

Recent State Cases of Interest to Cities



Texas City Attorneys Association-Summer Conference

by: Laura Mueller
Zoom, Texas
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Liability: Was the Officer On Duty?

- *Orozco v. County of El Paso*, No. 17-0381, 2020 WL 1321473 (Tex. Mar. 20, 2020).
- *CJK Trucking, L.P. v. City of Honey Grove*, No. 05-18-00205, 2019 WL 3296978 (Tex. App.—Dallas July 23, 2019).
- *City of Fort Worth v. Hart*, No. 10-17-00258-CV, 2019 WL 91676 (Tex. App.—Waco Jan. 2, 2019) (mem. op.).

Workers Compensation-*Orozco*

“Peace officers are . . . relatively unique among governmental employees as they may be required to spring into action at a moment’s notice, even while off duty.”



Workers Compensation-*Orozco*

Amici:

The Texas Association of Counties, joined by the Texas Association of Counties Risk Management Pool, the Texas Municipal League, the Texas Municipal League Intergovernmental Risk Pool, the Texas Conference of Urban Counties, and the **Texas Association of City Attorneys**, have filed a brief as Amici Curiae in support of the county.

I'm disappointed in the Supreme Court of Texas.

Was the Officer on Duty

- *CJK Trucking, L.P. v. City of Honey Grove*, No. 05-18-00205, 2019 WL 3296978 (Tex. App.—Dallas July 23, 2019). -**Yes: reasonable suspicion.**
- *City of Fort Worth v. Hart*, No. 10-17-00258-CV, 2019 WL 91676 (Tex. App.—Waco Jan. 2, 2019) (mem. op.). -**No: commuting to work.**



GI-Tort: *University of Tex. v. Garner*

No. 18-0740, 2019 WL 5275579 (Tex. Oct. 18, 2019)

- The road is for recreation if you want it to be.



GI-Tort: *City of El Paso v. Lopez*

No. 08-19-00056-CV, 2019 WL 6838005, (Tex. App.—El Paso Dec. 16, 2019)

Tort Claims Notice for the City:

Actual v. Constructive Notice

- Ownership
- Control
- Contributing Factors

GI-Tort: *Crockett Cty. v. Damian*

No. 08-19-00145-CV, 2020 WL 814013 (Tex. App.—El Paso Feb. 19, 2020).

Election of Remedies.

Sued both the County (TTCA) and employee (state law negligence).



GI-Tort: *Crockett Cty. v. Damian*

Employee negligence: outside scope of employment-
individual liability:

Drinking

Staying up late

Poker



Regardless, Election of Remedies

because both County and employee sued.

non-tort state law claim or 1983 would have worked

GI-Tort: Reyes v. Jefferson Cty.

No. 18-1221, 2020 WL 1898542 (Tex. Apr. 17, 2020)
(per curiam).

Car accident with County Employee.

Actual v. Constructive Notice

Called County-> Sent to Insurer-> Filed Claim->
Claim rejected-> Notice sufficient to County?

GI-Tort: Reyes v. Jefferson Cty.

Ways to avoid accepting notice:

Send plaintiff's counsel to your insurance carrier. Not.



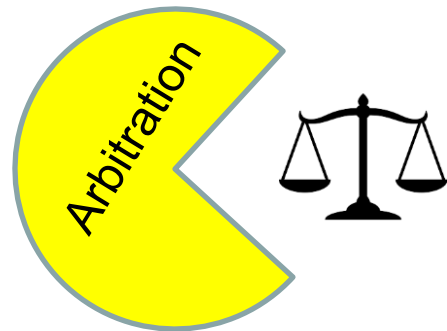
Actual and constructive notice are both sufficient under the Tort Claims Act: *Worsdale v. City of Killeen* – quoting ourselves = no oral argument.

GI-Contracts

San Antonio River Auth. v. Austin Bridge & Road, L.P.

No. 17-0905, 2020 WL 2097347 (Tex. May 1, 2020).

Political Subdivisions can agree to arbitrate-271.



GI-Contracts

San Antonio River Auth. v. Austin Bridge & Road, L.P.

No. 17-0905, 2020 WL 2097347 (Tex. May 1, 2020).

But court decides immunity . . .

“Courts are empowered to enforce such judgments only to the extent that immunity is waived. Accordingly, the judiciary retains the duty to decide whether a local government has waived its immunity, and the extent to which any arbitration award is recoverable against a local government—the parties’ agreement to arbitrate notwithstanding.”

