

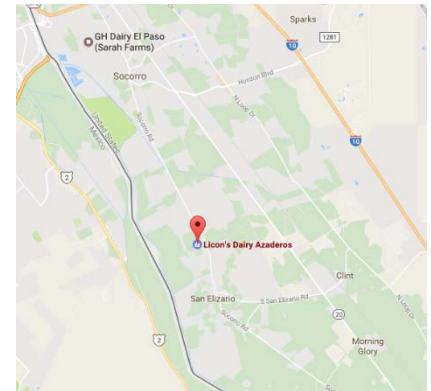
Recent State Cases of Interest to Cities

by Laura Mueller
Associate

Politics v Bribery

Jesus Gandara v. State of Texas, No. 08-15-00201-CR (Tex. App.—El Paso Nov. 16, 2017).

“This case is an example of how difficult it is to distinguish politics from bribery.”



Gandara v. State

Tex. Pen. Code Section 36.02

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

(1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

- Offered economic development incentives for dairy in exchange for support of annexation
- Dairy owner recorded conversation between Councilmember and Dairy owners



Gandara v. State

- Benefit to Gandara?

Trial Court: The pecuniary advantage to City of Socorro is sufficient to show Bribery because Gandara had a “direct and substantial interest in the welfare of Socorro”

Court of Appeals: He can’t be convicted of bribery when promise is to benefit “the citizenry of Socorro in accordance with his duty as a city councilman of the City of Socorro”

Conviction overturned.

Chapter 614

Colorado Cty. v. Staff, No. 15-0912, 2017 WL 461363
(Tex. Feb. 3, 2017).

Tex. Gov't Code Ch. 614:

Complaints against police officers must be:

- (1) In writing;
- (2) Signed by the Complainant; and
- (3) Given to the employee before discipline occurs.



Colorado County v. Staff

- Given a “Performance Deficiency Notice (Termination)” signed by his Supervisor
- At the same time as dismissal.
- County Attorney told Sheriff about Staff’s inappropriate behavior during a traffic stop
- Led to spot checks of other videos in which similar issues were revealed.

Colorado County v. Staff

- Applies to At-Will?
- Does the signer of the complaint have to be the victim?
- When does the officer have to receive the complaint?



Colorado County v. Staff

- Applies to At Will?

Yes

- Does the signer of the complaint have to be the victim?

“No reasonable construction of the statute can support reading it as requiring employers to turn a deaf ear and a blind eye to allegations of misconduct serious enough to warrant termination of employment unless ‘the victim of the misconduct’ is both willing and able to sign a complaint”

Colorado County v. Staff

- When does the officer have to receive the complaint?

“Nothing in the statute required the complaint to be served before discipline is imposed or precludes disciplinary action while an investigation is ongoing. Nor does the statute require an opportunity to be heard before disciplinary action may be taken.”

Personnel Policies as a Contract

City of Denton v. Rushing, et al., 02-16-00330-CV (Tex. App.—Fort Worth March 23, 2017).



City of Denton v. Rushing

CITY OF DENTON PERSONNEL MANUAL
DISCLAIMER:

THIS IS NOT A CONTRACT. THIS IS NOT A
CONTRACT. THIS IS NOT A CONTRACT.
THIS IS NOT A CONTRACT. THIS IS NOT
A CONTRACT. WE CAN CHANGE IT AT
ANY TIME AND FIRE YOU WHENEVER.
STILL NOT A CONTRACT. #NOCONTRACT

City of Denton v. Rushing

Court holds: still a contract.

- Personnel Policies about how on-call pay works.
- At-Will employment personnel policy still intact.
- On Call Pay is a unilateral contract.

Chapter 271 applies to this “contract.”

#AlsoNotABonus

Whistleblower: How To Manual

Torres v. City of San Antonio, No. 04-15-00664-CV (Tex. App.—San Antonio Dec. 7, 2016).

“... *his impulsivity to go to OMI [Office of Municipal Integrity] without going through the chain of command.*” = but for causation

FMLA And Unemployment

Tex. Workforce Comm'n v. Wichita County,
No. 02-15-00215-CV (Tex. App.—Fort Worth
Dec. 8, 2016)

TWC: Unpaid Leave equates to unemployment benefits.

Did you quit, were you laid off, or were you discharged from this position?

Tex. Workforce Comm'n v. Wichita County

Court of Appeals: Nope. Can't have both.

Reading the two statutes together in this way would
“amount to a judicial mandate of paid FMLA leave.”

*And because TWC misinterpreted the law, the County
doesn't have to pay it back . . .*



Public Information

Paxton v. City of Dallas, No. 15-0073, 2017 WL 469597 (Tex. Feb. 3, 2017).



