

Statutory Construction for Voter-Approved Measures

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Overview

- ▶ This presentation will cover how rules of statutory interpretation can be used to interpret charter amendments, ordinances adopted by initiative, and other types of measures.
- ▶ We will cover existing Texas case law and look at what guidance out-of-state cases can give us in the area of petition-driven measures where Texas case law is scant and a City may be grappling with the interpretation and enforcement of ambiguous language it did not write.

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**ARTICLE VII-b. - LEGISLATION BY THE PEOPLE.
INITIATIVE AND REFERENDUM.**

Survey of Texas Law on Local Initiatives

- ▶ Little Texas case law exists where courts have interpreted the text of law adopted through an initiative or referendum process and considered the method of adoption in its analysis.
- ▶ When Texas courts must determine the meaning of city charter or ordinance provisions adopted by the voters, they often look to rules governing the interpretation of statutes without consideration of the method of adoption.
 - ▶ *City of Houston v. Todd*, 41 S.W.3d 289, 297 (Tex. App.—Houston [1st Dist.] 2001, pet. denied) (“We construe a city charter provision according to the rules governing the interpretation of statutes generally.”).
 - ▶ *Rossano v. Townsend*, 9 S.W.3d 357, 363-64 (Tex.App.—Houston [14th Dist.] 1999, no pet.) (interpreting charter amendment that established procedures for adopting a zoning ordinance using the “rules governing the interpretation of statutes” without reference to who put forth the charter amendment to the voters).

Survey of Texas Law on Local Initiatives: *City of Corsicana v. Willmann*

- ▶ *City of Corsicana v. Willmann*, 216 S.W.2d 175 (Tex. 1949)
 - ▶ Background: City sought to annex territory by ordinance alone based on language of charter adopted in 1917; did not go through statutory annexation process.
 - ▶ “Whether the ordinances are valid depends upon a construction of Sec. 2, of petitioner’s charter, which reads: ‘The said limits of the City of Corsicana may be extended so as to take in other territory, by ordinance duly passed by the Commission, **in the manner and form as prescribed by the general laws of the State of Texas.**’” Id. at 176.
 - ▶ Texas Supreme Court rejected various canons of construction offered in support of City’s position (Doctrine of Last Antecedent, effect and meaning must be given to every phrase and word of the act).

Survey of Texas Law on Local Initiatives: *City of Corsicana v. Willmann*

- ▶ Opinion provides insight on other factors that may impact a court's analysis of an initiative beyond the text and statutory canons.
- ▶ Contains references to 1) context of the enactment of the charter provision and 2) intent of the voters.
 - ▶ “So we cannot agree that the framers of petitioner's charter **or the people of Corsicana when they adopted it intended** to refer its legislative body to the statutes for information, knowing that none could be found there. **We cannot ascribe to them a purpose so vain.**” Id. at 177.
 - ▶ “We think the more reasonable construction of Section 2 is that it does not give petitioner authority to annex adjacent territory by ordinance but means that annexation must be effected in the manner prescribed by the statutes. We are supported in that holding by the fact, as the court of civil appeals noted, that **when petitioner's charter was adopted the usual method of extending city limits was by election, under the general laws.**” Id. at 178.

Survey of Texas Law on Local Initiatives: *Arredondo v. City of Dallas*

- ▶ *Arredondo v. City of Dallas*, 79 S.W.3d 657 (Tex. App.—Dallas 2002, pet. denied)
 - ▶ Background: On September 8, 1978, the Dallas Police and Fire Action Committee presented the City with a signed petition seeking an ordinance to, among other things, maintain the “current percentage pay differential between grades in the sworn ranks” of police officers and firefighters. Ordinance was later adopted at a referendum election.
 - ▶ Court found that 1) the language of the Ordinance was ambiguous about whether the differential was intended to apply that one time or to all future salary adjustments; and 2) resolution of that issue is one for the fact-finder on remand. Id. at 669.
 - ▶ Because the voters adopted the ordinance at issue, court found that the intent of voters was relevant in resolving the ambiguity.

Survey of Texas Law on Local Initiatives: *Arredondo v. City of Dallas*

“Because the Ordinance constitutes a contract between the City and Plaintiffs, resolution of the ambiguity issue requires a determination by the fact-finder as to the intent of the parties to the contract, i.e., **what the City and Plaintiffs thought the Ordinance meant, as evidenced by, among other things, their conduct and any information disseminated by them to the voters.** Further, because in this instance the City was bound by the decision of the voters and in fact had no authority to change any language in the Ordinance as drafted by the Dallas Police and Fire Action Committee, **the intent of the voters is also relevant in resolving the ambiguity. While we acknowledge that ascertaining the intent of the voters can be a difficult task, it is not insurmountable.** See, e.g., *State v. Allison*, 143 Or.App. 241, 923 P.2d 1224, 1230 (1996) (in interpreting statute enacted by initiative, court found following to be probative evidence of voter intent: statements contained in voters' pamphlets and contemporaneous newspaper stories, magazine articles, and other reports from which voters might have derived information about the initiative); *Arvin Union Sch. Dist. v. Ross*, 176 Cal.App.3d 189, 221 Cal.Rptr. 720, 725 (1985) (in interpreting measure adopted by vote of people, court will examine language of initiative “in light of the political and social milieu that existed at the time the [initiative] came before the voters”).” *Id.* at 668-69.

