

Recent State Cases of Interest to Cities

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ZONING

Risoli v. Board of Adjustment of the City of Wimberley-3rd Court of Appeals

- You can appeal a BOA decision “within 10 days after the date the decision is filed in the board’s office.”
- **What counts as the “decision”?**
- The letter notifying the resident the Board’s decision got filed at city hall—
the meeting minutes were not approved and filed.



ZONING

Risoli v. Board of Adjustment of the City of Wimberley-3rd Court of Appeals

- Court held that they needed more evidence on what constitutes a “decision”
- **What is a decision of the Board of Adjustment?**
 - Minutes?
 - Letter?



Need to adopt an ordinance stating when the decision is filed if want to make use of this short deadline.

VRBOs and “Residential use”

Kenneth H. Tarr v. Timberwood Park Owners Association, Supreme Court of Texas

- Do short-term vacation rentals violate covenants restricting the property to residential uses?

*Depends on how you define:
“residential”*



H.B. 1111: A New SORRO Statute

City of Krum v. Rice, Supreme Court of Texas

Legislature to the Rescue

- Local Government Code § 341.906
“...the governing body of a general-law municipality by ordinance may restrict a registered sex offender from going in, on, or within a **specified distance** of a child safety zone in the municipality.” (No more than 1,000 feet.)



TORTS

City of Killeen v. Worsdale, 3rd Court of Appeals

- Under TTCA, “subjective awareness” waives City immunity.
- Police report: City had known about the mound of dirt for TWO YEARS.

DOES THAT COUNT?



Nope! *City of Killeen v. Worsdale*

- The police report didn't show that the City knew they were *responsible* for maintaining the road.
- It showed awareness of *causation* but not *fault*.



written notice of the claim **within 6 months** after the accident would have waived immunity.

Let's try another one:

City of San Antonio v. Tenorio, Supreme Court of Texas

- After a fiery car crash, the driver sued City for causing the accident.
- Police Crash Report: “fleeing or evading police” was a factor contributing to the crash.
- **DOES THAT COUNT as actual notice?**



Nope! City of San Antonio v. Tenorio, SCOTX

- The report showed awareness of *causation* but not of *fault*.
- Nothing in the report “indicate[s]. . . That the SAPD subjectively believed its officers acted in error. . . such that they were in some manner responsible for the injuries.”

Torts and Police

Clegg v. City of Fort Worth, Fort Worth Court of Appeals

Texas Torts Act does not apply to claims arising “from the failure to provide or the method of providing police or fire protection.”



Immunity: A Tough Nut to Crack

City of Edinburg v. Balli, Corpus Christi COA

- Pedestrian hit by a car sued City for traffic light: the walk signal coincided with green left turn signal.
- *This is how TxDOT designed the light to work.*
 - City waives immunity for torts only where a sign conveys information that is not intended.
 - Here, info. was intended: City wins!



Elect those remedies...

City of Edinburg v. Balli, Corpus Christi COA

- Government **entity** or government **employee**:

Who should you sue???

**Decide *before*
you file.**

- You can't sue both.
- You can't amend your pleading later.
- Thank you, Texas Tort law.

DANGEROUS DOG WHISTLEBLOWER CASE

- In *City of Hereford v. Frausto* (Amarillo Court of Appeals)...
 - City employee reported the city attorney for behavior he *thought* was illegal.
- ***If he did it in good faith***, employee may be protected by the Texas Whistleblower Act.

(for once did report to law enforcement authority)



“Snitching” is not Whistleblowing

Metropolitan Transit Auth. v. Williams, Houston [1st Dist.]

“When Mr. Ratcliff first took his position he asked me to be a ‘snitch’ and his ‘eyes and ears’ on the track. I told him I was uncomfortable with that but that I would report any action to him that I was required to report.”

Define “snitch”.



“Snitching” is not Whistleblowing

Metropolitan Transit Auth. v. Williams, Houston [1st Dist.]

- A transit employee reported his boss to the Metro’s compliance officer for creating a hostile work environment. The employee was later charged with a crime and terminated.—also that asking him to be a “snitch” equated to him being a lookout for criminal activities.
- Whistleblower did not work because:
 1. Asking someone to snitch is not a credible violation of law;
 2. Forgot to notarize his affidavit with other allegations of violations;
 3. Generally does not understand what a violation of law is.

City of Beaumont v. Interflow Factors Corp.

