RECENT STATE CASES OF INTEREST TO CITIES

Presented to:
TEXAS CITY ATTORNEYS ASSOCIATION
TEXAS MUNICIPAL LEAGUES
SUMMER CONFERENCE
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Laura, originally from Yukon, Oklahoma, graduated summa cum laude from the University of Oklahoma in 2001 with a liberal arts degree. She attended the University of Texas School of Law, where she was active in student recruiting, advocacy programs, and the Texas Journal on Civil Liberties and Civil Rights. While in law school, Laura worked as a law clerk for TML and as an intern for the Travis County Juvenile Public Defender's Office. After graduating with honors in 2004, Laura clerked for the Supreme Court of Texas. She joined the TML legal staff as legal counsel in November 2006.

TML LEGAL DEPARTMENT
Austin, Texas

The TML Legal Department is a ragtag group of attorneys brought together for one purpose, to give city officials general legal information without knowing anything about the controlling facts, city ordinances, or city charter. This advice often conflicts with that given by a city's own attorney (who does have the pertinent information), but the legal department is free so we must be right. From its ivory tower in northeast Austin, the legal department also moonlights as a therapist for city officials and city attorneys. The TML Legal Department also likes to take great papers written by city attorneys and place them on their Web site. Every two years the legal department emerges from its northeastern home to travel to the state legislature to repeat the information given to them by TML lobbyists, like the puppets they are.

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RECENT STATE CASES
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ANNEXATION:

***City of Granite Shoals v. Ted Winder*, 2009 WL 722290, No. 03-08-00323-CV (Tex. App.—Austin March 19, 2009).**

USE DEMOGRAPHICS, CENSUS DATA, OR SOME OTHER VERIFIABLE METHOD OF DETERMINING THE NUMBER OF INHABITANTS IN THE CITY BEFORE BECOMING HOME RULE. IN THIS CASE, THE CITY ARGUABLY DID NOT USE A VERIFIABLE METHOD OF DETERMINING 5,000 INHABITANTS AND THEREFORE THEIR UNILATERAL ANNEXATION COULD BE DEEMED VOID IN A DECLARATORY JUDGMENT ACTION.

The general law city of Granite Shoals annexed two islands on Lake LBJ. The islands consisted of a handful of high-value homes and were annexed pursuant to Local Government Code Section 43.033. That section allows unilateral annexation by a general law city if certain elements are met. Another provision in Section 43.033 allows a majority of property owners in the annexed area to petition for disannexation, and the island property owners took advantage of that provision and were disannexed. In the meantime, the voters of the city adopted a home rule charter.

The city then re-annexed the islands pursuant to its home rule authority. The property owners then filed for a declaratory judgment that, among many other things, the city did not have 5,000 inhabitants and was thus not eligible for home rule status, and that the city acted in bad faith in making the determination of the number of inhabitants. The city answered, arguing lack of subject matter jurisdiction and standing issues.

The city argued that the court lacked subject matter jurisdiction because the only way to challenge the election was pursuant to an election contest. The city further argued that the only way to challenge the "bad faith" aspect of conversion to home rule is by a quo warranto suit. Citing incongruent precedent relating to previous election law provisions, the court concluded that the challenge regarding the number of inhabitants falls outside of the scope of the current election contest provision (and is thus not an "election contest"). The court held that the property owners could continue their declaratory judgment action.

With regard to the city's quo warranto argument, the court held that the city's determination of inhabitants could be set aside upon a showing of bad faith. If the property owners can show that the determination was made in bad faith, the conversion to home rule becomes void *ab initio*, which allows a collateral attack on the conversion. Because the property owners raised more than a scintilla of evidence that the city acted in bad faith, the court examined the methods by which the city made the determination of inhabitants.

City witnesses testified that they counted the number of utility connections and multiplied by three. The city did not use demographics or census data to determine that multiplier.

Those facts were enough to establish the possibility of bad faith. The court affirmed the denial of the trial court's plea to the jurisdiction.

***Village of Salado v. Lone Star Storage Trailer, II Ltd., et al,* 2009 WL 961570, No. 03-06-00572-CV (Tex. App.—Austin April 10, 2009) (mem. op.).**

IN A VOLUNTARY ANNEXATION UNDER LOCAL GOVERNMENT CODE SECTION 43.025, ALL OF THE LANDOWNERS DO NOT HAVE TO AGREE TO THE ANNEXATION, ONLY A MAJORITY. THIS IS TRUE EVEN IF THE LANDOWNER WHO TECHNICALLY BORDERS THE CITY OBJECTS.

The statute does not require unanimous consent and also does not provide an exception for cases where one landowner owns all of the contiguous property and does not consent.

The Village of Salado annexed property along its eastern boundary, including property owned by Lone Star, pursuant to the voluntary annexation provision of Section 43.025 of the Local Government Code. That section authorizes a majority of the qualified voters living in an area next to certain cities to petition the city for annexation. If a majority of the qualified voters are in favor of annexation, three of those voters file an affidavit with the city stating the majority requirement has been met. In this annexation, the area had multiple qualified voters, but Lone Star's property was the only property that was actually contiguous to the city.

After the annexation, Lone Star filed a declaratory judgment action asking the court to declare the annexation void. The village and Lone Star filed competing motions for summary judgment, and the district court granted Lone Star's motion, declaring the annexation void. The village appealed. Lone Star argued that Section 43.025 requires that Lone Star consent to the annexation because Lone Star is the only "contiguous" landowner. Lone Star argued that non-contiguous voters cannot consent to an annexation, even if their property is part of a larger total area to be annexed. The village argued that the annexation was proper because the requirements of Section 43.025 were followed.

TML and TCAA filed an amicus brief, arguing under Section 43.025 that: (1) "contiguous area" means the entire area to be annexed, not just those tracts that directly border the city; (2) the entire contiguous area may be annexed as a unified tract; and (3) the plain language of the voluntary annexation statute does not require the consent of each bordering landowner.

The court of appeals held that Section 43.025 does not distinguish between "voters" who are on the border of the city and those who are not. The statute does not require unanimous consent and also does not provide an exception for cases where one landowner owns all of the contiguous property and does not consent. The court of appeals held that the entire area is used to determine whether the area is contiguous, not just one tract.

The court of appeals reversed the district court's judgment and rendered judgment that the annexation was valid and enforceable.

***Town of Fairview v. City of McKinney*, 271 S.W.3d 461 (Tex. App.—Dallas 2008).**

EVEN IF A PORTION OF AN ANNEXED AREA WAS IMPROPERLY ANNEXED, THE ENTIRE ANNEXATION MAY NOT VOID.

