

Ultra Vires Claim Found

<u>CASE</u>	<u>FACTS</u>	<u>RULING</u>
<i>Chambers-Liberty Counties Navigation District v. State</i> , 575 S.W.3d 339 (Tex. 2019)	County Navigation District leased submerged land to a resource management company for oyster production. State of Texas sued the District and company, seeking to invalidate the lease under the theory that Texas law affords the Texas Parks and Wildlife Department, not the District, the sole power to decide who may and may not cultivate oysters in the disputed area.	The Court found that the District’s functions were directly limited by statute, found no discretion, and precluded the lease that was executed by the commissioners.
<i>City of Houston v. Houston Municipal Employees Pension Sys.</i> , 549 S.W.3d 566 (Tex. 2018)	Houston Municipal Employees Pension System brought an action against City of Houston to acquire information regarding city employee contributions to properly administer a pension fund.	Court found controlling statute created mandatory duties and mandamus was proper because plaintiff lacked adequate remedy at law.
<i>Houston Belt & Termination Railway Co. v. City of Houston</i> , 487 S.W.3d 154 (Tex. 2016)	Public Works Director sued based on his calculation of property drainage fees, which contradicted with the method and calculation process set forth by municipal ordinance.	The Court found that the Director engaged in <i>ultra vires</i> acts, as the ordinance clearly set forth how the Director was to calculate and determine the drainage fee at issue and the ordinance gave the Director no discretion to deviate from the calculation.
<i>Southwest Bell Telephone, L.P. v. Emmett</i> , 459 S.W.3d 578 (Tex. 2015)	Plaintiff utility company sued the city, public works director, and county commissioners, alleging that a statute required a county flood control district to be responsible for the cost of relocating facilities.	The Court held that the statute imposed ministerial duties which the defendant commissioners failed to perform.
<i>City of El Paso v. Heinrich</i> , 284 S.W.3d 366 (Tex. 2009)	Police officer’s widow sued several defendants after her pension benefits were reduced. Widow alleged that the retroactive reduction of her benefits violated a statute expressly providing that benefits could only <i>increase</i> .	Court acknowledged the <i>ultra vires</i> theory. The Court found that the widow had sufficiently alleged and offered evidence that the board’s retroactive reduction was expressly prohibited by a state statute—a statute that provided any retroactive change or modification of benefits “shall only increase pensions or benefits.” Therefore, because the retroactive action reduced benefits in violation of the statute and there was no discretion allowed, an <i>ultra vires</i> claim existed.

<i>Suarez v. Silvas</i> , 2020 WL 2543311, *5 (Tex. App.—San Antonio, May 20, 2020)	Plaintiff claimed other city councilmembers acted without legal authority under city charter in declaring plaintiff's position as a councilmember forfeited.	<i>Ultra vires</i> allegations existed. Furthermore, the court found that <i>ultra vires</i> claims against the city manager and the city secretary were permissible since a notice for applications for the vacant seat was posted and the plaintiff alleged that the city manager and city secretary were responsible for compiling and processing the applications.
<i>Patino v. Tex. Dep't of Ins.-Div. of Workers' Comp.</i> , No. 14-18-00274-CV, 2020 Tex. App. LEXIS 2210 (Tex. App.—Houston [14th Dist.] Mar. 17, 2020)	Plaintiff doctors sued the Texas Department of Insurance-Division of Worker's Compensation Commissioner for various claims including wrongfully listing the doctors on the Division's website as being disciplined.	The Court found the three claims to be <i>ultra vires</i> .
<i>White Deer Indep. Sch. Dist. v. Martin</i> , 596 S.W.3d 855 (Tex. App.—Amarillo 2019, pet. filed March 13, 2020)	Complaint surrounding a school board's vote to repeal a tax exemption.	Court found that board members were not within their legal authority simply by using the permissible means of voting. Rather, the enactment had to also be considered. Therefore, although the board acted as a body, each member who voted acted outside legal authority and therefore were each individually proper defendants of the <i>ultra vires</i> claim. However, Superintendent who did not vote or take any other <i>ultra vires</i> act.
<i>City of San Antonio v. Int'l Ass'n, Local 624</i> , 582 S.W.3d 455 (Tex. App.—San Antonio 2018, no pet.)	<i>Ultra vires</i> claims against fire chief and city manager for creating the non-classified Assistant to the Director position and staffing it with a non-civil-service, civilian employee.	<i>Ultra vires</i> acts because position must be classified. Further, only case to address whether attorneys' fees are recoverable on a successful <i>ultra vires</i> claim. The Court concluded attorneys' fees are ancillary to an award of prospective relief in an <i>ultra vires</i> action and therefore recoverable. The court reasoned, "the line between retroactive and prospective relief cannot be so rigid that it defeats the effective enforcement of prospective relief."
<i>Turner v. Robinson</i> , 534 S.W.3d 115 (Tex. App.—Houston [14th Dist.] 2017, pet. denied)	Allegations a mayor acted without legal authority in permitting the illegal assessment, collection, and expenditure of drainage fees, exempting those fees from caps, passing budgets which exceeded caps, and expending monies which exceeded caps.	Court found that the requested relief was prospective for purposes of <i>ultra vires</i> claims and the mayor was the proper <i>ultra vires</i> defendant due to declared intentions.