Paxton v. City of Dallas

—Attorney Client Privilege is a discretionary exception to the PIA.

— City missed the deadline to file request for attorney general opinion. . . By a lot.

Breaking news flash: AG says the City has to release because they missed the deadline.

Paxton v. City of Dallas



“ . . . the interests protected by the attorney-client privilege are sufficiently compelling to rebut the public-disclosure presumption that arises on expiration of the PIA’s ten-day deadline. The attorney-client privilege reflects a foundational tenet in the law: ensuring the free flow of information between attorney and client ultimately serves the broader societal interest of effective administration of justice.”

More PIA

McLane Co. v. TABC, et al., No. 03-16-004150-CV (Tex. App.—Austin Feb. 1, 2017): Can't pursue UDJA and PIA. Same result.

UT v. Paxton, No. 03-14-00801-CV (Tex. App.—Dallas Apr. 7, 2017) Evidence that someone was told their information would be confidential is pertinent to privacy analysis.

Breach of Contract

Byrdson Svs., L.L.C. v. South E. Tex. Reg'l Planning Comm'n, No. 15-0158, 2016 WL 7421392 (Tex. Dec. 23, 2016).

Does a governmental entity retain immunity under Chapter 271 when it contracts with a third party to provide services to residents?

Byrdson Services, LLC v. S. E. Tex. Reg'l Planning Comm'n

How the court phrases the issue:

“Does the contractor’s suit fall within chapter 271 of the Local Government Code, which waives immunity, if the contract, among other things, provides ‘goods or services to the local governmental entity’?”

Byrdson Services, LLC v. S. E. Tex. Reg'l Planning Comm'n

#ProvidesGoodsOrServicesToTheLocal
GovernmentalEntity #waiver
@justicewillett



Byrdson Services, LLC v. S. E. Tex. Reg'l Planning Comm'n

- SETRPC contracted with the State to provide various housing restoration services
- SETRPC subcontracted with Byrdson Services, LLC to provide homeowner repair services to homeowners in the area
- SETRPC disputed payment to Byrdson for various reasons
- Byrdson sued SETRPC under Chapter 271

Byrdson Services, LLC v. S. E. Tex. Reg'l Planning Comm'n

Chapter 271 waives immunity for governmental entities in contracts if:

1. Essential terms are in written agreement; and
2. Agreement provides goods or services to the governmental entity.

What goods or services did SETRPC receive?

Byrdson Services, LLC v. S. E. Tex. Reg'l Planning Comm'n

1. Indemnity and warranty provisions in contract sufficient to waive immunity (?)
2. Byrdson provided home repair services that SETRPC was required to provide.

Services were satisfying SETRPC's obligations to the State.

Remanded.

Tort Time

Brown v. Corpus Christi Reg'l Transp. Auth., No. 13-15-00188-CV (Tex. App.—Corpus Christi March 9, 2017). Notice was insufficient when police placed blame on pedestrian and injured pedestrian didn't sue for two years.

City of Austin v. Frame, et al., No. 03-15-00292-CV (Tex. App.—Austin May 5, 2017) (mem. op.). Immunity not waived because discretionary exception. “*We are sympathetic to the appellees’ loss and injury, but we are constrained*” by the law.

Res Judicata

Engelman Irrigation Dist. v. Shields Bros., Inc.,
No. 15-0188, 2017 WL 1042933 (Tex. Mar. 17,
2017).

Final Judgment in 1998.

One more bite at the apple after *Tooke*.

Collateral Attack on Final Judgment

Engelman Irrigation Dist. v. Shields Bros., Inc.

Supreme Court says: Tough, apple cart is gone.

Also, apparently Court now thinks it is okay to conflate sovereign immunity and governmental immunity because it's "convenient." FN. 1



Utility Rates

Oncor Elec. Delivery Co., L.L.C., v. Public Util. Comm'n of Texas, No. 15-0005, 2017 WL 68858 (Tex. Jan. 6, 2017).

Long complicated case by Chief Justice Hecht.

Includes sweet chart.

Oncor Elec. Delivery Co., L.L.C., v. Public Util. Comm'n of Texas

Highlights:

1. Electric provider treated as corporation for calculating tax impact on rates. Winner: Oncor
2. Can include Franchise Fees as part of rate calculation. Winner: Oncor.



Governmental Functions for Beginners: When Development Agreements Go Bad

City of Leon Valley EDC v. Little, No. 04-15-0488-CV (Tex. App.—San Antonio March 15, 2017). EDC is immune.

Jamro Ltd v. City of San Antonio, No. 04-16-00307-CV (Tex. App.—San Antonio March 15, 2017). TIRZ is immune.



Thank you!



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