Government Law Section

of the State Bar of Texas



January 22, 2018

This month's article has been submitted by Ted Wood, an assistant public defender with the Harris County Public Defender's Office in Houston. This article provides us with the review of Senate Bill 1913 and House Bill 351 and the ability of a judge to determine alternatives to payment. If you are interested in reading this article, please click here.

We hope you enjoy this monthly article installment, which is just one of the benefits of being a member of the Government Law Section.

John Grace, Chair
Government Law Section
State Bar of Texas

- **Dallas Court of Appeals holds fact question exists as to whether a reasonable officer would look both ways before entering an intersection** *City of Dallas v. Matthew A. Lamb,* 05-16-01506-CV (Tex. App. – Dallas, December 4, 2017).

  Video of officer entering intersection and not slowing down along with testimony from officer an adjacent building obstructed his view created a fact question in the court's mind as to whether the officer looked both ways before entering the intersection. The failure to look both ways can waive the officer's official immunity.

  Expanded summary here.

- **U.S. 5th Circuit holds fact question exists on qualified immunity between whether officer stepped in front of car to prevent escape, or was already in front of car and shot to defend himself** *Vann v. City of Southaven*, 16-60561 (5th Cir. November 22, 2017).

  When undercover officers surrounded Plaintiff's car in a drug sting, the Plaintiff attempted to drive around/through the encircling officers. He was shot. In response to the shooting officer's claim of qualified immunity, the U.S. 5th Circuit held a fact quest exists as to whether the officer stepped in front of the fleeing car in order to prevent escape (and shot him) or was already in the path of the car and shot in self-defense.

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- **Trial court properly dismissed subsequent purchaser's TTCA and Takings claims after City demolished house** *Jorge Rodriguez v. City of Fort Worth*, 07-16-00037-CV (Tex.App. – Amarillo, December 8, 2017).

Purchaser of property found out after the sale the City's Buildings and Standards Commission had declared the property a nuisance. After the new owner took possession, the City demolished the structure. Owner sued. Since the City used an independent contractor, no city employee negligently used motor driven equipment to demolish the house. Further, he was given an opportunity to cure the defects and failed to do so. As a nuisance abatement, no taking can occur.

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- **Texas Supreme Court holds a change in pleadings cannot defeat a sec. 101.106 motion to dismiss** *University of Texas Health Science Center of Houston v Rios*, 16-0836 (Tex. December 15, 2017).

  Former first-year resident sued several doctors at the University for dismissing him. He sued the doctors and the University. The University moved to dismiss the doctors under Tex. Civ. Prac. & Rem. Code 101.106(e) (requiring employee dismissal if entity employer is sued at the same time). Before the trial court ruled, the Plaintiff amended his pleading and dismissed the University, trying to assert he could still sue the doctors. The Texas Supreme Court held the right to dismissal was immediate at the time the motion to dismiss was filed. Therefore, subsequent amendments cannot change the result.

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- **U.S. 5th Circuit holds cities cannot use website service fee in calculating hotel occupancy taxes owed** *City of San Antonio v Hotels.com* 16-50479 (5th Cir, November 29, 2017).

  The next chapter in a long history of litigation where various cities sued to various hotels and online scheduling companies to recover asserted hotel-occupancy taxes. While the court confirmed the municipalities could impose the tax when customers reserve rooms online, the court held the fee charged by the online hotel company (which does not own or operate hotels but merely helps with online reservations) is not used as part of the calculation.

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- **Austin Court of Appeals holds Medicaid claim information is not protected and potentially subject to disclosure under Public Information Act** *Ken Paxton, Attorney General of the State of Texas v. Texas Health and Human Services Commission* 03-15-00652-CV (Tex.App. – Austin, December 14, 2017).

  Health and Human Services Commission received a Public Information Act ("PIA") request based on payment for Medicaid claims. HHSC asserted the information was "related to" Medicaid applicants and confidential. The court held Tex. Hum. Res. Code § 12.003 (i.e. confidentiality statute) expresses an intent to shield only that information in Medicaid records that names or refers to Medicaid applicants or recipients, not all information connected with a claim.

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- **City and Officer who witnessed car accident immune from claims they "failed to protect and warn" of the impending collision** *Christopher Leron Clegg v. City of Fort Worth* 02-17-00040-CV (Tex. App – Fort Worth, December 14, 2017).

  Plaintiff's car was struck by a private driver. Plaintiff sued the driver. However, the accident was witnessed by a City police officer who then investigated. Plaintiff sued the City asserting the officer failed to regulate traffic through the use of his patrol vehicle. Characterizing Plaintiff's briefing as a "garbled morass," the court held the Texas Tort Claims Act unequivocally does not apply to a claim arising "from the failure to provide or the method of providing police or fire protection." Further, no negligent act of the officer caused the accident.

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CLE for February:

February 1, 2018 (Waco) Investigating & Prosecuting the Drugged Driver

February 21, 2018 (Liberty) Investigating & Prosecuting the Drugged Driver

February 23, 2018 (Angleton) Investigating & Prosecuting the Drugged Driver

February 8-9, 2018 (Dallas) Riley Fletcher Basic Municipal Law Conference

February 15-16, 2018 (New Orleans) Advanced Trial Strategies

February 21, 2018 (San Antonio) Water Law 101

February 22-23, 2018 (San Antonio) The Changing Face of Water Law

February 22-23, 2018 (Austin) School Law Conference