

The Role of City Attorneys in Risk Management:
Competence and Using the Resources Available to You



Competence Means Using Your Resources

- My new role as *Intergovernmental Relations Manager*: Explain how the TML Risk Pool partners with cities to keep employees and residents safe, protect public property, and save taxpayer dollars.
- Competence according to the Rules: (1) competent and diligent representation; (2) offering advice; (3) attorney as advisor/counselor; and (4) scope of advice...
- Know your clients and to whom they are talking...and know what they have to offer (e.g., legislative expertise and knowledge, TML's COVID-19 Updates, Risk Pool's "Call Before You Fire," etc.).
- Know when you (or they) should seek help and what resources are available to you – today we'll look through the lens of the "Local Officials: *Stronger, Together* Podcast" topics.
- Political risk – know the changes in the law:
 - Local governments are creatures of the state.
 - Legislature can at any time increase or decrease your potential liability.
 - Stay involved locally with assistant from TML and Risk Pool.



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LOCAL OFFICIALS:

STP

Stronger, Together Podcast

*Educating members through discussions about
key legal issues and Pool services.*

LISTEN. LEARN.

Rule 1.01. Competent and Diligent Representation

(a) A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence...

Comment: Accepting Employment

1. A lawyer generally should not accept or continue employment in any area of the law in which the lawyer is not and will not be prepared to render competent legal services.
2. “Competence” is defined in Terminology as possession of the legal knowledge, skill, and training reasonably necessary for the representation...
3. ...Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge.

Local Governments and Firearms: Avoiding a Jam

OPEN MEETINGS

- **Unlicensed carrier:** may not carry into the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to the Open Meetings Act, and if the entity provided notice as required by the Open Meetings Act.
- **License holder:** may carry into a meeting described above, *unless the entity provides notice that doing so is prohibited using a Penal Code 30.06 and/or 30.07 sign.*
- **Some disagree:** here's the argument both ways:
 1. Section 46.03(a)(14) prohibits carry of any firearm into open meeting
 2. Section 46.15(b)(6) makes the above "non-applicable" to license holders.
 3. Section 30.06/30.07(e) allows posting of sign (or other notice) only if already prohibited by 46.03:

"(e) It is an exception to the application of this section that the property on which the license holder carries a handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Section 46.03."

Local Governments and Firearms: Avoiding a Jam

LEASED PREMISES

- Convention center or similar facility owned by city and leased to private entity (Tex. Atty. Gen. Op. No. KP-0108):
 1. “As long as the state agency or political subdivision leasing the property to the private entity has no control over the decision to post such notice, the state agency or political subdivision lessor would not be the entity responsible for the posting and would therefore not be subject to a civil penalty under section 411.209.”
 2. “A court would likely conclude that a license holder who carries a handgun on property that is owned by a governmental entity but leased to a private entity and that is not a premises or other place from which the license holder is prohibited from carrying a handgun under sections 46.03 or 46.035 of the Penal Code is excepted from the offenses in subsections 30.06(a) and 30.07(a) of the Penal Code.”

Sewage Backups: Know Before You Go!



Sewage Backups: Know Before You Go!

- Regarding property damages, the Tort Claims Act provides, in pertinent part: “A governmental unit in the state is liable for: (1) property damage...proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if: (A) the property damage arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and (B) the employee would be personally liable to the claimant according to Texas law...” TEX. CIV. PRAC. & REM. CODE § 101.0215.
- Sec. 552.912. CERTAIN DAMAGES CAUSED BY SEWAGE BACKUP. (a) A municipality or a river authority, other than a river authority listed in Subsection (c), may pay actual property damages caused by the backup of the municipality’s or river authority’s sanitary sewer system regardless of whether the municipality or river authority would be liable for the damages under Chapter 101, Civil Practice and Remedies Code. (b) This section does not waive governmental immunity from suit or liability. (c) This section does not apply to the Trinity River Authority, the San Jacinto River Authority, the Sabine River Authority, or the Lower Neches Valley River Authority



II. Counselor, Rule 2.01. Advisor

- In advising or otherwise representing a client, a lawyer shall exercise independent professional judgment and **render candid advice**.