In this case, McKinney adopted an ordinance in 1958 that inadvertently included a 600-foot-wide strip of land that was already in Fairview's city limits. In 1959, McKinney adopted a disannexation ordinance to release that area back to Fairview.

Later, annexations by McKinney regarding other tracts were called into question based on the 1950s annexations. Fairview argued that McKinney's ordinance was void *ab initio* because its boundary description included the 600-foot strip already contained within Fairview's city limits. McKinney countered that it discovered its mistake and later disannexed the 600-foot strip. The court concluded that the fact that McKinney was prohibited from annexing into Fairview's city limits does not make the entire annexation ordinance void.

After citing previous decisions that appeared to conclude that an annexation ordinance cannot be "partially upheld," the court further analyzed the decision and concluded that they were not on point. The principal source for much of the "wholly void" language used in other cases is *Alexander Oil v. City of Seguin*, 825 S.W.2d 434 (Tex.1991). However, *Alexander Oil* did not present, and that court did not directly address, whether an annexation that *partially* exceeds the city's annexation authority is void in part or in whole. There, the plaintiff attacked the City of Seguin's annexation ordinance based on alleged procedural irregularities in the annexation process. In deciding whether these claims could be asserted by a private party, it appears the opinion in *Alexander Oil* used the phrase "wholly void" to distinguish between complaints that would render an annexation void (and thus subject to collateral attack by private parties), and complaints that would render an annexation voidable (and thus claimable only through quo warranto).

The court disagreed with Fairview's argument that *Alexander Oil* is authority for its position that, because the ordinance was void in part, it was "wholly void" and thus not effective to annex anything. A more instructive opinion was that by the Supreme Court of Texas in *City of West Lake Hills v. City of Austin*, 466 S.W.2d 722 (Tex. 1971), wherein a part of Westlake Hills' boundaries could not be determined when it attempted to incorporate. For that and other reasons, the court upheld the incorporation of the city, but only as to the "main" part. It concluded that, under the facts presented, the holding that incorporation was void only in part did not violate the general principle that an incorporation or annexation ordinance cannot be reformed by judicial action.

Based on the Supreme Court's holding in *West Lake Hills*, the court concluded that if a portion of a city's boundary is invalid, the remainder of the boundary may be upheld if

the facts warrant it and if the court can do so without usurping the legislative authority of a home rule city to draw its boundaries.

EMINENT DOMAIN:

***Curtis L. and Hazel B. Martin v. City of Rowlett*, 2008 WL 5076629, No. 05-07-00972-CV (Tex. App.—Dallas 2008) (mem. op.).**
A room change is insufficient to make notice in a condemnation proceeding inadequate, where the landowner originally received notice of the correct date, building, and time.

***Cascott, LLC v. City of Arlington*, 278 S.W.3d 523 No. 2-08-042-CV (Tex. App.—Fort Worth Feb. 19, 2009).**
The court of appeals held that the City of Arlington's condemnation of property was proper because the construction of the Dallas Cowboys Stadium was for a "public purpose."

EMPLOYMENT:

***Jeffrey Nelson, et al. v. City of Dallas and Chief David Kunkle*, 278 S.W.3d 90 (Tex. App.—Dallas Feb. 4, 2009).**

IN DISPUTES INVOLVING CITY ADMINISTRATIVE PROCEDURES FOR EMPLOYEE DISCIPLINE, A CITY MAY HAVE PRIMARY JURISDICTION OVER DISCIPLINING ITS OFFICERS UNDER ITS CHARTER AND ORDINANCES.

This case involves police officers suing the City of Dallas to prevent the city from disciplining them on what they argue are invalid citizen complaints. The City of Dallas has its own civil service rules rather than state law provisions. The city's civil service rules require that the police chief disciplines officers and the rules also provide an administrative procedure for contesting and appealing the police chief's discipline decisions, including an appeal to the city manager and the civil service board.

City police officers sued the City of Dallas when the city was in the process of taking disciplinary action against them, before the city's appeals process was complete. The employees sought a temporary injunction to prevent the city from taking disciplinary action, arguing that the city was using an insufficient citizen complaint according to Chapter 614 of the Government Code. The city argued that the officers had not exhausted their administrative remedies under the city's civil service rules. The trial court held for the city.

The court of appeals examined whether it had subject matter jurisdiction over this case under the theory of primary jurisdiction when the plaintiff police officers had not exhausted their administrative remedies. Primary jurisdiction is a doctrine that determines whether an agency or a court should make an initial determination in a case when both technically have authority to make the determination. A court defers to an agency, such as a city, when: (1) the agency is staffed with experts on the issue at hand;

and (2) great benefit is had from the agency's uniform interpretation of the rules in question. The officers argue that it does not matter whether the city had primary jurisdiction since the city arguably violated Chapter 614 of the Government Code when it used an invalid citizen complaint as the basis for the disciplinary action. The officers also argued that the city is not an "expert" in interpreting state law, and therefore should not be deferred to in this matter.

The court of appeals held that the city does have primary jurisdiction over disciplining its officers under its charter and ordinances. That is because the city is best able to interpret its own rules and because uniformity in interpreting personnel policies will help all city personnel know what to expect. The court of appeals also held that the police officers had not shown any exceptions to the exhaustion requirement such as irreparable harm. The court affirmed the trial court's abatement of the officers' claims.

***Tex. Workforce Comm'n v. City of Houston*, 2009 WL 396208, No. 14-07-00407-CV (Tex. App.—Houston [14th Dist.] Feb. 19, 2009).**
The court of appeals held that the city's protest to unemployment benefits was not timely under the Texas Administrative Code because the Texas Workforce Commission did not provide the city "misleading information on appeal rights."

***Keith D. Johnson v. City of Fort Worth*, 2009 WL 806868, No. 2-08-369-CV (Tex. App.—Fort Worth March 26, 2009) (mem. op.).**
Keith Johnson sued the city for racial discrimination after the city refused to rehire him. The court of appeals affirmed the trial court's dismissal of Johnson's suit because Johnson's petition was filed after the statute of limitations on employment discrimination claims had passed.

***Renaye Ochoa v. City of Galveston*, 2009 WL 618694, No. 01-08-00490-CV (Tex. App.—Houston March 12, 2009) (mem. op.).**
Ochoa and another police officer sued the city under their collective bargaining agreement after they were denied promotions based on test scores. The court of appeals affirmed the trial court's judgment for the city based on reformation of the conflicting terms of the collective bargaining agreement prohibiting appeals from test scores.

