

Recent State Cases of Interest to Cities

Laura Mueller
Assistant General Counsel
Texas Municipal League



Torts Claims Act: What We've Learned

Watch where you are walking . . .



and to whom you are giving notice after you fall.



Recreational Use: Spectating

Does Recreation include Spectating?

Tyler Court of Appeals says Yes! *City of Dikoff v. Lawson*, No. 12-13-00344-CV, 2014 WL 6792679 [Tex. App.—Tyler Dec. 3, 2014] (mem. op.).

Supreme Court of Texas says No! *University of Tex. at Arlington v. Williams*, No. 13-0338, 2015 WL 1285317 [Tex. Mar. 20, 2015] (plurality opinion).



Election of Remedies

Texas Dep't of Aging & Disability Servs. v. Cannon, No. 12-0830, 2015 WL 127829 (Tex. Jan. 9, 2015).

Tort Claims Act v. 1983

Claims brought under 42 U.S.C. Section 1983 are not subject to the TTCA, so the dismissal of an employee under the TTCA does not affect the plaintiff's ability to bring a Section 1983 claim.



Election of Remedies

Molina v. Alvarado, No. 14-0536, 2015 WL 2148055 (Tex. May 8, 2015) [per curiam].

Plaintiffs must decide who they want to sue before they bring suit. #brookiemistake



Notice of Suit



San Antonio Water Sys. v. Smith, No. 04-13-00898-CV, 2014 (Tex. App.—San Antonio Sept. 24, 2014). Tripped and fell. SAWS is part of city. NOTICE SUFFICIENT.

Texas Dep't of State Health Servs. v. Gonzalez, No. 13-14-2014 WL 7205332 (Tex. App.—Corpus Christi Dec. 18, 2014). Car accident with DSHS employee. Employee took pictures, waits over 6 months to tell DSHS. NOTICE NOT SUFFICIENT.

Green v. City of Houston, No. 01-14-00808-CV, 2015 WL App.—Houston [1st Dist.] April 30, 2015). Tripped and fell Told TSA. Did not tell City until suit. NOTICE INSUFFICIENT.

Bexar County v. Leticia Votlon, 04-14-00629-CV (Tex. App.—San Antonio, May 20, 2015). Slipped and fell. Gave OSHA form to Bexar County employee. NOTICE COULD BE SUFFICIENT. WAIT AND SEE.

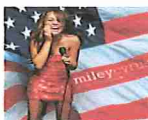


Party in the ETJ

Town of Annetta South v. Seadrift Dev., L.P., No. 02-12-00171-CV, 2014 WL 5013292 (Tex. App.—Fort Worth Sept. 25, 2014, pet. filed).

Texas Local Government Code Section 212.003(a)(4) states that a city shall not regulate in its ETJ "the number of residential units that can be built per acre of land."

Blalos v. Town of Lakewood Village, No. 02-14-00143-CV, 2014 WL 7447699 (Tex. App.—Fort Worth Dec. 31, 2014)
General Law cities can only do what they are specifically authorized to do by the State. Section 212.003 only allows plats and subdivision (but not lot size or building codes)



SIGNS!

Garrett Operators, Inc. v. City of Houston, No. 01-13-00767-CV, 2015 WL 293305 (Tex. App.—Houston [1st Dist.] Jan. 22, 2015).



State of Texas v. Clear Channel Outdoor, Inc., No. 13-0053, 2015 WL 1870306 (Tex. Apr. 24, 2015).
What is a billboard worth? Almost nothing for tax appraisal purposes, millions of dollars when its time to remove. Supreme Court of Texas says: worth almost nothing!! Yeah!

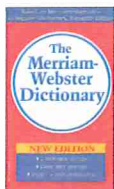


Regulation of Alcohol

Pak-a-Sak, Inc. v. City of Perryton, No. 07-14-00047-CV, 2014 WL 5796034 (Tex. App.—Amarillo Nov. 6, 2014).

What is a residential area? Here's a hint: it has houses.

To the foregoing, we add that the common meaning of the term "residential" describes a location at which people live. Indeed, it has been defined as a location "containing mostly homes instead of stores [or] businesses," "used as a place to live," or "of or relating to the places where people live." See Merriam-Webster Dictionary, <http://merriam-webster.com> (last visited Nov. 6, 2014).



More Things I Didn't Know About TOMA

Board of Adjustment of the City of Univ. Park v. Legacy Hillcrest Inv., L.P., No. 05-13-01128-CV, 2014 WL 6871403 (Tex. App.—Dallas Dec. 8, 2014) (mem. op.).

