

WHAT A WASTE!

SOMETHING STINKY GOING ON IN THE
GARBAGE BUSINESS

CHRISTOPHER DUNCAN

SCENE OF THE CRIME.....

- ▶ CITY OF CLUTE HAS 11,000 POPULATION
- ▶ RESIDENTIAL SOLID WASTE SERVICE EXCLUSIVELY BY THE CITY
- ▶ CITY PROVIDES COMMERCIAL SERVICE
- ▶ WASTE MANAGEMENT ALSO PROVIDES COMMERCIAL SERVICE
- ▶ WASTE MANAGEMENT HAS APPROVED FRANCHISE AGREEMENT
- ▶ ANOTHER LOCAL SERVICE PROVIDES ROLLOFF FOR CONSTRUCTION WASTE

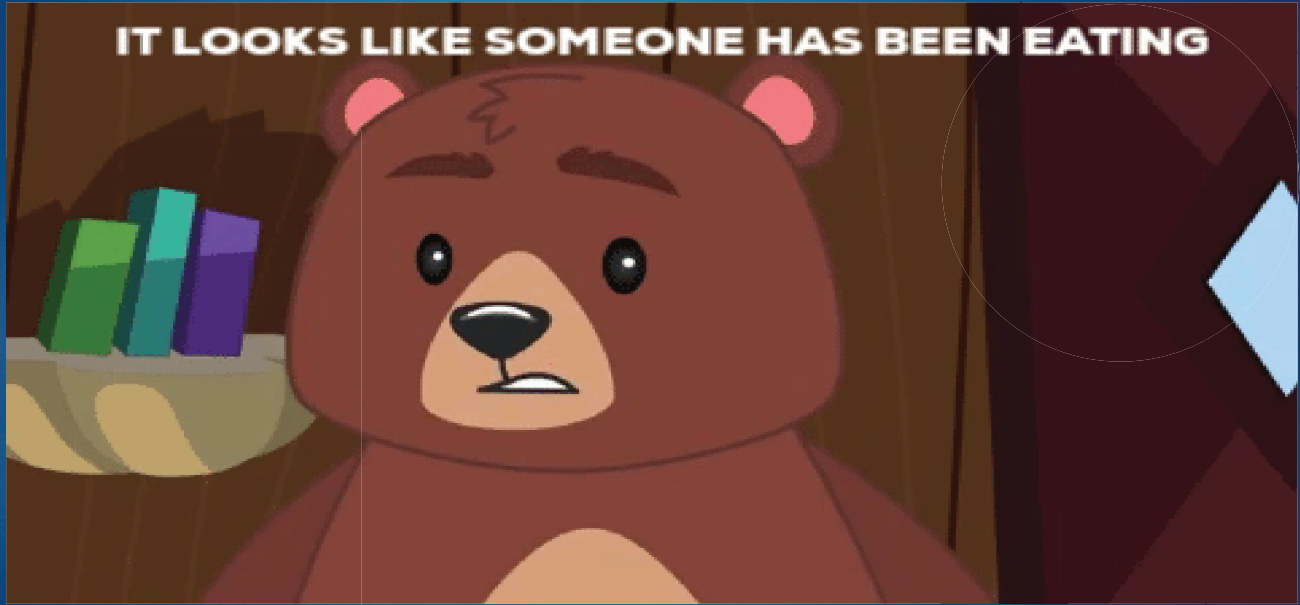
THE
REPORT.....

MYSTERY
DUMPSTER



THE NEW
GUY....ASKED
A QUESTION

CITY MANAGER ASKS THE LAWYER



INQUIRING CITY
ATTORNEY
WANTS TO
KNOW

A SUSPECT!



PULL UP THE DOCUMENTS

- ▶ NO FRANCHISE AGREEMENT
- ▶ NO PAYMENT OF FRANCHISE FEES
- ▶ ACTIVE EVASION

ACTIVE DECEPTION

COMMERCIAL DUMPSTER AT MCDONALDS BEHIND FENCE



CONTACT WASTE CONNECTIONS EXPLANATION(S)

1. WE BOUGHT OUT REPUBLIC. WE'VE BEEN TIPPING DUMPSTERS SINCE 2008.
2. FUNNY NO FRANCHISE FEES PAID
3. AGREEMENT NOT TRANSFERABLE
4. AGREEMENT ENDED IN 2009.