EMPLOYMENT—CIVIL SERVICE:

***City of Houston v. Joseph Buttitta*, 274 S.W.3d 850 (Tex. App.—Houston [1st Dist.] 2008) (op. on r'hg).**
The court held that a decision of the civil service commission can be reviewed by a court under the Declaratory Judgment Act if a city shows sufficient facts that the commission's order was not legal nor enforceable.

***City of Weslaco v. Claudio Lucio*, 2008 WL 5275244, No. 13-07-00319-CV (Tex. App.—Corpus Christi-Edinburg 2008) (mem. op.).**

The court of appeals determined that the hearing examiner's finding of jurisdiction was reasonable based on the examiner's interpretation of the city's collective bargaining agreement.

***Arturo Gracia v. City of Killeen*, 2009 WL 349161, No. 03-08-00197-CV (Tex. App.—Austin Feb. 13, 2009).**

The court of appeals held that there was no statutory basis under the civil service statutes to suspend an employee who had been arrested for a Class A misdemeanor because an arrest under warrant is not the same as being "charged" under Texas Local Government Code Section 143.056.

GOVERNMENTAL IMMUNITY—CONTRACT:

***City of Alton v. Sharyland Water Supply Corp.*, 277 S.W.3d 132 (Tex. App.—Corpus Christi-Edinburg 2008).**

DAMAGES ARE NOT RECOVERABLE UNDER LOCAL GOVERNMENT CODE SECTION 271.153 UNLESS THERE IS A BALANCE DUE UNDER THE AGREEMENT, AND WITHOUT DAMAGES, NO ATTORNEY'S FEES CAN BE RECOVERED. ALSO, A PRIVATE PARTY CANNOT PURSUE AN EQUITABLE CLAIM AGAINST A CITY REGARDING AN UNAUTHORIZED ACT WITHOUT LEGISLATIVE PERMISSION.

The City of Alton (Alton) and the Sharyland Water Supply Corporation (Sharyland) entered into a water service agreement and a water supply agreement. In 1994, Alton began development on a sewer system. That development resulted in many of Alton's residential service connections for the sewer main crossing over Sharyland's water main, threatening to leak sewage into the water lines. Sharyland sued Alton for breach of contract and sought to enjoin Alton from operating the sewer lines in a wrongful manner, claiming that the residential sewer service connections were constructed in violation of state regulations, specifically section 317.13 of the Texas Commission on Environmental Quality Design Criteria for Sewerage Systems relating to the proximity of the sewer system to water lines. It also brought suit for negligence and breach of contract against certain corporate entities that constructed the sewer system.

At trial, the jury found that Alton breached the water supply agreement with Sharyland by failing to maintain the proper separation distance between the sewer and water lines, and breached the water service agreement by failing to comply with Sharyland's regulations. The trial court also granted Sharyland's motion for partial summary judgment on its declaratory judgment claim that section 317.13 applied to all sewer connections in proximity with the water lines. However, the trial court denied Sharyland's claims for injunctive relief and specific performance.

On appeal, Alton argued that because it did not waive its governmental immunity, the court has no jurisdiction over Sharyland's breach of contract claims. In response, Sharyland contended that Alton's immunity from suit was waived by section 271.152 of the Local Government Code, which provides that a local government that enters into a

contract "waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract[.]" The court found that the agreements at issue between Alton and Sharyland involved "services" and therefore fell within the scope of section 271.152, waiving Alton's immunity.

Alton also claimed that Sharyland produced no evidence of damages, and that if the court of appeals found that Sharyland had compensable damages, those were not recoverable because damages are limited under section 217.153(a) of the Local Government Code. Damages could be recovered under this section if there was either a balance due and owed by Alton under the agreements at issue, or if there was any amount due from change orders, additional work, or interest. As neither form of damages applied to this case, the court held that Sharyland had no avenue for recovery.

Finally, Alton contended that Sharyland cannot recover attorneys' fees given the language in section 271.159 of the Local Government Code. Without reaching that provision in the Local Government Code, the court held that Sharyland cannot recover attorneys' fees against Alton on the breach of contract claim. Under Chapter 38 of the Civil Practices and Remedies Code, attorneys' fees can be awarded for a suit based on a contract if a party prevails on a cause of action for which attorneys' fees are recoverable and recovers damages. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 38.001(8). Because Sharyland recovered no damages, and because section 38.001 applies only when an individual sues a corporation (not a city), the court held that the trial court erred in awarding attorneys' fees. As for the declaratory judgment claim, the court determined that because Sharyland did not segregate the fees in presenting testimony regarding attorneys' fees at the trial level, the issue should be remanded back for a determination of the amount of the award.

Sharyland contended on its sole issue that the trial court erred in failing to grant equitable relief in lieu of the monetary damages awarded by the jury against Alton. In holding that the trial court did not abuse its discretion, the court of appeals noted that Sharyland sought to "control state action" by enforcing performance under the contract with Alton. The court held that Sharyland could not pursue an equitable claim regarding an unauthorized act without legislative permission, which was not given in this instance. Therefore, governmental immunity precluded Sharyland's claim. Further, the court held that Sharyland had an adequate remedy in its breach of contract action.

***Update:* *City of Alton, et al. v. Sharyland Water Supply Corp.*, No. 13-06-00038 (Tex. App.—Corpus Christi Feb. 5, 2009) (op. on rehearing).**
The court of appeals denied the motions for rehearing, but issued a new opinion making non-dispositive clarifications to its November 5, 2008, opinion.

***City of Houston v. Steve Williams*, 2009 WL 838571, No. 14-08-00059-CV (Tex. App.—Houston [14th Dist.] March 31, 2009).**

EMPLOYMENT CONTRACT CASES ARE NOW REVIEWED UNDER TEXAS LOCAL GOVERNMENT CODE SECTIONS 271.151.-.160.

Firefighters sued the City of Houston to recover amounts deducted from payments they received upon termination of employment. The city filed a plea to the jurisdiction based on sovereign immunity. In February 2007, the Supreme Court of Texas held that this employment contract case should be remanded to the trial court to be reviewed under new Sections 271.151-.160 of the Local Government Code, which governs immunity regarding city contracts. The trial court reviewed the case under Sections 271.151-.160 and determined that governmental immunity had been waived by the city through the employment contract. The court of appeals affirmed.

***City of Houston v. S. Elec. Servs., Inc.*, 273 S.W.3d 739 (Tex. App.—Houston [1st Dist.] 2008).**

The fact that a contract claim is likely to fail does not deprive the court of jurisdiction where the plaintiff has alleged sufficient facts to fall under a statutory waiver of sovereign immunity.