GI-Contracts: *Wasson* in Practice

Proprietary

Contract: *City of Tyler v. Owens*, No. 12-16-00128-CV, 2019 WL 3024756 (Tex. App.—Tyler July 10, 2019) (mem. op.)(pet. denied). Leasing of public property to private individual is proprietary.

Tort: *City of Helotes v. Page*, No. 04-19-00437-CV, 2019 WL 6887719 (Tex. App.—San Antonio Dec. 18, 2019) (mem. op.)(pet. denied). Three of the *Wasson II* factors were met, so fair could be a proprietary function. (discretionary, benefitted non-residents, City received funds-on City's behalf)



TOMA: Town of Shady Shores v. Swanson

No. 18-0413, 2019 WL 6794327 (Tex. Dec. 13, 2019)

Using TOMA to waive immunity

Does not work under UDJA

Works for injunctive or mandated relief



Texas Open Meetings Act

City of Plano v. Hatch, No. 05-18-00927-CV, 2019 WL 4010777 (Tex. App.—Dallas Aug. 26, 2019)-city can redo an action made void, but ratification alone does not deprive the court of jurisdiction.

City of Austin v. Lake Austin Collective, Inc., No. 14-18-00068-CV, 2019 WL 6317337 (Tex. App.—Houston [14th Dist.] Nov. 26, 2019) (mem. op.)-include all pertinent information in notice.

TOMA Integrity, Inc. v. Windermere Oaks Water Supply Corp., No. 06-19-00005-CV, 2019 WL 2553300 (Tex. App.—Texarkana June 21, 2019) (mem. op.)-Some actions cannot be voided-even if TOMA is violated.

Public Information Act: *Paxton v. Escamilla*

No. 03-18-00346-CV, 2019 WL 5779912 (Tex. App.—Austin Nov. 6, 2019)

- Discussion of the law enforcement exception to the PIA-Deferred Prosecution Agreements.
- Arguments: either still investigating or have been finalized without a conviction.



Public Information Act: *Horton v. Welch*

No. 12-19-00381-CV, 2020 WL 1697439 (Tex. App.—Tyler Apr. 8, 2020) (mem. op.).

“deposition testimony, in which he stated that he made no inquiry of council members regarding text messages and did not examine emails on his personal computer or personal computers belonging to council members, raises a fact question regarding whether Welch and the City complied with his requests.”

Please share with your elected officials and city secretaries/PIOs.

Land Use: *Starbright Car Wash LLC v. City of Belton*

No. 14-18-00261-CV, 2019 WL 6711398 (Tex. App.—Houston [14th Dist.] Dec. 10, 2019) (mem. op.)

No vested right under an ordinance. Especially when the owner purchased the property after the City decided not to extend the road.



Land Use: *City of Houston v. Commons at Lake Houston, Ltd.*

No. 14-18-00664-CV, 2019 WL 5158725 (Tex. App.—Houston [14th Dist.] Oct. 15, 2019)

- Regulations in the 500 year flood plain.
- Engineers cannot bind the city with their e-mail legal advice on what vesting is

“A final decision usually requires both a rejected development plan and the denial of a variance from the controlling regulations.”

Eight Liners: *City of Fort Worth v. Rylie*

No. 18-1231, 2020 WL 2311941 (Tex. May 8, 2020).

- Are eight liners legal/constitutional?
- Can cities regulate eight liners?
- Are poker rooms with a membership fee illegal?



Eight Liners: *City of Fort Worth v. Rylie*

No. 18-1231, 2020 WL 2311941 (Tex. May 8, 2020).

- Actually, move along. No questions were answered by this opinion, except that just because the state licenses or taxes your business does not make it legal.



STRs: Zaatari v. City of Austin

No. 03-17-00812-CV, 2019 WL 6336186 (Tex. App.—Austin Nov. 27, 2019).

Fun fact: state intervened.

Retroactive law: Cannot terminate current use without compensation.

Constitutional right to assembly. (When the Court cites Patrick Henry watch out).