Intent of the Voters in Interpretation of Constitutional Amendments

- ▶ Courts have also examined voter intent in the context of constitutional amendments.
 - ▶ *Satterfield v. Crown Cork & Seal Co., Inc.*, 268 S.W.3d 190, 201-02 (Tex. App.—Austin 2008, no pet.) (“The guiding principle of construing a constitution is to ascertain and give effect to the intent of the voters who adopted it.”).
 - ▶ *In re Allcat Claims Serv., L.P.*, 356 S.W.3d 455, 466 (Tex. 2011) (“However, in construing the Texas Constitution, we ‘ascertain and give effect to the plain intent and language of the framers of a constitutional amendment and of the people who adopted it.’”).
- ▶ In order to give effect to “the intent of the voters,” Texas courts:
 - ▶ 1) rely heavily on the literal text;
 - ▶ 2) assume words are carefully selected and interpret words as they are generally understood; and
 - ▶ 3) consider other matters such as history of the legislation, the conditions and spirit of the time, the prevailing sentiments of the people, the evils intended to be remedied, and the good to be accomplished.

Harris County Hosp. Dist. v. Tomball Reg'l Hosp., 283 S.W.3d 838, 842 (Tex. 2009).

Survey of Law Outside of Texas: “Voter Intent” is the watchword

- ▶ 26 states have some type of statewide initiative process for the passage of statutes and/or constitutional amendments proposed by the people.
- ▶ States, such as California and Washington, place emphasis on “voter intent”
 - ▶ *Davis v. City of Berkeley*, 794 P.2d 897, 900 (Cal. 1990) (“When construing a constitutional provision enacted by initiative, the intent of the voters is the paramount consideration.”);
 - ▶ *City of Spokane v. Taxpayers of City of Spokane*, 758 P.2d 480, 483 (Wash. 1988) (“Judicial interpretation should focus on ‘the voters’ intent and the language of the initiative as the average informed lay voter would read it.”)
 - ▶ *Roseburg Sch. Dist. v. City of Roseburg*, 851 P.2d 595, 597 (Or. 1993) (“In interpreting a constitutional provision adopted through the initiative process, our task is to discern the intent of the voters.”).

Survey of Law Outside of Texas: How do you find voter intent?

- ▶ General Rules of Statutory Construction
 - ▶ *State ex rel. Palmer v. Hart*, 655 P.2d 965, 967 (Mont. 1982) (“The same rules applicable to judicial interpretation of legislation enacted by the legislature apply to the interpretation of initiatives.”)
- ▶ Language of the initiative as the average informed lay voter would read it
 - ▶ *City of Spokane v. Taxpayers of Spokane*, 758 P.2d 480, 483 (Wash. 1988) (rejecting intent of drafters and supporters because language of ordinance was unambiguous).
- ▶ Extrinsic aids such as statements in an official voters’ pamphlet, historical context in which provision was adopted
 - ▶ Utilized primarily where the language is susceptible to more than one reasonable interpretation
 - ▶ *Woo v. Superior Court*, 83 Cal. App. 4th 967, 975, 100 Cal. Rptr. 2d 156, 162 (2000) (“[W]e will not presume that the lawmakers (here, the voters) intended the literal construction of a law if that construction would result in absurd consequences.”).

Survey of Law Outside of Texas: Some outliers

- ▶ Nebraska: No way to determine voter intent
 - ▶ *Pig Pro Nonstock Co-op. v. Moore*, 253 Neb. 72, 82, 568 N.W.2d 217, 223-24 (1997) (“There is no meaningful way to determine the intent which motivates voters to sign a petition for the submission of an enactment, nor is there any real way to determine the intent of those voters who vote for the adoption of an enactment... We hold that the intent of the voters adopting an initiative amendment to the Nebraska Constitution must be determined from the words of the initiative amendment itself.”).
- ▶ Maine: Liberal interpretation of citizen-initiated legislation
 - ▶ *Wawenock, LLC v. Dep't of Transp.*, 2018 ME 83, ¶ 26, 187 A.3d 609, 621 (“Citizen-initiated legislation must be interpreted liberally to effectuate its purpose, Opinion of the Justices, 2017 ME 100, ¶ 59, 162 A.3d 188, but it should not be interpreted beyond the scope of the legislative intent underlying its enactment.”).

Take Away Points

- ▶ In interpreting charter amendments or ordinances adopted via an initiative process, consider multiple tools:
 - ▶ Start with the text of the initiative
 - ▶ Canons of Statutory Construction, with emphasis on canons considering the law as a whole and assuming that adopters have knowledge of existing laws
 - ▶ Extrinsic aids demonstrating voter's intent and context of passage, such as Notice of Election and other aids prepared by the City
 - ▶ Be mindful of what is disseminated in public prior to the election, it could impact a city's position on interpretation of an initiative down the road

Questions?

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