***Emily Grace Scown v. City of Alpine*, 271 S.W.3d 380 (Tex. App.—El Paso 2008).**

A land developer's water services contract with a city is not enforceable where language in the contract allowed the city to terminate the contract at will if the landowner gave up its easement.

GOVERNMENTAL IMMUNITY—TORT:

***City of El Paso v. Lilli Heinrich*, 2009 WL 1165306, No. 06-0778 (Tex. May 1, 2009).**

GOVERNMENTAL IMMUNITY GENERALLY BARS SUITS FOR RETROSPECTIVE MONETARY RELIEF, BUT IT DOES NOT PRECLUDE PROSPECTIVE INJUNCTIVE REMEDIES IN OFFICIAL-CAPACITY SUITS AGAINST GOVERNMENT ACTORS WHO VIOLATE STATUTORY OR CONSTITUTIONAL PROVISIONS.

Lilli Heinrich, widow of police officer Charles D. Heinrich, received monthly survivor benefits from the El Paso Firemen & Policemen's Pension Fund. In 2002, the city reduced the monthly payments to Heinrich by one-third after Heinrich's son turned 23. Heinrich filed this suit, alleging that the city and the individual board members violated the statute governing the Fund by reducing her benefits retroactively. Heinrich sought both declaratory relief and an injunction restoring Heinrich to the full amount of the money owed. The city and individual board members filed pleas to the jurisdiction asserting that governmental immunity shielded the governmental entities from suit and that the individual board members enjoyed official immunity.

Governmental immunity protects cities from monetary damages, unless the immunity has been waived. *Reata Constr. Corp. v. City of Dallas*, 197 S.W. 3d 371 (Tex. 2006). However, individuals may seek declaratory judgment from governmental officials who "allegedly act without legal or statutory authority." *Tex. Nat. Res. Conservation Comm'n v. IT-Davy*¸ 74 S.W.3d 849 (Tex. 2002). The Uniform Declaratory Judgment Act can be used by individuals to "settle and to afford relief from uncertainty and insecurity with

respect to rights, status, and other legal relations." TEX. CIV. PRAC. & REM. CODE § 37.002. This relief includes clarifying rights under city ordinance or contract. The Act cannot give parties access to relief they would not otherwise enjoy and does not expand a trial court's jurisdiction. *IT-Davy*, 74 S.W.3d at 855. A suit for contract damages is allowed against a governmental entity where a law requires that government contracts be enforced in a certain way, without discretion. *State v. Epperson*, 42 S.W.2d 228 (Tex. 1931).

The Supreme Court held that Heinrich could bring a suit for prospective relief against the city officials, in their official capacities, who govern her claims for future benefits, since the officers allegedly acted outside their discretion under law in changing her benefits. The Court dismissed Heinrich's retrospective claims and her claims against the city, the board, and the fund. The Court sent the case back to the trial court.

***City of Elgin v. John William Reagan*, 2009 WL 483344, No. 03-06-00504-CV (Tex. App.—Austin Feb. 26, 2009) (mem. op.).**

PROVIDING ADOPTION SERVICES THROUGH AN ANIMAL SHELTER IS A GOVERNMENTAL FUNCTION, AND THEREFORE THE CITY IS PROTECTED BY TEXAS TORT CLAIMS ACT FOR INJURIES RESULTING FROM ANIMAL ADOPTION.

In this dog bite case, Mr. Reagan sued the city after a dog adopted from the city attacked his son. Mrs. Reagan visited an adult male Doberman at the City of Elgin Animal Shelter. The shelter allegedly told Mrs. Reagan that the dog was good with children, but the shelter was unsure how the dog would react around other dogs. When it was time to euthanize the dog, the animal shelter called Mrs. Reagan with the information that if she did not adopt the dog, it would be euthanized. Mrs. Reagan adopted the dog after the city waived the adoption fee. Mrs. Reagan was told that she could bring the dog back if the dog did not get along with her other dogs. Mrs. Reagan took the dog home and later tied him to a tree in her backyard. Mrs. Reagan stayed in the backyard with the tied up dog and her four children. The dog attacked and injured her four-year-old son. Mr. Reagan returned home shortly after and shot the dog. Reagan sued the city alleging that the city was negligent and grossly negligent in allowing someone to adopt the dog. The city filed a motion for summary judgment and a plea to the jurisdiction.

The city alleged in its plea to the jurisdiction, that adoption services through an animal shelter is a governmental function, not a proprietary function. Cities have immunity from suit for torts committed in the performance of governmental functions, unless immunity has specifically been waived by the legislature. If a governmental function causes injury, then a city is only liable for "personal injury or death so caused by a condition or use of tangible personal or real property if the governmental unity would, were it a private person, be liable to the claimant according to Texas law." Tex. CIV. PRAC. & REM. CODE § 101.021(2). Governmental functions are listed in the Texas Tort Claims Act. Animal control is one of the functions listed as governmental. TEX. CIV. PRAC. & REM. CODE § 101.0215(a). An activity that is closely related to or necessary for the performance of a governmental function is also governmental functions. *See City of Houston v. Petroleum*

Traders Corp., 261 S.W.3d 350 (Tex. App.—Houston [14th Dist.] 2008, no pet.). The Elgin animal control ordinance provides for adoption of animals.

The court of appeals held that the city's immunity had not been waived because running an animal shelter is a governmental function similar to animal control, and because the adoption of the animal was not a use of city property that waives immunity under the Texas Tort Claims Act.

***Charlene Carter v. City of Galveston*, 2008 WL 4695351 No. 01-07-01010-CV (Tex. App.—Houston [1st Dist.] 2008)**.

EVIDENCE THAT A CITY DID NOT HAVE REQUISITE CONTROL OR MAINTENANCE RESPONSIBILITIES OVER PROPERTY CAN RELIEVE THE CITY OF LIABILITY FROM INJURY ON THE PROPERTY.

In this memorandum opinion, Carter appealed the dismissal of her case by the trial court based on the court's granting of the city's plea to the jurisdiction under sovereign immunity. Carter, who was injured when she tripped on an exposed pipe in a sidewalk within the City of Galveston, argued that the trial court erred in considering the evidence brought by the city when deciding the sovereign immunity plea. The city's evidence included documents showing that, at the time of the incident, the sidewalk was in the Port of Galveston, an area that was leased and controlled by the Galveston Wharves, a separate governmental entity with sovereign immunity. The court held that it was not improper to consider this evidence in a plea to the jurisdiction. Additionally, the court held that although the city maintained ownership of the Galveston Wharves area, it did not have sufficient control over the premises to be liable, and thus the city's governmental immunity was not waived.