<p><i>City of Plano v. Carruth</i>, 2017 WL 711656 (Tex. App.—Dallas 2017, pet. denied)</p>	<p>Plaintiffs brought several claims, including an <i>ultra vires</i> action against City Secretary, for refusing to submit a referendum petition to the City Council and the Council’s failure to reconsider the ordinance and call an election.</p>	<p>Court found that the City’s Charter did not give the City Secretary any discretion to determine whether a referendum petition has been withdrawn, and therefore <i>ultra vires</i> was available.</p>
<p><i>Wineinger v. Z Bar A Ranch, LP</i>, 2016 WL 3971560 (Tex. App.—Dallas 2016, no pet.)</p>	<p>Plaintiff purchased property from County pursuant to a resale statute. The purchaser made improvements to the property over several months when another person claimed to be the rightful owner. Conflicting deeds were issued. Plaintiff sued, including asserting <i>ultra vires</i> claims against Tax Assessor-Collector for the failure to issue a proper deed.</p>	<p><i>Ultra vires</i> claims found, as the failure to issue a correct deed is a ministerial act.</p>
<p><i>City of New Braunfels v. Tovar</i>, 463 S.W.3d 913 (Tex. App.—Austin 2015, no pet.)</p>	<p>Police officer filed claims, including <i>ultra vires</i> actions, claiming that he was denied points for seniority that would have made him eligible for placement on a promotion eligibility list. Officer claimed he was not credited with ten points and that a state statute left no discretion to commissioners.</p>	<p><i>Ultra vires</i> actions found. Court agreed that the applicable statute “unambiguously mandate[d]” the commissioners to include the ten seniority points, leaving no discretion in the calculation.</p>

Ultra Vires Claim Not Found

<u>CASE</u>	<u>FACTS</u>	<u>RULING</u>
<i>Garcia v. City of Willis</i> , 593 S.W.3d 201 (Tex. 2019)	Plaintiff, representing a putative class of citizens, challenged the constitutionality of red-light cameras.	The Court affirmed dismissal of the <i>ultra vires</i> claim on a standing determination. The Court found that the plaintiff was not seeking any prospective relief because he did not have outstanding violations, did not intend to violate the laws, and he no longer faced the purported unconstitutional conduct.
<i>Honors Academy, Inc. v. Texas Education Agency</i> , 555 S.W.3d 54 (Tex. 2018)	Two open-enrollment charter schools sought judicial review of the Commissioner of Education’s decision to revoke their charters.	The Court found no <i>ultra vires</i> act where the Commissioner’s authority allowed him to interpret the issues presented and the enabling statute made his determination final.
<i>Hall v. McRaven</i> , 508 S.W.3d 232 (Tex. 2017)	University regent (Hall) sued the university chancellor (McRaven), alleging that McRaven redacted certain educational information and therefore refused to grant Hall complete access to student records. Hall alleged that McRaven misinterpreted a privacy statute in doing so and therefore McRaven’s withholding of the student records constituted an <i>ultra vires</i> act not permitted by statute.	No <i>ultra vires</i> act– the Chancellor’s alleged misinterpretation of the privacy statute applied to a law collateral to his authority. McRaven’s mistake, if any, was in interpreting a law that was part of his job to interpret and there was no statute or other law setting forth clear and direct instruction and therefore removing his discretion. Held: an <i>ultra vires</i> claim does not arise for an alleged misinterpretation of a law that is part of an official’s job to interpret.
<i>Morath v. Sterling City Indep. Sch. Dist.</i> , 499 S.W.3d 407 (Tex. 2016)	Three school districts asserted <i>ultra vires</i> claims against the Commissioner of Education for making adjustments in state aid to school districts pursuant to statutory authority that was “final and may not be appealed.”	In the plurality decision, the court found that the Commissioner did not act <i>ultra vires</i> because the applicable statute conferred authority and further made the Commissioner’s decision final and unreviewable.
<i>Klumb v. Hous. Mun. Emps. Pension Sys.</i> , 458 S.W.3d 1 (Tex. 2015)	The issue in <i>Klumb</i> was whether courts have authority to review a municipal pension board’s actions under an <i>ultra vires</i> theory, notwithstanding statutory language precluding judicial review.	Court found no <i>ultra vires</i> claim because the board acted within its broad statutory authority to construe the term “employee.” Further, compliance with a contract does not give rise to an <i>ultra vires</i> claim.
<i>Patel v. Tex. Dep’t of Licensing & Regulation</i> , 469	Individuals practicing commercial eyebrow	No <i>ultra vires</i> act where plaintiffs challenged

