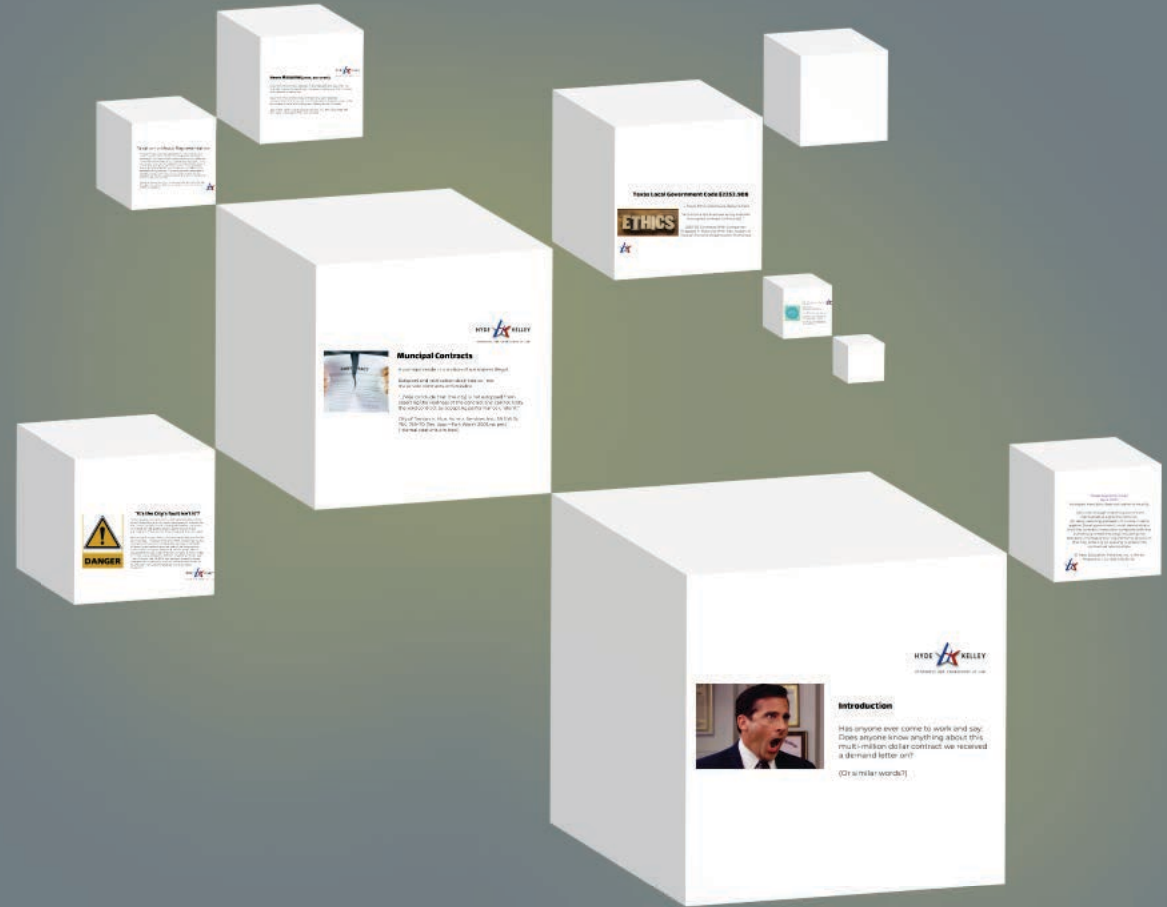
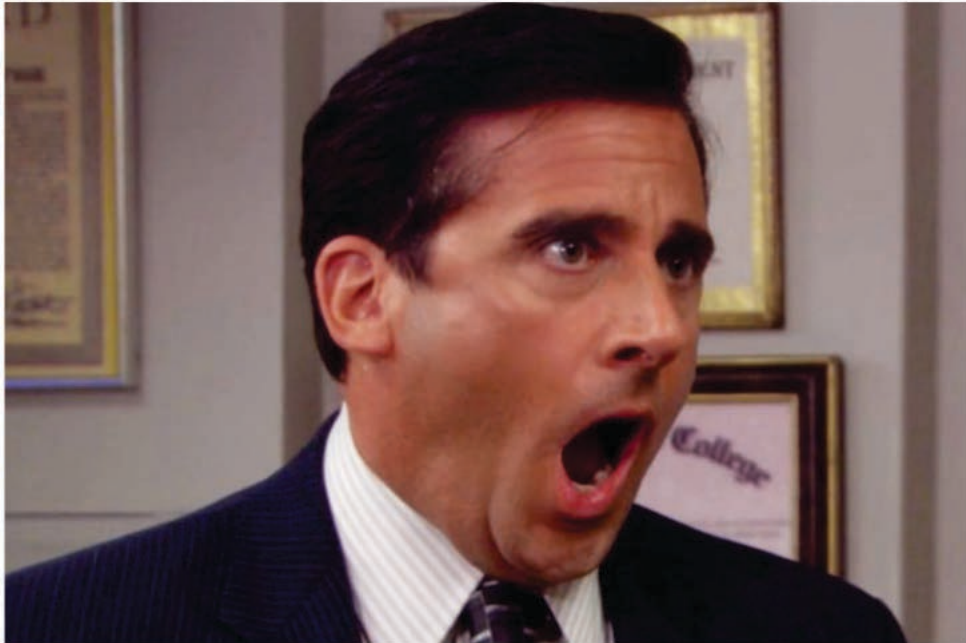


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**Contracts: When
Things Go Wrong!**

A twisted story of
intrigue in immunity!