***Dahlila Guerra Casso v. City of McAllen*, 2008 WL 781863, No. 13-08-00618-CV (Tex. App.—Corpus Christi-Edinburg March 26, 2009) (mem. op.).**
Casso, a former city employee, filed a claim against the city, alleging that the city should have maintained her health insurance. The court of appeals held that the city was performing a proprietary function when it provided health insurance to Casso, and therefore was not entitled to governmental immunity.

***Ivo Nabelek v. City of Houston*, 2008 WL 5003737, No. 01-06-01097-CV (Tex. App. – Houston [1st Dist.] 2008) (mem. op.).**
A plaintiff must ensure that service of process is properly accomplished to the proper agent of the city for a statute of limitations claim to be estopped.

***City of Taylor v. Laboratory Tops, Inc*, 2008 WL 5423037, No. 03-08-00357-CV (Tex. App.—Austin 2008) (mem. op.).**
Court of appeals affirmed the trial court's denial of the city's plea to the jurisdiction because the plaintiff presented a question of fact as to whether the use of a city vehicle caused property damage under the Texas Tort Claims Act.

***Helen Herrera and Frank Herrera v. City of San Antonio*, 2008 WL 263282, No. 04-08-00291-CV (Tex. App.—San Antonio Feb. 4, 2009) (mem. op.).**
The court of appeals affirmed in favor of the city because the appellants provided no proof of a waiver of sovereign immunity that would make the city subject to suit.

***Ben McCullough and Cyndi McCullough v. City of Pearsall*, 2009 WL 331886, No. 04-08-00395-CV (Tex. App.—San Antonio Feb. 11, 2009) (mem. op.).**
The court of appeals held that immunity was not waived under the Texas Tort Claims Act because the construction of sidewalks is a governmental function and the failure to put up a signal indicating that railroad tracks are nearby is not a premises defect.

***City of Richmond v. Delia Garcia Rodriguez*, 2009 WL 884810, No. 01-08-00471-CV (Tex. App.—Houston April 2, 2009) (mem. op.).**
Rodriguez sued the city under the Texas Tort Claims Act after a police car hit her vehicle during a pursuit of another vehicle. The court of appeals rendered judgment for the city based on governmental immunity, holding that the police officer was entitled to official immunity based on the police officer's acting in good faith during the pursuit.

OPEN GOVERNMENT:

***Loving v. City of Houston*, 2009 WL 36477, No. 14-07-00621-CV (Tex. App.—Houston [14 Dist.] Jan. 8, 2009).**

EVEN IF A JUVENILE IS TRIED AS AN ADULT, THEIR RECORDS ARE STILL CONFIDENTIAL UNDER FAMILY CODE SECTION 58.007, AND SO CAN NOT BE RELEASED UNDER THE PUBLIC INFORMATION ACT.

On January 26, 2005, Gloria Loving submitted a request to the City of Houston under the Public Information Act for a copy of all information pertaining to a specified incident report involving Quient Wolford. The incident also involved a juvenile named Michael Torres. The city denied the request for information based upon previous determinations by the attorney general that the information at issue was confidential because it contained law enforcement records in which a juvenile was alleged to have engaged in delinquent conduct. Loving then, through her attorney, requested that the attorney general review the city's decision to withhold the information. Loving's attorney questioned whether or not the information must be withheld under Section 552.101 of the Government Code in conjunction with Section 58.007 of the Family Code because the juvenile in the incident report was tried as an adult. The attorney general's office responded that it would defer to the representations of the city, as it could not determine issues of fact in the open-records process, and held that the city could withhold the information at issue. Loving filed a petition for a writ of mandamus to order the city to produce the requested information. The city filed a motion for summary judgment, and the trial court granted the motion without specifying the grounds.

On appeal, Loving contended that she was not seeking the law enforcement records of a child, but instead the records for an adult, Mr. Wolford. Thus, she argued that Section

58.007 of the Family Code should not apply. However, the appellate court noted that both parties agreed that the incident report in question related to the arrest and prosecution of Torres as well as Wolford, and that Torres was a child at the time of the incident. Because the law enforcement records that were requested involved a child, they must not be disclosed to the requestor.

Loving further argued that, because Torres was tried as an adult, the confidentiality provision in Family Code 58.007(c) did not apply. The court noted that the predecessor to Section 58.007, Section 51.14 of the Family Code, contained an exception to confidentiality when a juvenile was tried as an adult. But when that section was repealed and replaced by section 58.007, the language addressing juveniles who are tried as adults was not included. In accordance with previous case law, the court presumed that the language in the predecessor statute was excluded for a reason and therefore the excluded language is no longer the law under 58.007.

Finally, the parties disagreed over whether or not Section 552.321 of the Government Code gave Loving the right to file a suit for a writ of mandamus against the city when the attorney general determined that the requested information may not be disclosed. While the court determined that under certain circumstances a mandamus suit may be filed against a governmental body to compel it to make information available, the information at issue was held to be confidential pursuant to section 58.007 of the Family Code. As such, the city had no duty to provide the requested information even if Loving had the right to file a suit for a writ of mandamus.

***Austin Chronicle Co. and Jordan Smith v. City of Austin*, 2009 WL 483232, No. 03-08-00596-CV (Tex. App.—Austin Feb. 24, 2009) (mem. op.).**

AN ATTORNEY GENERAL'S LETTER OPINION IS ENTITLED TO SOME DEGREE OF DEFERENCE FOR PUBLIC INFORMATION REQUESTS BUT A COURT IS NOT BOUND BY THE OPINION. THE PIECE OF INFORMATION THAT A CITY WOULD LIKE TO KEEP CONFIDENTIAL MUST BE ON FILE WITH THE COURT, OR CANNOT BE VIEWED AS EVIDENCE, THEREFORE DEPRIVING THE COURT OF SUFFICIENT EVIDENCE OF A NEED FOR CONFIDENTIALITY.

In March of 2008, Jordan Smith, a journalist for the *Austin Chronicle*, submitted a public information request to the City of Austin for a copy of the entire police report created in connection with the investigation into Frances and Daniel Keller of Fran's Daycare. Frances and Daniel Keller were jointly convicted and sentenced to 48 years imprisonment for the sexual assault of a child in 1992. The city received a ruling from the attorney general's office that the requested information was confidential and must be withheld pursuant to section 552.101 of the Government Code based on the doctrine of common-law privacy. The *Austin Chronicle* filed a petition for a writ of mandamus to order the city to produce the police report, and the petition was tried in district court. The district court entered a final judgment denying the petition in its entirety, finding that the city "acted in reasonable reliance upon a written opinion of the Office of the Attorney

General," and that the police report contained highly embarrassing information that had never been made public. The police report itself was not entered into evidence.