S.W.3d 69 (Tex. 2015)	threading asserted that Texas’s licensing statutes and regulations violated the Texas Constitution’s’ due course of law provision. State claimed that the Court, with its recent decisions, departed from the rule that sovereign immunity is inapplicable when a suit challenges the constitutionality of a statute and seeks only equitable relief.	validity of statutes and regulations, rather than complaining that officials illegally acted or failed to act.
<i>Beeman v. Livingston</i> , 468 S.W.3d 534 (Tex. 2015)	Two prison inmates claimed that the Executive Director of the Texas Department of Criminal Justice acted <i>ultra vires</i> in failing to provide access to phones and other rights provided by the Texas Human Resources Code.	The Court held that the challenged statute did not include facilities such as prisons, therefore there was no <i>ultra vires</i> claim because no applicable statute could be analyzed for the Director’s discretion of authority.
<i>Texas Lottery Comm’n v. First State Bank of DeQueen</i> , 325 S.W.3d 628 (Tex. 2010)	A Texas Lottery prizewinner assigned two annual installment prize payments to pay a bank debt. The Lottery Commission refused to recognize the assignment because the Lottery Act prohibits assignments of installment payments due within the final two years of the prize payment schedule. Plaintiffs sought a declaratory judgment that the UCC conflicts with the Lottery Act, therefore rendering it ineffective.	The Court held that the plaintiffs were challenging the validity of the Lottery Act, rather than the actions of any governmental official, therefore no <i>ultra vires</i> claim existed.
<i>Dunson v. Jacobson</i> , No. 02-18-00059-CV, 2019 Tex. App. LEXIS 8016, at *16 (Tex. App.—Fort Worth Aug. 29, 2019)	Suit against the Tarrant County Appraisal Review Board and then-chairman for policies which allegedly misinterpreted the tax code.	The court found no <i>ultra vires</i> act for policies implemented because it was within the chairman’s authority to establish procedural rules involving tertiary matters.
<i>Nelson v. Head</i> , 2019 WL 6315425 (Tex. App.—Corpus Christi-Edinburg 2019, no pet.)	City resident alleged mayor engaged in <i>ultra vires</i> conduct by voting in council meetings in the absence of a tie vote. Further, requested to have all of the mayor’s improper votes declared void, setting aside all actions by the City that resulted from those votes.	Court reversed denial of plea to the jurisdiction on <i>ultra vires</i> claims pertaining to mayor’s votes. In doing so, the court noted that seeking to have past votes declared invalid does not state an <i>ultra vires</i> claim.
<i>Ray’s Drive Inn, Inc. v. Angelina County & Cities Health District</i> , 2018 WL 4474054 (Tex. App.—Tyler, no pet.)	Complaint involved health district’s choice to withhold a permit pending installation of a special sink.	The court held that the district’s decision, even if wrong, was not an <i>ultra vires</i> act because the district had authority to make the decision.
<i>City of Austin v. Utility Associates, Inc.</i> , 517	Bidder for city contract for the provision of body-	No <i>ultra vires</i> act. Court found that while

S.W.3d 300 (Tex. App.—Austin 2017, pet. denied)	worn cameras sued city and city manager, alleging manipulation and corruption in the procurement process.	procurement statute set out procedures, it did not negate all discretion—and plaintiff sued based on disagreement of determination within discretion. Court further found that seeking to invalidate a previously awarded contract constituted retrospective relief not allowed on an <i>ultra vires</i> claim.
<i>Kilgore Indep. Sch. Dist. v. Axberg</i> , 535 S.W.3d 21 (Tex. App.—Texarkana 2017)	Complaint surrounding a school board’s vote to repeal a tax exemption.	The court found that members of a collective body, such as a school board, cannot commit <i>ultra vires</i> acts individually by voting on the repeal of a tax exemption because the individual members do not act alone.
<i>EP Hotel Partners, L.P. v. City of El Paso</i> , 527 S.W.3d 646 (Tex. App.—El Paso 2017, no pet.)	<i>Ultra vires</i> claim against city council, alleging it lacked “full knowledge” when voting to enter a lease.	No <i>ultra vires</i> claim, however the court kept open the idea that had the plaintiff shown that the contract violated the charter, perhaps an <i>ultra vires</i> claim could exist.
<i>Cameron County Appraisal Dist. v. Rourk</i> , 2016 WL 380309 (Tex. App.—Corpus Christi-Edinburg 2016, pet. denied)	Taxpayers filed class action against appraisal district seeking declaration that assessment of ad valorem tax on recreational vehicles and trailers on their property was unlawful.	Reversed the trial court, finding no <i>ultra vires</i> claim. The court was silent as to whether attorneys’ fees would have been recoverable if there had been an <i>ultra vires</i> claim.
<i>Satterfield & Pontikes Construction, Inc. v. Texas Southern Univ.</i> , 472 S.W.3d 426 (Tex. App.—Houston [1 st Dist.] 2015, reh’g denied).	Bidder for public contract sued university, including <i>ultra vires</i> claims against CFO and Executive Director of Procurement, claiming officials violated Government Code and Education Code statutes, and seeking to declare awarded contract void.	<i>Ultra vires</i> actions not found. Court found that while statutes regulated their actions, officials had discretion in making selection, including determining what was “the best value.” Further, court noted that plaintiff sought retrospective relief to invalidate a contract, which is not permitted through an <i>ultra vires</i> claim.