- City hired a contractor for landscaping;
- Contractor assigned Interflow the right to collect payments;
- Contractor let City know of assignment;
- City paid contractor, not Interflow;
- Interflow sues City for breach



CONTRACTUAL IMMUNITY - LGC § 271.152

City of Beaumont v. Interflow Factors Corp., Beaumont COA

- A City that lawfully “enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract.”
- This applies for *assignees* too!
- If City contracts with A and A assigns rights to B, B has a claim against City.
(If A has a claim, which she freaking doesn't. . .)

National Media Corp. v. City of Austin, Austin COA

- “National Media’s expectation of a permit is not a protected property interest, and the receipt of a permit is not a matter of right.”
- If you didn’t properly register your sign, city ordinances can prevent you from replacing or relocating it.



OPEN MEETINGS ACT

City of Donna v. Ramirez, Corpus Christi COA

- City Council Meeting agenda posted on front door of City Hall was marked with the word “cancelled” . . .
- But the meeting actually happened.
- This is violation of the Act because it did the *opposite* of informing the public that the meeting would be held.

TOMA is Constitutional

- In *State v. Doyal*, (Beaumont COA) defendant charged with circumventing the Act claimed that the circumvention provision of TOMA is “facially unconstitutional.”
 - Violates First Amendment
 - Overbroad, vague
- Court disagreed: the provision is of “sufficient specificity” and applies to conduct, not free speech.

UTILITIES

City of Richardson v. Oncor

- When a city widens a right of way, the **utility** usually pays to relocate electric lines.

This one refused—shocking, I know.





- Franchise agreement: Oncor pays
- City's tariff ordinance:
 - “the entity requesting *[removal or relocation of the lines]* shall pay Company the total costs of removing or relocating.”

The Franchise controls. City wins!

- The franchise represents the “unique conditions” the city requires.

APPELLATE PROCEDURE

State Office of Risk Mgmt v. Martinez, SCOTX

- When going to court to dispute a Workers' Compensation Commission decision, parties cannot present new issues,

BUT

Parties *can* present new arguments.

In this case...

- A public employee slipped and fell while working from home – was denied workers' comp., denied again in a contested case hearing.
- At the hearing, agency said 'she wasn't working in the scope of her employment.'
- In court, the agency switched it up. They said, 'she violated a state statute by working from home.'

Is this a new argument (allowed) or a new issue (not allowed)?

SCOTEX said this was just a new argument.

**Agency: 1,
Clumsy employee: 0**



EMPLOYMENT

Alamo Heights Indep. Sch. Dist. v. Clark, SCOTX **Sexual Harassment, the Bar is High.**



- A female coach complained of harassment by another female coach at a junior high school.

“bullied and harassed”
Crass comments about her body

SCOTEX ruled it wasn't harassment

- It wasn't clearly motivated by sexual desire
- It wasn't clear because the plaintiff was a woman – the defendant reportedly harassed everyone equally!

Oh, and the court rejected her retaliation claim, too.



Unemployment Compensation while on FMLA

Tex. Workforce Comm'n v. Wichita County, SCOTX

Define “unemployment”: is being on unpaid FMLA leave (“with intent to return”) unemployed?

Unemployment Compensation while on FMLA

Tex. Workforce Comm'n v. Wichita County, SCOTX

- Employees may qualify while on unpaid FMLA leave
- Wages just have to be low enough:
 - Total unemployment means “the individual does not perform services for wages in excess of the greater of: (1) \$5; or (2) 25 percent of the benefit amount.” Tex. Labor Code § 201.091(a).



CONCEALED WEAPONS: Jumpin' the Gun ***Holcomb v. Waller Cty., Houston [1st Dist.]***



- Holcomb wrote the county a letter telling them the gun prohibition signage in the county courthouse was unlawful.
- County sued Holcomb, asked the court to declare his interpretation incorrect.
- BUT Holcomb's letter wasn't a "redressable wrong" – the county couldn't sue him for exercising a Constitutional right.

Texas Government Code Section 411.209(a)



- A state agency or political subdivision can only post signage prohibiting carrying a handgun on the premises if:
 - “license holders are prohibited from carrying a handgun on the premises or other place by Section 46.03 or 46.035, Penal Code.”

ETJ's Last Stand

Collin Cty. v. City of McKinney v. Custer Storage Center, Dallas COA

- City can't enforce its building codes in ETJ.
- City *can* require a landowner in ETJ to plat their property.



Conclusion



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