On appeal, the *Austin Chronicle* contended that the evidence presented was legally and factually insufficient to find that the police report was confidential under Section 552.101 of the Government Code, and that upon prevailing, it would be entitled to recover their attorney's fees and costs. Under the doctrine of common-law privacy, otherwise public information is excepted from disclosure if the information contains highly intimate or embarrassing facts, and the information is not of legitimate concern to the public. *See Industrial Found. of the South v. Texas Ind. Acc. Bd.*, 540 S.W.2d 668, 683 (Tex. 1976).

The city relied upon the letter opinion from the attorney general's office and the district court's conclusion that the police report should be withheld from disclosure because both the attorney general and district court inspected the report. However, because the police report was not in the record, the court of appeals did not consider this to be evidence supporting the district court's judgment. As a result, the court of appeals concluded that there was "a complete absence of evidence of a vital fact," namely, that the police report at issue was confidential. *See City of Keller v. Wilson*, 168 S.W.3d 802, 810 (Tex. 2005). Although the attorney general's letter opinion was entitled to some degree of deference, the court of appeals noted that it is not bound by the opinion. The court of appeals concluded that the evidence was legally insufficient to support the finding that the police report was confidential.

Section 552.323 of the Government Code provides that a court may not assess costs of litigation and attorney's fees against a governmental body if the court finds the governmental body acted in reasonable reliance on an attorney general's opinion. *See* TEX. GOV'T. CODE ANN. § 553.323. Because the evidence supported that the city reasonably relied on the attorney general's opinion, the court of appeals overruled the *Austin Chronicle's* contention that it was entitled to recover attorney's fees and costs.

***City of Houston v. Larry Edgar Estrada and Mayer Brown, L.L.P.*, 2009 WL 783361, No. 14-08-00900-CV (Tex. App.—Houston March 26, 2009) (mem. op.).**

Mayer Brown filed a petition for writ of mandamus to require the city to respond to public information requests regarding Larry Estrada. The court of appeals affirmed the trial court's denial of the city's plea to the jurisdiction since Mayer Brown was a proper requestor under the act.

***City of Dallas v. The Dallas Morning News, LP*, 2009 WL 783361 No. 05-07-01736-CV (Tex. App.—Dallas April 9, 2009).**

IT IS STILL AN OPEN FACT QUESTION WHETHER EMAILS OR OTHER DOCUMENTS THAT ARE NOT COLLECTED, ASSEMBLED, MAINTAINED OR ACCESSIBLE TO A CITY, BUT ARE TRANSACTIONS OF CITY BUSINESS, ARE PUBLIC INFORMATION UNDER THE ACT.

The question before the court was whether former City of Dallas Mayor Laura Miller's Blackberry e-mails (significantly, e-mails that never went through the city's e-mail system) are subject to the Texas Public Information Act (the Act).

The dispute arose when reporters from the Dallas Morning News (DMN) submitted open records requests seeking copies of e-mail messages sent and received by the mayor and various city employees. One of the requests sought e-mails from "accounts other than their city address to conduct city business," including the mayor's personal Blackberry account.

The trial court ruled that such e-mails, made in connection with the transaction of official business, are public information. The trial court agreed with the DMN's argument that when a mayor engages in communication by personal e-mail relating to her authority as mayor, the e-mail becomes "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by . . . or for a governmental body." (The quoted language is from the definition of "public information" in the Act.)

The city argued that the e-mails do not meet the statutory definition of "public information," regardless of whether the e-mails relate to the transaction of official business, because they are not collected, assembled, or maintained by or for the city, and the city does not own or have the right of access to them. (Those terms are additional elements of the definition of "public information" under the Act.)

After addressing various procedural issues, the court of appeals essentially concluded that neither the city nor the DMN had presented enough evidence for the trial court to have ordered the e-mails released. The court of appeals then remanded the issue back to the trial court for further proceedings.

Concluding that none of the testimony clearly stated whether the city had the right of access to the mayor's e-mails, the court of appeals stated that:

> We do not know what the terms of the personal account are; who has a right of access to the device or account; what type of access, if any, exists; who pays for the account; whether the City has any policies or contracts relating to personal e-mails or accounts; whether any e-mails exist falling within the News's requests; or other information relevant to the inquiries explored in addressing the public's open records rights.

SEXUALLY ORIENTED BUSINESS:

***Thomas J. "Jim" Trulock v. City of Duncanville,* 277 S.W.3d 920 (Tex. App.—Dallas Feb. 19, 2009).**

The court of appeals dismissed the case as moot because the original ordinance regarding sex clubs was repealed and no charges had been filed under any other ordinance.

***Saronikos, Inc v. City of Dallas*, 2009 WL 542396, No. 05-07-01063-CV (Tex. App.—Dallas March 5, 2009).**

The court of appeals held the trial court's summary judgment in the city's favor was in error because there is still an issue as to whether the sexually oriented business was within 1,000 feet of the city park and because *res judicata* did not apply.

TAKINGS:

***City of San Antonio v. Charles and Tracy Pollock*, 2009 WL 1165317 No. 01-1118 (Tex. May 1, 2009).**

Lauren is doing the case summary.

***City of Borger v. Victor Garcia*, 2009 WL 1098091, No. 07-08-0444-CV (Tex. App.—Amarillo April 23, 2009).**

Evidence of negligence in designing and constructing a public work is insufficient to allege a taking since (1) the design of a street drainage system is a discretionary act for which governmental immunity has not been waived, and (2) the particular design and construction of the drainage system selected by the City is within the City's discretion and may not be reviewed and revised by the courts in a piecemeal fashion. Since the plaintiffs presented no evidence of intentional acts by the city, the city's plea to the jurisdiction was granted.

***Southwestern Bell Tel. L.P v. Harris County Toll Road Auth.*, 2009 WL 886157 No. 06-0933 (Tex. Jan. 15, 2009).**

PRIVATE UTILITIES DO NOT HAVE A VESTED PROPERTY INTEREST IN THE PUBLIC RIGHT OF WAY AND SO CAN BE FORCED TO PAY FOR RELOCATION OF THEIR FACILITIES.