WASTE CONNECTIONS EXPLANATION(S)

WE DIDN'T KNOW YOUR CITY HAS A
FRANCHISE ORDINANCE.
NOBODY TOLD US.



SEND OUT THE DUMPSTER PATROL

CITY-WIDE INVENTORY BY STAFF

ONLY ABOUT 5-6

REQUEST LIST OF ACCOUNTS FROM WASTE CONNECTIONS

DOZENS NEARLY 1/3 OF ALL ACCOUNTS

SOLID WASTE - EXCLUSIVE RIGHT

- ▶ TEXAS HEALTH & SAFETY CODE 363.111(a)

- ▶ City is authorized to adopt rules for regulating solid waste collection, handling, storage, processing, and disposal.

SOLID WASTE – CITY DIRECT SERVICE

- ▶ TEXAS HEALTH & SAFETY CODE 364.034(a)
 - ▶ A public agency may
 - ▶ 1. Offer solid waste disposal service to persons in its territory
 - ▶ 2. Require the use of the service by those persons
 - ▶ 3. Charge fees
 - ▶ 4. Establish service as a utility.

RIGHT TO FRANCHISE

- ▶ TEXAS HEALTH & SAFETY CODE 364.031
 - ▶ Authorized to contract with certain other public entities or private contractor to furnish solid waste collection, transportation, handling, storage or disposal services.

HB 1227 – EFFECTIVE SEPT. 1, 2025

2% CAP

- ▶ TEXAS HEALTH & SAFETY CODE 363.120

- ▶ MUNICIPAL FRANCHISE FEES A municipality may not charge a person granted a franchise to provide solid waste management services in the municipality franchise fees of more than two percent of the gross receipts of the franchisee for the sale of services in the municipality

HB 1227 – EFFECTIVE SEPT. 1, 2025

NON-EXCLUSIVE CATEGORIES

- ▶ TEXAS HEALTH & SAFETY CODE 364.034(F)

- ▶ ~~(2)~~ a municipality may not restrict the right of an entity to contract with a person other than the municipality or an exclusive franchisee of the municipality for solid waste management services for commercial, industrial, or multifamily residential waste.

CRIMINAL ENFORCEMENT ORDINANCE REQUIRED

- ▶ YOUR CITY ORDINANCE MUST MAKE UNAUTHORIZED COLLECTION A (CLASS C) CRIMINAL OFFENSE.
- ▶ PUNISHABLE BY A MAXIMUM OF \$2000 PER OCCURRENCE (PER DUMPSTER TIP)

CRIMINAL ENFORCEMENT DRIVER OR CORPORATION?

- ▶ DEPENDING ON LANGUAGE CAN PROSECUTE EITHER OR BOTH.
- ▶ TEXAS PENAL CODE 7.01 PARTIES TO OFFENSES
 - ▶ (a) A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.
 - ▶ (b) Each party to an offense may be charged with commission of the offense.

CRIMINAL ENFORCEMENT CORPORATION

- ▶ TEXAS PENAL CODE 12.51 AUTHORIZED PUNISHMENTS
 - ▶ (3) \$2,000 if the offense is a Class C misdemeanor;
- ▶ TEXAS CODE OF CRIMINAL PROCEDURE 17A.03 SUMMONS
 - ▶ ISSUE A SUMMONS
- ▶ TEXAS CODE OF CRIMINAL PROCEDURE 17A.04 SERVICE
 - ▶ SERVE CORPORATE OFFICER OR REGISTERED AGENT

TEXAS CODE OF CRIMINAL PROCEDURE 17A.09 CONVICTION
THE COURT SHALL NOTIFY THE ATTORNEY GENERAL IN WRITING OF CONVICTION

CRIMINAL ENFORCEMENT STATUTE OF LIMITATIONS

- ▶ TEXAS CODE OF CRIMINAL PROCEDURE 12.02
 - ▶ TWO YEARS FROM DATE THE OFFENSE WAS COMMITTED.
 - ▶ BEING SNEAKY PAYS OFF

CIVIL ENFORCEMENT

HOW TO COLLECT FRANCHISE FEES

- ▶ WHAT IF FRANCHISE FEES WERE NOT PAID FOR 10 YEARS? 20 years?
- ▶ Is there any method to bring suit to recover unpaid franchise fees?

