not “cause” injury
- Plaintiff’s evidence was that officer purposely injured her



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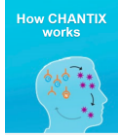
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Prescription Drugs and Tort Claims

University of Tex. M.D. Anderson Cancer Ctr. v. Jones, No. 14-15-00266-CV, 2016 WL 269160 (Tex. App.—Houston [14th Dist.] Jan. 21, 2016).

Misuse of information or tangible personal property?



WARNING: SERIOUS NEUROPSYCHIATRIC EVENTS
 See full prescribing information for complete boxed warning.

- Serious neuropsychiatric events have been reported in patients taking CHANTIX. (5.1 and 6.2)
- Advise patients and caregivers that the patient should stop taking CHANTIX and contact a healthcare provider immediately if agitation, hostility, depressed mood, or changes in behavior or thinking that are not typical for the patient are observed, or if the patient develops suicidal ideation or suicidal behavior while taking CHANTIX, or shortly after discontinuing CHANTIX. (5.1 and 6.2)
- Weigh the risks of CHANTIX against benefits of its use. CHANTIX has been demonstrated to increase the likelihood of abstinence from smoking for as long as one year compared to treatment with placebo. The health benefits of quitting smoking are immediate and substantial. (5.1 and 6.2)

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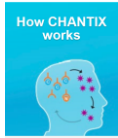
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Prescription Drugs and Tort Claims

University of Tex. M.D. Anderson Cancer Ctr. v. Jones

- Blind study to stop smoking
- Dispensed the drugs
- She had mental issues leading to physical issues because of drug



WARNING: SERIOUS NEUROPSYCHIATRIC EVENTS
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Clean Air Act v. City Ordinance

BCCA Appeal Group, Inc. v. City of Houston, No. 13-0768 (April 29, 2016).

Oil companies v. a city: who will prevail?



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Field Preemption

BCCA Appeal Group, Inc. v. City of Houston

Surprise! It's the oil companies. #winning

Clean Air Act v. City Ordinance

- Can't require registration when facility already has TCEQ permit
- No dual prosecution for air quality—ordinance tracked statute



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Parker v. Wilson, Episode IV: A New Hope (squashed)

Parker v. Wilson, No. 01-15-00687-CV (Tex. App.---Houston [1st Dist.] March 10, 2016).

Charter amendment that is opposite to Houston's failed equal rights ordinance.

Tips for Election litigation

*Wait them out—moot



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Tip 2: Residency—A Losing Argument

State of Texas v. Wilson, No. 01-14-00783-CV (Tex. App.---Houston [1st Dist.] March 1, 2016)

- (1) record of voting;
- (2) where a person sleeps;
- (3) where a person stores personal possessions;
- (4) where a person performs day-to-day activities; and
- (5) the residence the individual chooses and to which the individual intends to return.

Or if I fall asleep in my office at work, is that my new home?



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Tip 2: Residency—A Losing Argument

State of Texas v. Wilson,

#notresiding

Home not in district DSW Warehouse downtown



Home not in District	DSW Warehouse in District
Paid taxes	Paid no rent
Lived on weekends	Lived during the week
All family events	Didn't cook or shower
Wife lived there full time	Few personal possessions
Told IRS it is his home	Red tagged as residence
Home stead exemption	DL and voter registration

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Tip 2: Residency—A Losing Argument

State of Texas v. Wilson,

BUT:

I want it to be my residence. I live there. I spend the majority of my time there. I want to live in the city of Houston. The politics in the city of Houston affects my life and my business; so I choose to live there so I can be active in the Houston politics.

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Let's Get on Down the Road

Ex parte Perry (Tex. Crim. App. Feb. 24, 2016).

- Texas Penal Code 39.02
Misuse of government property
- Texas Penal Code 36.03
Coercion of a public servant



V. Texas Constitution—unlimited veto discretion and
United States Constitution—First
amendment protection

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Let's Get on Down the Road

- **Ex parte Perry**
- **Texas Constitution**
Unlimited veto discretion
- **United States Constitution**
First Amendment protection



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Hide Yo Personal Email Addresses

- **The Austin Bulldog v. Leffingwell**, No. 03-13-00604-CV (Tex. App.—Austin Apr. 8, 2016).
- Tex. Gov't Code § 552.137(a)—personal email addresses of a “member of the public”
- **What does “member of the public” mean?**



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Hide Yo Personal Email Addresses

The Austin Bulldog v. Leffingwell

If you use it for public business, it is public.