Southwestern Bell (SWB) was forced to relocate its facility due to road construction by the Harris County Toll Road Authority. SWB did so, billed the county, and demanded reimbursement under Texas Utility Code Section 181.082. SWB argued that this section grants it a property interest on which a takings claim can be based. The county refused to pay, and SWB brought this suit as a takings claim under Article I, Section 17, of the Texas Constitution (presumably to do an end run around the county's immunity). To recover in a takings claim for inverse condemnation, a property owner must establish that: (1) the state intentionally performed certain acts; (2) that resulted in a taking of property; and (3) that the taking was for a public use. The court concluded that the first and third elements were present in this case, but the second element was not. That is because SWB does not have a vested property interest in the public right-of-way in which its facilities are located. Citing the United States Supreme Court and various secondary sources, the court concluded that a utility essentially uses the public rights-of-way pursuant to a license, and that the license is secondary to the primary public need – transportation. The court held that SWB is not entitled to reimbursement for the relocation.

***AVM-HOU, Ltd. v. Capital Metro. Transp. Auth.*, 262 S.W.3d 274 (Tex. App.—Austin 2008).**

NO CAUSE OF ACTION EXISTS FOR INVERSE CONDEMNATION WHEN THE ENTIRE PIECE OF PROPERTY IS ACQUIRED THROUGH EMINENT DOMAIN.

This case involves a condemnation award for an adult business lessee where the condemned property was specially zoned for adult businesses. The adult business argued that it could not move its business due to zoning and various other issues. The business argued that the condemnor owed both the value of the lease and business value damages for the life of the lease. The business received an award for statutory condemnation, which included a premium for the zoning obtained by the adult business. The business then sued the condemnor to receive the lost profits from the business in an inverse condemnation action. The trial court dismissed the adult business' request for business value damages since the business had already received an award for statutory condemnation and inverse condemnation is only appropriate when there is no statutory condemnation. The business appealed.

TML and TCAA filed an amicus brief in the appeals court that argued, among other things, that the trial court should be affirmed because business value damages are not appropriate where the entire piece of real property is condemned and the fair market value is awarded. The court of appeals agreed. It held that there is no cause of action for lost profits once full compensation has been paid in a formal condemnation proceeding.

***TCI West End, Inc. v. City of Dallas and Texas Historical Comm'n*, 274 S.W.3d 913 (Tex. App.—Dallas 2008).**

A BUILDER HAS TO FOLLOW THE CITY'S PROCEDURES REGARDING REGULATION OF BUILDINGS BEFORE ITS INVERSE CONDEMNATION CLAIMS WILL BE RIPE AGAINST THE CITY.

This case involves whether it is a taking for a city or other governmental body to make a property owner pay for a historic building that the property owner demolishes.

The property owner, TCI, wanted to demolish a building on property it owned in the city's historic district. The city argued that the building should not be demolished because the demolition permit was improperly obtained and TCI did not receive other required authorization from the city. The city revoked TCI's demolition permit and ordered a halt to the demolition. Despite the order, TCI had the building demolished. The city sued TCI under Local Government Code Chapters 54 and 211 and sought to have the building reconstructed using as many of the original materials as possible, and sought civil penalties from TCI for each day it continued to violate the city's ordinances. TCI filed counterclaims against the city and the city's landmark commission, alleging inverse condemnation under Article I, Section 17, of the Texas Constitution, and other causes of action.

The city and commission filed pleas to the jurisdiction in response, claiming the trial court did not have subject matter jurisdiction over the counterclaims. The city argued, among other things, that it was protected by governmental immunity and that TCI's claims were not ripe. The trial court dismissed TCI's inverse condemnation action as not being ripe, and dismissed its other claims based on governmental immunity. TCI appealed.

The ripeness question comes from the separation of powers provision in Article II, Section 1, of the Texas Constitution. Courts are without jurisdiction to issue advisory opinions because such is the function of the executive department, not the judiciary. TEX. CONST. art. II, sec. 1; *Pub. Util. Comm'n v. Houston Lighting & Power Co.*, 748 S.W.2d 439 (Tex.1987). In land use situations, courts have concluded that a regulatory takings claim is not ripe until the governing body makes a final decision regarding an application of its regulations to the property. *Mayhew v. Town of Sunnyvale,* 964 S.W.2d 922, 928 (Tex. 1998).

The city argued that TCI's inverse condemnation takings claim is not ripe because TCI did not receive a final decision from the city regarding the building permit or city approval of the demolition. When the city revoked TCI's demolition permit, TCI did not follow the city's procedure for appealing the revocation of a demolition permit; instead, TCI simply demolished the building anyway. TCI argued that its claim is ripe because it has already lost all productive value of its property due to the fact that it cannot remove the building materials left behind by the demolition. In addition, seeking a decision from the city now would be futile.

The court of appeals affirmed the trial court's dismissal of TCI's inverse condemnation claim, holding that TCI's claim is not ripe since it did not follow the city's procedures to appeal the revocation of the demolition permit.

***Lamar Co. v. City of Longview*, 270 S.W.3d 609 (Tex. App.—Texarkana 2008).**

WHETHER AN ORDINANCE IS PROPER OR CONSTITUTES A TAKING UNDER THE CONSTITUTION IS A QUESTION OF LAW, BUT AN ORDINANCE IS PRESUMED TO BE VALID. THE PARTY ATTACKING THE ORDINANCE MUST PROVE IT IS NOT A VALID POLICE POWER REGULATION TO MOVE FORWARD WITH A TAKINGS CLAIM.

In 2003, the city adopted an ordinance prohibiting billboards within 1,500 feet of a public park. Lamar had billboards that were allowed to remain as nonconforming signs. The ordinance allowed the nonconforming signs to remain as long as they were "kept in good repair and maintained in a safe condition." Also, the billboards could be maintained, repainted, and cleaned, but could not be "dismantled for any purpose other than maintenance operations" or it loses its nonconforming status and must be removed. Lamar dismantled all three signs without requesting a permit from the city, and performed various work on the signs. The city informed Lamar that it needed permits for this work, but when Lamar applied for the permits for "structure repair" the permits were denied. The city then informed Lamar that its signs were in violation of the city's

ordinances, and therefore had to be removed. Lamar appealed this decision to the board of adjustment arguing that denial of the work permits was an unconstitutional taking of private property, and requested a variance from the city's ordinance that required removal of the billboards. The board denied the variance. Lamar then filed suit, arguing that the city's application of the ordinance was an unconstitutional taking of private property. The city filed a plea to the jurisdiction.

Article I, Section 17 of the Texas Constitution requires the payment of adequate compensation when private property is taken for public use. However, payment is not required when property is merely subjected to the valid exercise of the police power. *City of College Station v. Turtle Rock Corp.*, 680 S.W.2d 802 (Tex. 1984). A city may enact reasonable regulations to promote the health, safety, and general welfare of its people. *Id.* Whether a police power regulation is proper or constitutes a taking under the Constitution is a question of law, but a city ordinance is presumed to be valid, and the party attacking the ordinance must prove it is not a valid police power regulation to move forward with a takings claim. *Id.* To be a valid police power regulation an ordinance must be "substantially related" to the health, safety, and welfare of the city and it cannot be arbitrary. *Id.* According to the city's sign ordinance, its purpose is to "promote the health, safety, and welfare" of the city.