Introduction

Has anyone ever come to work and say:
Does anyone know anything about this
multi-million dollar contract we received
a demand letter on?

(Or similar words?)



Municipal Contracts

A contract made in violation of a statute is illegal.

Estoppel and ratification doctrines will not make void contracts enforceable.

"...[W]e conclude that [the city] is not estopped from asserting the voidness of the contract and cannot ratify the void contract by accepting performance under it."

City of Denton v. Mun. Admin. Services, Inc., 59 S.W.3d 764, 769–70 (Tex. App.—Fort Worth 2001, no pet.) (internal citations omitted).



"It's the City's fault isn't it"?

"When a party contracts with a political subdivision of the state, the burden is on the contracting party to ensure that the contract is valid and that the governmental entity has complied with all applicable laws governing contract approval and if they do not, they proceed at their own peril.

Richmond Printing v. Port of Houston Auth., 996 S.W.2d 220, 224 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (party that contracts with governmental entity has duty to verify all statutory requirements are met; party that commences work without doing so "does so at its own peril"); Bd. of Adjustment for City of San Antonio v. E. Cent. E. Cent. Indep. Sch. Dist., 04-14-00341-CV, 2015 WL 1244665, at *5 (Tex. App.—San Antonio Mar. 18, 2015, pet. denied) (property owner charged with notice provisions of ordinance and relies "at its own peril" on unauthorized actions of building inspector).

Never Assume (pron. ass-u-me)

Governmental entities operate in one way and one way only – by majority vote in a properly noticed open meeting and that includes the approval of contracts.

Governmental entities may contract only upon express authorization of the council, commissioners, or board, as applicable, by a majority vote of that body as reflected in the minutes.

City of Bonham v. Southwest Sanitation, Inc., 871 S.W.2d 765, 767 (Tex. App.—Texarkana 1994, writ denied).

Taxation without Representation

The only way that a political subdivision of the state can act is by and through its governing body.... It is a well-settled rule that the governing authorities of cities can express themselves and bind the cities only by acting together in a meeting duly assembled.... A city council can transact a city's business transactions only by resolution or ordinance, by majority rule of the council ... A city's governing body may not delegate the right to make decisions affecting the transaction of city business.... The governing body is authorized to delegate the right to perform acts and duties necessary to the transaction of the city's business, but can do so only by resolution or ordinance, by a majority vote.

DeSoto Wildwood Dev., Inc. v. City of Lewisville, 184 S.W.3d 814, 826 (Tex. App.—Fort Worth 2006, no pet.) (internal citations omitted) (emphasis supplied).



Texas Local Government Code §2252.908



- Texas Ethics Disclosure Requirement

"at the time the business entity submits the signed contract to the [city]..."

2252.152 Contracts With Companies Engaged in Business With Iran, Sudan, or Foreign Terrorist Organization Prohibited





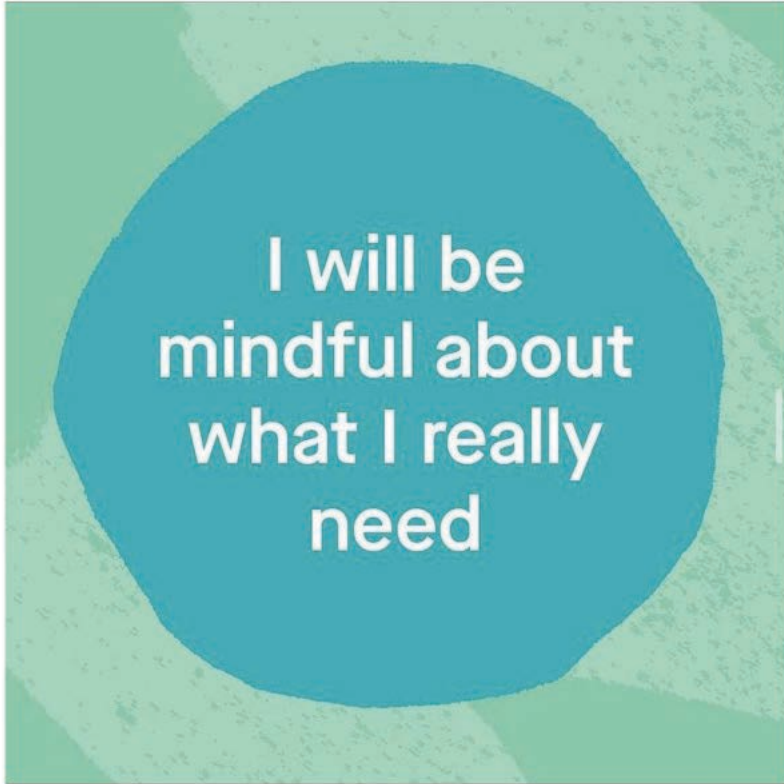
§ 2271.002. Provision Required in Contract

(Israel anti-boycott)
(Energy Companies anti-boycott)
(Firearms and Ammo anti-boycott)

and § 2274 - No contracting with:

“listed companies” on a list prepared and maintained pursuant to Government Code Section 806.051, 807.051, or 2252.153.

“foreign corporations individuals who are citizens of China, Iran, North Korea, Russia or a designated country.”



I will be
mindful about
what I really
need

Texas Supreme Court
April 2020

Improper execution does not waive immunity.

...[I]t is not enough that the government representative signs the contract.

[A] party asserting a breach-of-contract claim against [local government] must demonstrate that the contract's execution comports with the authority granted the [city], including the statutory and regulatory requirements placed on [the city] entering (or seeking to enter) into contractual relationships.

El Paso Education Initiative, Inc. v. Amex Properties, LLC, 602 S.W.3d 521.



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