You don't have to open the meeting in open session before "convening" in closed session. *But see: Cox Enters v. Bd. of Tr. of Austin ISD*, 706 S.W.2d 956 (1986)

Sec. 551.001. REQUIREMENT TO FIRST CONVENE IN OPEN MEETING. If a closed meeting is allowed under this chapter, a governmental body may not conduct the closed meeting unless a quorum of the governmental body first convenes in an open meeting for which notice has been given as provided by this chapter and during which the presiding officer publicly:

- (1) announces that a closed meeting will be held; and
- (2) identifies the section or sections of this chapter under which the closed meeting is held.

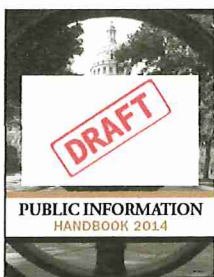
Something I did know: Take Minutes.

Tarrant Reg'l Water Dist. v. Bennett, No. 02-13-00354-CV, 2014 WL 6686482 (Tex. App.—Fort Worth Nov. 26, 2014, pet. filed)

Less than a quorum is not a "meeting", even if the committee is making decisions that the board is rubber-stamping. **TRWD also makes a good point: Its "use of committee action in researching, planning and implementing the Integrated Pipeline Project is the antithesis of absurdity. Indeed, it would be illogical to think that the complex engineering studies, project specifications, logistical analyses, and contract development could be efficiently and effectively accomplished at the board level."* Good point.



New PIA Things?



Information that is attorney-client privilege does not have to be disclosed: *Abbott v. City of Dallas*, No. 03-13-00686-CV, 2014 WL 7466736 (Tex. App.—Dallas Dec. 23, 2014, pet. filed); *City of Dallas v. Paxton*, No. 13-13-00397-CV, 2015 WL 601974 (Tex. App.—Corpus Christi Feb. 12, 2015) (mem. op.).

Dates of Birth are confidential. *Ken Paxton, Attorney General of the State of Texas v. City of Dallas*, 03-13-00546-CV (Tex. App.—Austin, May 22, 2015).

Court does not have to wait for an AG to rule on open records before acting. *Kallinen v. City of Houston*, No. 14-0015, 2015 WL 1275385 (Tex. Mar. 20, 2015) (per curiam).



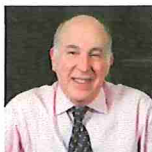
It's a contract

Damuth v. Trinity Valley Cmty. Coll., No. 13-0815, 2014 WL 6612535 (Tex. Nov. 21, 2014) (per curiam).

Employment contracts are contracts.

Western Offfields Supply Co. v. City of Anahuac, No. 01-14-00468-CV, 2015 WL 1061130 (Tex. App.—Houston [1st Dist.] Mar. 10, 2015) (mem. op.).

Contracts without prices are not contracts. Contracts not approved by party authorized to approve are not contracts.



Whistleblower

Texas Comm'n on Envtl. Quality v. Resendez, No. 13-0094, 2014 WL 6612570 (Tex. Nov. 21, 2014) [per curiam].

Do not call senators or your supervisor.

Carter v. Texas Dep't of Motor Vehicles, No. 13-13-00596-CV, 2014 WL 5314522 (Tex. App.—Corpus Christi Oct. 16, 2014) (mem. op.).

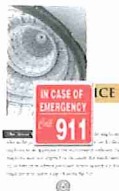
Call before you are terminated and not about stupid stuff that are not legal violations. Being annoying is not illegal.

Vicki Ward v. Lamar University, Texas State University System and James Simmons, 14-14-00097-CV, (Tex. App.—Houston [14th] May 12, 2015).

Told the police, was not actually fired.

Bell County v. Kozemny, No. 10-14-00021-CV, 2014 WL 4792656 (Tex. App.—Waco Sept. 25, 2014) (mem. op.).

Told the DA, may not have alleged actual criminal activity. Hope remains.



#winning

San Antonio Water Sys. v. Nicholas, No. 13-0966, 2015 WL 1873217 (Tex. Apr. 24, 2015).

Convolutd case with one message: lunch invitations are not sexual harassment.



More from the Supremes



Justice Don Willett @JusticeWWillett May 26

Today I was named "Tweeter Laureate of the 84th Texas Legislature."

Let joy reign unconfined!

#txlege #TexasRising

Ryder Integrated Logistics, Inc. v. Fayette Cnty., No. 13-0968, 2015 WL 496303 (Tex. Feb. 6, 2015) [per curiam]. High beams into traffic = distracting.

City of Dallas v. TJ West End, Inc., No. 13-0795, 2015 WL 2147986 (Tex. May 8, 2015) [per curiam]. Chapters 211 and 54 are different.

City of Houston v. Carlson, 451 S.W.3d 828 (Tex. Dec. 19, 2014). Civil enforcement procedure [as annoying as it might be] is not a taking.