Rule 2.01, Comment – Offering and Scope of Advice

- 4. Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. **Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation.** At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.
- 5. ...A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

Keep Your Police Officers Safe: TPCA's *Vincible* Program

- As many as 50 percent of officer deaths in some years are attributable to behaviors that are controllable.
- The title of the program – [VINCIBLE](#) – removes the “in” from “invincible” to remind officers that they are vulnerable.
- Texas Police Chiefs Association's [seven-minute video](#) outlines the basics of this free program.
- Uses five cornerstones to change deeply ingrained, risk-prone behaviors and ultimately reduce deaths and injuries: (1) wear your vest; (2) wear your seatbelt; (3) watch your speed; (4) stay fit; (5) “540.”

The storm has passed, now what?

TMLIRP ROOFING PROGRAM - BEST Building Envelope Systems Team

Member Service Driven

The Risk Pool consistent with its mission to function as a Member service value driven organization encourages all of its members to utilize the Building Envelope Systems Team program (BEST). The BEST program strives to provide members with a one-stop shop for building envelope repairs which enhance roofing performance, hail resistance, energy efficiency and reduced maintenance costs. **This program is available for a covered loss.**

Key Points to the BEST Program

- ✓ All consultant costs are borne by TMLIRP
- ✓ The Member retains choice as to procurement method:
 - RFP
 - Selected buying cooperative
- ✓ Member chooses roofing system replacement
- ✓ No additional out of pocket expenses without Member notification

Contact
TMLIRP Claims for more information
 512-491-2426
 800-537-6655

What BEST Does for the Member

- ✓ Reviews all Independent Adjuster estimates for accuracy as to scope and price
- ✓ Reviews current roofing system
- ✓ Assesses Member's current roofing needs
- ✓ Recommends roofing system based on Member needs considering:
 - Improved hail resistance
 - Improved energy efficiency
 - Lower maintenance costs
 - Warranty.
- ✓ Manages Procurement Process
- ✓ Manages Pre-construction Process
- ✓ Oversees Construction Process
- ✓ Finalizes completion of job to ensure Member satisfaction
- ✓ Coordinates delivery of all job specifications and warranties to Member.

TMLIRP recently provided a comprehensive training program on roof maintenance, repair, or replacement. A five-part recording of the training is available at <https://www.tmlirp.org/risk-management/videos/>



Catastrophe Response

800.537.6655 | tmlirp.org | STRONGER TOGETHER

Public Service | Fiscal Responsibility | Operational Excellence | Integrity

TMLIRP Enhanced Property Damage Recovery Program

Member Service Driven

In response to property damage recovery needs of our Members, TMLIRP partnered with SynergyNDS, Inc. ("SynergyNDS"). This partnership allows TMLIRP and its Members to quickly and accurately identify damaged property and the steps needed to stabilize and repair the property. It also provides members with access to the **Synergy Turnkey Recovery Program**. This program provides world-class disaster response solutions allowing quicker building stabilization and recovery getting members back to operational capacity sooner. Members can focus on their community's needs as their recovery proceeds. **Program available for a covered loss.**

How the Program Works?

- ✓ TMLIRP engages Synergy to evaluate damages and provide solutions
- ✓ Member chooses to engage Synergy Turnkey in accordance with procurement laws.
- ✓ Synergy manages all aspects of project for member and member focuses on citizens.
- ✓ Cost of program is paid through claims cost
- ✓ No additional out of pocket expenses without written Member notification
- ✓ Synergy works directly with TMLIRP claims adjusters
- ✓ Ensures members have a vetted contractor
- ✓ Proven track record

Contact **TMLIRP Claims**
 (512) 491-2426

What Turnkey Program Does for the Member

- ✓ Rapid Loss Notification/Damage Assessments
- ✓ Mitigation & Stabilization
- ✓ Dedicated Project Management
- ✓ Defines Project Scope
- ✓ Project Procurement
- ✓ Project Management
- ✓ Claims Management & Loss Recovery Software
- ✓ Post-Recovery Support