“Finally and also significantly, this interpretation satisfies the PLA’s mandate that the public have “complete information about the affairs of government and the official acts of public officials and employees,” even where, as here, those officials chose to conduct official government business using private email addresses.”



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Basic Information

City of Carrollton v. Paxton, No. 03-13-00571-CV, 2016 WL 1305196 (Tex. App.—Austin Mar. 31, 2016).

- Requested police reports related to his repeated reports of criminal activity
- City wants to withhold CAD notes

Case: Dispatchers Accused of Egging House Fried



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Basic Information

City of Carrollton v. Paxton

“The Attorney General’s construction of Section 552.108 is not reasonable or consistent with the statutory text, at least as it applies to the record here.”

“Reliance on alternative theories of recovery or defense is a long-accepted, commonplace feature of Texas civil practice, and we see no indication in the PIA that the Legislature intended to foreclose that familiar practice in regard to the Act’s exemptions.”

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The Takeaway

City of Carrollton v. Paxton



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Basic Information

City of Carrollton v. Paxton

- Everything is public, but
- 552.108: Law enforcement and physical safety exceptions, but
- Basic information *about an arrested person, an arrest, or a crime* is still public—regardless of the source of the information,
- *Also*, can't use informer's privilege or physical safety exception if the cat's already out of the bag.

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Whistleblowin in the Wind

Loer v. City of Nixon, No. 13-14-00582-CV, 2015 WL 9257031 (Tex. App.—Corpus Christi Dec. 17, 2015) (mem. op.).

“Loer reported the following “illegal actions” *by the chief of police to the chief of police himself* and to city council members: (1) traffic tickets being “fixed”; (2) “evidence being destroyed”; (3) “falsifying government records (F-5’s)”; and (4) “the Chief ‘double dipping’ by getting paid by a third party company.”

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Whistleblowin in the Wind

Loer v. City of Nixon

Appropriate law enforcement authority

- law enforcement authority*
- appropriate*

Reporting to the wrongdoer:

1. *It's not a report if he did it.*
2. *He's not going to investigate or prosecute his own wrongdoing.*

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Texas Whistleblower Act

McMillen v. Texas Health & Human Services Comm'n, 15-0147 (Tex. Feb. 26, 2016) (per curiam)

Memo by attorney at HHS OIG to HHS OIG that HHS was improperly handling Medicaid payments.

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Texas Whistleblower Act

McMillen v. Texas Health & Human Services Comm'n

OIG: *Appropriate law enforcement authority?*

- law enforcement authority*
- appropriate*



Yes, Virginia, an “appropriate law enforcement authority” does exist.

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Last Chance

City of Austin Firefighters' & Police Officers' Civil Serv. Comm'n v. Stewart, No. 03-15-00591-CV, 2016 WL 1566772 (Tex. App.—Austin Apr. 14, 2016) (mem. op.).

Last Chance agreements upheld.

#stopbreakingtherules



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Condemnation 101

Babaria v. City of Southlake, No. 02-14-00068-CV, 2016 WL 287523 (Tex. App.—Fort Worth Jan. 14, 2016) (mem. op.).

Award for longest memorandum opinion.

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Bills Bills Bills

Schrock v. City of Baytown, No. 01-13-00618-CV, 2015 WL 8486504 (Tex. App.—Houston [1st Dist.] Dec. 10, 2015) (mem. op. on motion for rehearing).

Utility bills: when does the city know it's a rental?

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Open Carry or Busted

Ex parte Poe, No. 09-15-00373-CR, 2016 WL 1600607 (Tex. App.—Beaumont Apr. 20, 2016).



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CDL NO DD, even in County Court

- **In Re State**, No. 07-16-00052-CR, 2016 WL 1072504 (Tex. App.—Amarillo Mar. 16, 2016).
Another criminal case!
- **42.111**: Deferral in justice and municipal courts
- **Article 45**: No deferrals for CDLs

*When it's the same type of case, you have to follow the same rules.

Thank you!



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