STRs: *Zaatar v. City of Austin*

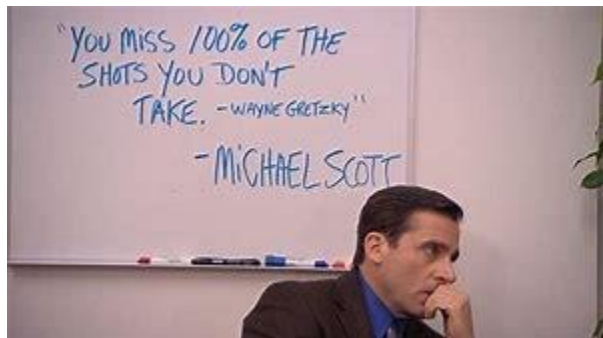
Items that the 3rd Court does not find as good reasons for regulating:

- Public-health concerns about over-occupancy affecting the sewage system and creating fire hazards and about “bad actor” tenants who dump trash in the neighborhood and urinate in public;
- public-safety concerns regarding strangers to neighborhoods, public intoxication, and open drug use;
- general-welfare concerns about noise, loud music, vulgarity, and illegal parking; and
- the negative impact on historic Austin neighborhoods, specifically concerns of residents that that short-term rentals alter a neighborhood’s quality of life and affect housing affordability.

STRs: Anding v. City of Austin

No. 03-18-00307-CV, 2020 WL 2048255 (Tex. App.—Austin Apr. 29, 2020) (mem. op.).

- Interesting approach to renting home for 30 days or more.
- Court held that a 30 day lease with co-tenant agreements does not get around the STR ordinance or make the ordinance unconstitutionally vague.



Nice try though.

Civil Service: *In re Moore*

No. 03-19-00233-CV, 2019 WL 3023973 (Tex. App.—Austin July 11, 2019)

Exculpatory Evidence v. (g) file confidentiality

In camera inspection of (g) file.

Discrimination: *Lovelace v. DISD*

No. 05-18-00207-CV, 2019 WL 2723801 (Tex. App.—Dallas July 1, 2019) (mem. op.).

- Discrimination and waiver of immunity under the TCHRA
- Plaintiff has burden to show pretext. (Supreme Court decisions apply retroactively but ordinances can't)



Whistleblower: *City of Madisonville v. Sims*

No. 18-1047, 2020 WL 1898540 (Tex. April 17, 2020).

90 day “whistle” clock is jurisdictional and runs from the time of termination, not from the time of when finding out facts about the termination.

Harassment: *Toldson v. Denton Indep. Sch. Dist.*

No. 02-18-00394-CV, 2019 WL 6205245 (Tex. App.—Fort Worth Nov. 21, 2019) (mem. op.).

What is needed to prove harassment: Proof.
(also, you kind of have to speak to HR).



Discrimination: *Socorro ISD v. Hamilton*

No. 08-18-00091-CV, 2019 WL 3214154 (Tex. App.—El Paso July 17, 2019).

Age Discrimination: after the settlement agreement.

- Agreed to a specific neutral reference
- Gave a different reference
- Settled claim of age discrimination waived immunity

Harassment: *County of El Paso v. Aguilar*

No. 08-19-00082-CV, 2020 WL 1303556 (Tex. App.—El Paso Mar. 18, 2020).

Harassment, a guide.

- Continued harassment (with specific examples)
- Told not to make complaints
- Physical reaction to stress of harassment

Harassment: *County of El Paso v. Aguilar*

No. 08-19-00082-CV, 2020 WL 1303556 (Tex. App.—El Paso Mar. 18, 2020).

For pay claims, similarly situated, the court compared job descriptions including educational requirements. Something to review if there are titles that are similar but whose pay and educational requirements are different.

Harassment: *City of Coldspring v. Boudreaux*

No. 09-19-00251-CV, 2020 WL 1465977 (Tex. App.—Beaumont Mar. 26, 2020) (mem. op.).

Harassment by elected officials: say what you want. #TCPA



Election Language: Being Precise

- *In Re Linder*, No. 03-19-00553-CV, 2019 WL 3978582 (Tex. App.—Austin Aug. 22, 2019) (mem. op.).-**Misleading.**
- *In re Blythe*, No. 03-19-00577-CV, 2019 WL 4068571 (Tex. App.—Austin Aug. 28, 2019) (mem. op.). -**Not Misleading.**
- *Bryant v. Parker*, No. 01-18-00400-CV, 2019 WL 2588107 (Tex. App.—Houston [1st Dist.] June 25, 2019). -**Not Misleading.**

Firearms: *Thomas v. State*

No. 10-17-00138-CR, 2019 WL 4072073 (Tex. App.—Waco Aug. 28, 2019) (mem. op.).

“premises” for court offices is clear.

Courts don't have to listen to the Attorney General.



City of Houston v. Garza,

No. 01-18-01069-CV, 2019 WL 2932851 (Tex. App.—Houston [1st Dist.] July 9, 2019) (mem. op.).

Possession . . .

Tracking cars, police officers, and inmates.

MORE CASES OF INTEREST TO LAURA MUELLER