The court of appeals held that Lamar failed to overcome the presumption of constitutionality of the ordinance. There is no taking and the city can require by ordinance the removal of a billboard that has been rebuilt or dismantled for purposes other than maintenance, where the city's intent is to remove nonconforming signs.

***City of Midland v. Jud Walton*, 2008 WL 5100942 No. 11-08-00053-CV (Tex. App.—Eastland 2008) (mem. op.).**
A fact question of intent raised by the plaintiff is sufficient in a takings case to overcome a city's pleas to the jurisdiction.

***City of Dallas v. Chicory Court Simpson Stuart, L.P.*, 271 S.W.3d 412 (Tex. App.—Dallas 2008).**
Administrative procedures had not been exhausted in a takings case where the developer had never submitted its desired development plan in writing to the city.

***City of Dallas v. Heather Stewart,* 2008 WL 5177168 No. 05-07-01244-CV (Tex. App.—Dallas 2008) (mem. op.).**
The court of appeals affirmed in favor of the property owner holding that the city had to show that a house was a nuisance on the day it was demolished to defeat the property owner's constitutional takings claim.

PROCEDURAL

***Jayanti Patel v. City of Everman*, 2009 WL 885916 No. 2-07-303-CV (Tex. App.—Fort Worth April 2, 2009) (mem. op.).**

TRADITIONAL AND NO EVIDENCE SUMMARY JUDGMENT.

In this case, Patel sued the city after the city demolished some of his apartment buildings that were allegedly not in conformance with city codes. In 2004, the court of appeals held that: (1) the property was demolished for a public purpose; (2) Patel consented to the demolition since he did not successfully challenge the court order allowing the city to demolish the buildings; and (3) there was a fact issue regarding whether there were code violations. The court of appeals remanded the case on the issue of code violations. On remand, the city filed an amended answer, raising defenses based on city ordinances and Chapter 214 of the Local Government Code. The trial court granted the city's summary judgment. The court of appeals affirmed the trial court, holding that the city filed sufficient evidence with its traditional motion for summary judgment and correctly challenged Patel's evidence to grant its no evidence motion for summary judgment.

***Nashville Texas, Inc. v. City of Burleson*, 2009 WL 618507 No. 01-08-00274-CV (Tex. App.—Houston March 12, 2009) (mem. op.).**

REQUEST FOR ATTORNEY'S FEES WAS NOT A COUNTERCLAIM.

Nashville Texas, Inc., sued the city after the city placed dumpsters near Nashville's property. The court of appeals affirmed the trial court's order granting the city's plea to the jurisdiction because the city's prayer for attorney's fees did not constitute a counterclaim.

MISCELLANEOUS

Councilmember Compensation: *City of Corpus Christi v. Joe O'Brien, et al.*, 2009 WL 265281, No. 13-08-00267-CV (Tex. App.—Corpus Christi-Edinburg Feb. 5, 2009) (mem. op.).

CHAPTER 172 OF THE LOCAL GOVERNMENT CODE AUTHORIZES A CITY TO PROVIDE HEALTH INSURANCE FOR ITS COUNCILMEMBERS, AND THE CORPUS CHRISTI CHARTER DOES NOT PROHIBIT HEALTH INSURANCE FOR ITS COUNCILMEMBERS.

In this case, the trial court granted a permanent injunction barring Corpus Christi city councilmembers from participating in the city's health insurance.

The city has group health insurance for its employees. Under a city ordinance, the city councilmembers are also allowed to participate in the city's health insurance. The charter states that city councilmembers "shall receive as compensation the sum of six thousand dollars ($6,000)" and that the mayor "shall receive as compensation the sum of nine thousand dollars ($9,000)". No other possible limiting language is present in the city charter. A citizen sued the city, arguing that the city councilmembers could not be on the health plan because it constituted compensation and caused the councilmembers' compensation to rise above the charter limit. The city argued that the charter did not forbid the councilmembers from participating in the city's health insurance and that

Chapter 172 of the Local Government Code allows councilmembers to be on the city's health insurance.

The court of appeals reversed the trial court's permanent injunction. While stating that health insurance is compensation, the court of appeals held that the ordinance allowing health benefits was not inconsistent with the charter provisions granting the councilmembers compensation. The charter language provided for compensation, but did not appear to set a maximum limit. The court also held that Chapter 172 provides additional support for allowing councilmembers to receive health benefits from the city.

Municipal Utility District: ***Northwest Austin Municipal Utility Dist. No. 1 v. City of Austin*****, 274 S.W.3d 820 (Tex. App.—Austin 2008).**
The court held that an agreement between the City of Austin and an in-city municipal utility district was an "allocation agreement" under the Texas Water Code, and thus the ad valorem taxes in the district could not exceed the city's tax rate.

Airport Access Fees: ***Eddins Enters., Inc. v. Town of Addison*****, 2009 WL 565717, No. 05-08-00194-CV (Tex. App.—Dallas March 6, 2009).**
The court of appeals held the city's airport access fee ordinance to be valid because the fees were reasonable, uniform, and based on the cost of the operation of the property.

Property: ***Wind Mountain Ranch, LLC v. City of Temple*****, 2009 WL 4999303 No. 07-07-0305-CV (Tex. App. – Amarillo, Nov. 25, 3008) (mem. op.).**
The city prevailed in a property action where the appellant Wind Mountain did not properly assign error.

Deregulation: ***Cities of Dickinson, Friendswood, La Marque, League City, Lewisville and Texas City v. Pub. Utility Comm'n*****, 2009 WL 1161349 No. 03-08-00492-CV (Tex. App.—Austin May 1, 2009).**
The cost of debt must be determined from the company's most recent earnings report because: (1) the PUC had not explicitly addressed the cost of debt; and (2) the cost of debt could not be determined from cost of capitol. Therefore, in this case, the PUC correctly determined the cost of debt.

Manufactured Housing: ***Laura Parker v. City of Canadian*****, 2009 WL 1148750 No. 07-08-0197-CV (Tex. App. —Amarillo April 29, 2009) (mem. op.).**
Texas Occupations Code Section 1201.008 is meant to be applied prospectively to mobile homes.

Franchise: ***Howard Adams v. City of Weslaco*****, 2009 WL 1089442 No. 13-06-00697-CV (Tex. App. —Corpus Christi-Edinburg April 23, 2009) (mem. op.)**