CIVIL ENFORCEMENT

TEXAS HEALTH & SAFETY CODE

- ▶ THERE IS NO ENFORCEMENT CAUSE OF ACTION IDENTIFIED OR ENABLED IN CHAPTERS 363 OR 364.

CIVIL ENFORCEMENT STATUTORY RIGHT TO BRING SUIT

- ▶ TEXAS LOCAL GOVERNMENT CODE 51.013
 - ▶ TYPE A GENERAL LAW CITIES MAY SUE AND BE SUED.
- ▶ TEXAS LOCAL GOVERNMENT CODE 51.033
 - ▶ TYPE B GENERAL LAW CITIES MAY SUE AND BE SUED
- ▶ TEXAS LOCAL GOVERNMENT CODE 51.075
 - ▶ HOME RULE CITIES MAY PLEAD AND BE IMPEADED
 - ▶ SEE ALSO CITY CHARTER

CIVIL ENFORCEMENT TORTIOUS INTERFERENCE

1. Reasonable probability enter relationship
2. Defendant knew interference was certain or substantially certain
3. Defendant's conduct was independently tortious or unlawful.
4. Interference caused injury
5. Plaintiff suffered actual injury

CIVIL DAMAGES

1. LOST PROFITS TO 2008
2. PUNITIVE DAMAGES FOR MALICIOUS CONDUCT
3. INJUNCTIVE RELIEF

STATUTE OF LIMITATIONS

Sec. 16.061. RIGHTS NOT BARRED. (a) A right of action of this state or a political subdivision of the state, including a county, an incorporated city or town, a navigation district, a municipal utility district, a port authority, an entity acting under Chapter [54](#), Transportation Code, a school district, or an entity created under Section [52](#), Article III, or Section [59](#), Article XVI, Texas Constitution, is not barred by any of the following sections: 16.001-16.004, [16.006](#), [16.007](#), 16.021-16.028, 16.030-16.032, 16.035-16.037, [16.051](#), [16.062](#), [16.063](#), 16.065-16.067, [16.070](#), [16.071](#), [31.006](#), or [71.021](#)

GAME PLAN

1. TEMPORARY RESTRAINING ORDER IN CIVIL SUIT
2. ISSUE CITATIONS TO DRIVERS FOR ONE DAY
3. SUBPOENA BUSINESS RECORDS FROM ALL CUSTOMERS IN THE CRIMINAL DRIVER CASE
4. CHARGE CLASS C VIOLATION FOR EVERY TIP THE LAST 2 YEARS

REACTION

ISSUED CITATION TO ONE DRIVER.
HE CALLED SUPERVISOR
ADMITTED ON OFFICER BODY CAM BE PREPARED TO GET CAUGHT
WASTE CONNECTIONS PULLED ALL SERVICES IMMEDIATELY
PAID THE ONE CITATION FOR THE DRIVER IMMEDIATELY
STOPPED RESIDENTIAL SERVICE IN THE ETJ AND BLAMED THE CITY IN THE
LOCAL NEWSPAPER

CONCLUSION



THEY ARE COMPLETELY BOLD AND BRAZEN.

IF THEY CAN OPERATE IN THE SHADOWS IN A SMALL TOWN, IMAGINE
WHAT THEY CAN DO IN A BIGGER CITY.

RECOMMENDATION IS TO HAVE SOMEONE IN YOUR CITY MONITOR THE
COMMERCIAL SOLID WASTE SERVICES.