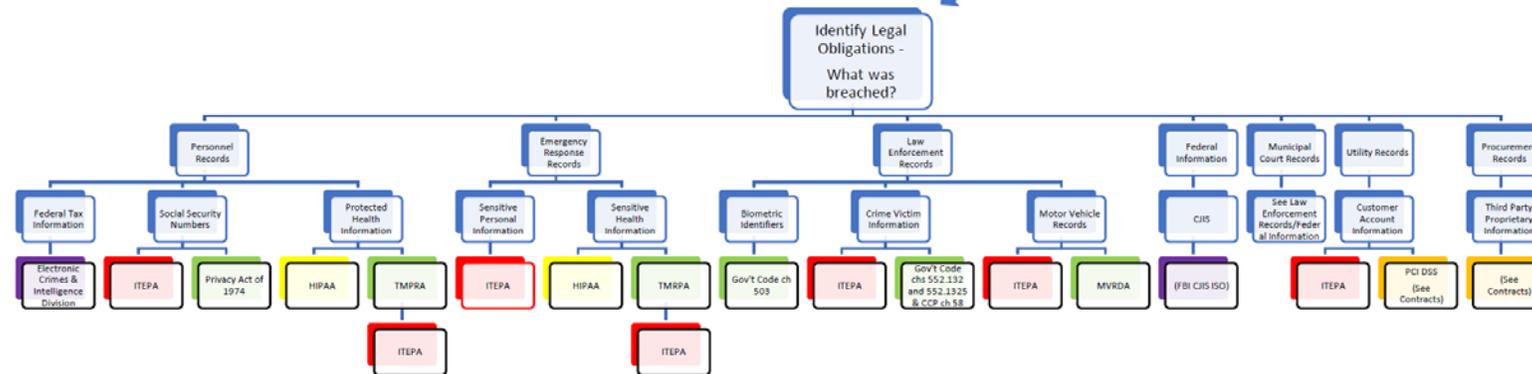


Catastrophe Response

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Public Service | Fiscal Responsibility | Operational Excellence | Integrity

Cybersecurity: Are You Prepared?



Rule 2.01, Comment – Offering and Scope of Advice

- 2. Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as costs or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

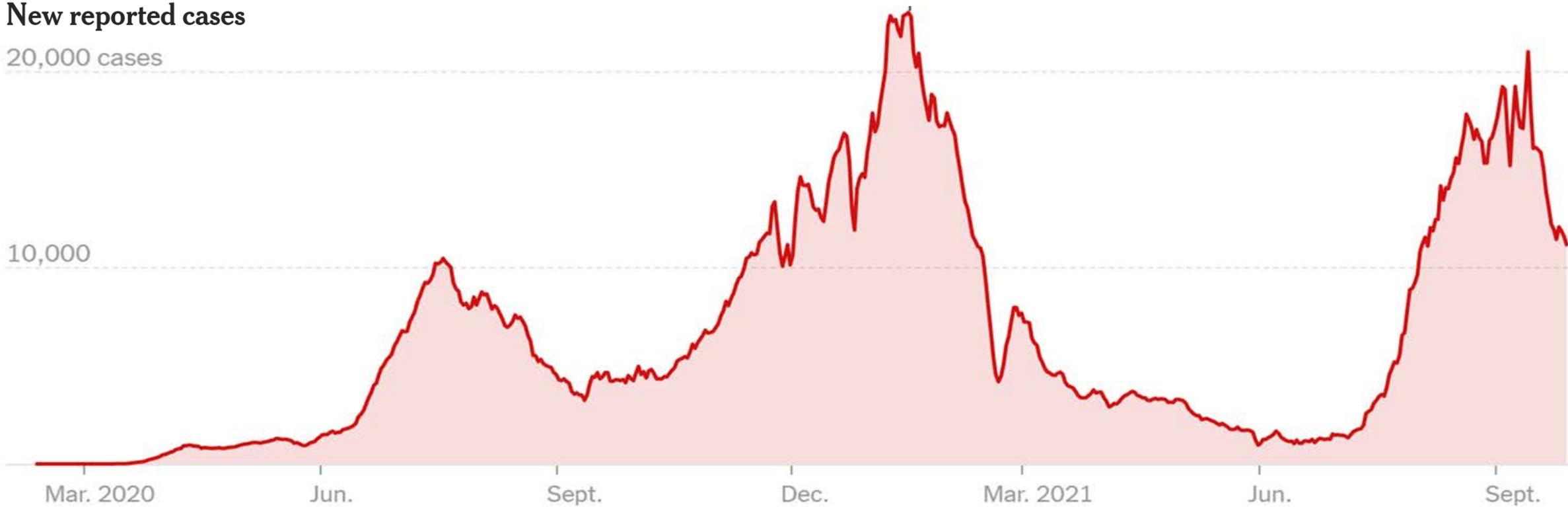
First Responders and COVID-19 Vaccines

Tracking Coronavirus in Texas:

New reported cases

20,000 cases

10,000



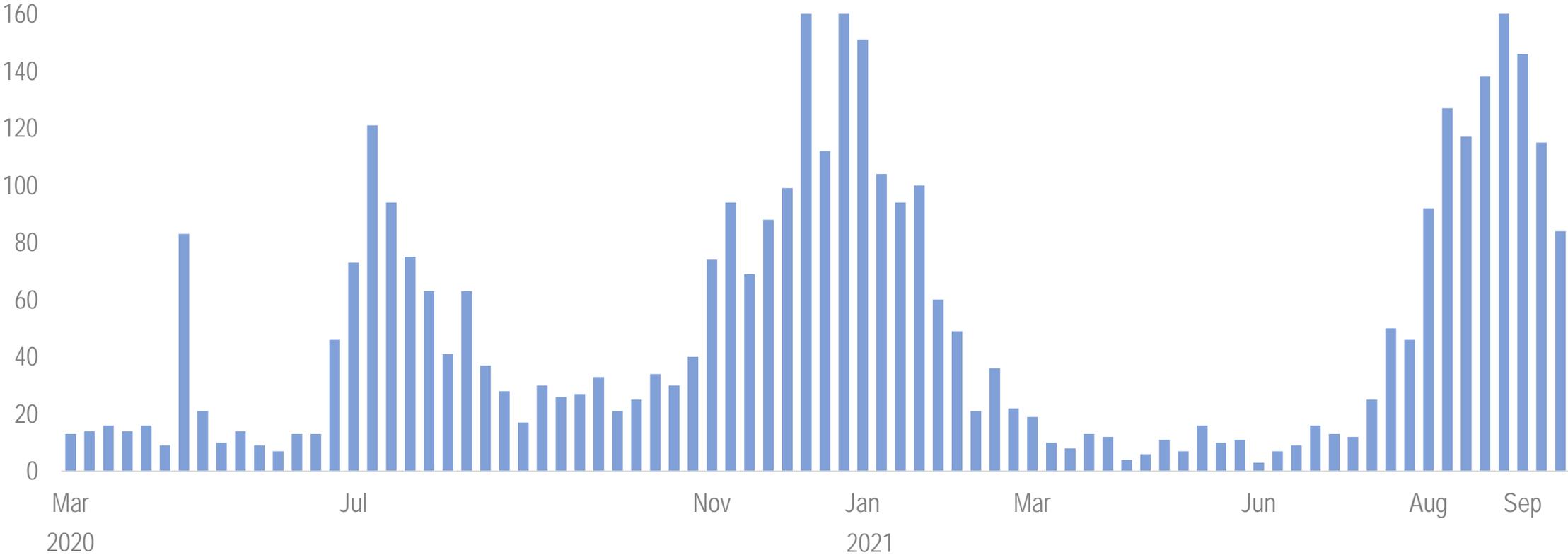
Source: New York Times

Texas Communities are **STRONGER TOGETHER**



Pool accepted first Workers' Compensation COVID-19 claim in March 2020

Workers' Compensation COVID-19 Claims Reported by Week



Texas Communities are **STRONGER TOGETHER**



As the State of Texas goes, so does the Pool...

Workers' Compensation COVID-19 Claims Reported by Week



Texas Communities are **STRONGER TOGETHER**



First Responders and COVID-19 Vaccines

- Roger Dean was a healthy 31-year-old Seguin firefighter who passed away after a months-long battle with COVID.
- He left behind his wife and their newborn infant child.
- Vaccination rate for first responders mirrors that of the general population.
- First responder COVID claims thus far: 3,500+ with 29 fatalities and \$60 million incurred.



First Responders and COVID-19 Vaccines



Our Core Values

- **Public Service**: Serving the public good – for the benefit of local governments and their tax-paying citizens.
- **Fiscal Responsibility**: Responsibly managing our members’ pooled funds for the protection of their financial stability.
- **Operational Excellence**: Delivering excellent member service in all components of our risk financing and loss prevention services.
- **Integrity**: Serving with honesty, integrity and professionalism.