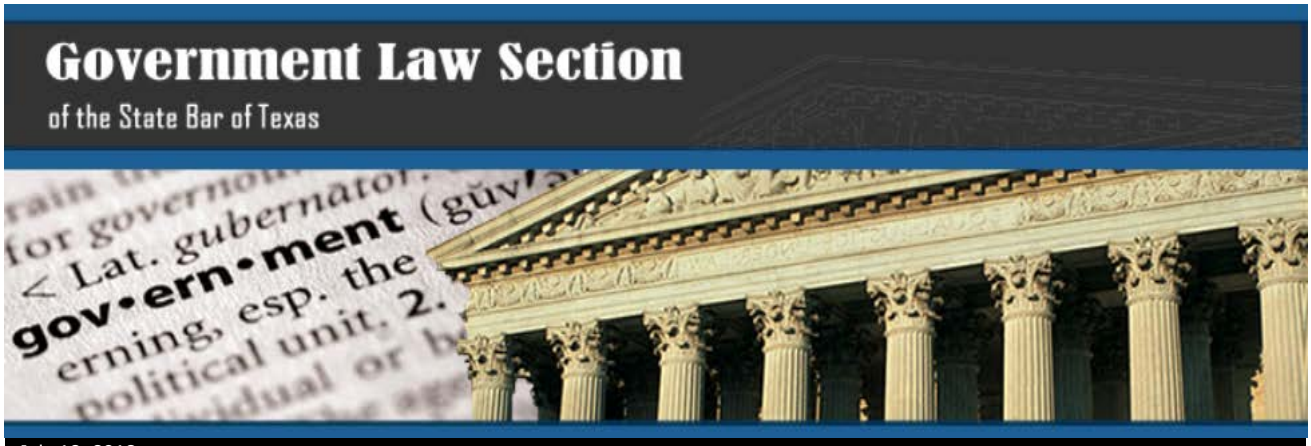


July 12, 2018

June's article is a brief summary on certain limited aspects of the Texas Supreme Court's opinion in *Alamo Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755 (Tex. 2018), submitted by Ryan Henry. For those that do not know, Clark is a same-sex gender discrimination case. 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

Recent Case Updates

- **Trial court abused its discretion in awarding attorney's fees to City in vested rights and declaratory judgment case** *Patsy B. Anderton, et al. v. City of Cedar Hill*, 05-17-00138-CV (Tex. App. – Dallas, May 25, 2018)

  This is a zoning/vested rights case where the parties went up and down the appellate ladder several times. The City eventually amended its zoning ordinance mooting part of the Plaintiff's claims. The City was awarded attorney's fees at the trial court. However, the court of appeals reversed noting even fees supported by uncontradicted testimony may be "unreasonable" in light of the amount involved, the results obtained, and in the absence of evidence that such fees were warranted. The court found the trial court abused it discretion in awarding the specific fees.

  Expanded summary here.

- **City's BOA within its discretion to grant variance due to situation where property was a prime target for "destruction or damage by the local . . . students"** *Lenda Vogler v. City of Lamesa and April Vara* 11-16-00168-CV (Tex. App – Eastland, May 24, 2018)

  This is a board of adjustment case where a neighbor challenged the granting of a variance to the Varas for a closed-in-car-port to protect antique cars. The court of appeals held the location of the property makes it a prime target for "destruction or damage by the local . . . students . . . who might lob rocks and bottles and cans and whatnot at them." Such a condition appears to be unique to the Varas' property. That the Varas' own antique cars does not make the unique condition of the property a self-imposed hardship.

  Expanded summary here.

- **City immune from claims it misapplied its own ordinances or procedures, but not for TOMA claims** *Peter Schmitz, et al v. Town of Ponder, Texas, et al.* 02-16-00114-CV, (Tex. App. – Fort Worth, May 10, 2018).

  Plaintiffs attempted to force the Town to enforce its zoning laws against other property owners (specifically a church). However, the City maintains immunity from such claims. Further, in the absence of a valid declaratory judgment claim, requests for permanent injunction are also not viable. Under Plaintiffs' §1983 claims, a regulatory taking can occur because Plaintiffs claims challenge the process in which the Town enforced its ordinances, not the substance of the enforcement. However, the Plaintiffs' claims the City violated the Texas Open Meetings Act were properly plead.

  Expanded summary here.

- **Fort Worth Court of Appeals holds Plaintiff's claim officer negligently deployed road spikes was actually a battery, so no waiver of immunity exists** *City of Fort Worth, Texas v. Mary Deal*, 02-17-00413-CV (Tex. App. – Fort Worth, May 31, 2018)

  This is a Texas Tort Claims Act case where an unknown officer laid out spikes to stop a fleeing suspect and the suspect was later injured when he lost control. The court of appeals held the driver had such a close connection with his vehicle the spikes constituted a battery. Taking the Plaintiff's pleadings as true, the unknown police officer's decisions about where, when, and how to deploy the devices were all subsumed in, and not distinct from, the commission of the battery. The Plaintiff's claims arise out of the battery and are subject to the TTCA's intentional-tort exception, so no wavier of immunity exists.

  Expanded summary here.

- **Evidence of a shorted-out lift pump on one day, is not evidence of faulty motor driven equipment on a different day says 13th Court of Appeals** *City of Edinburg v. GNJ Realty Investments LLC,* 13-17-00290-CV (Tex. App.—Corpus Christi-Edinburg August 22, 2017).

  GNJ Realty Investments (or "GNJ") brought a negligence claim against the City of Edinburg for sewage backup allegedly caused by a City-owned faulty motor-driven lift pump. The court of appeals held no evidence in the record indicated the pump was faulty and was directly linked to the flooding of GNJ's building. That a pump "shorted out" the day after the tenant experienced the water back up is, alone, not evidence that it was malfunctioning the day before.

  Expanded summary here.

- **Texas Supreme Court holds leasing of lakefront property is proprietary for purposes of beach-of-contract claim** *Wasson Interests, Ltd. vs. City of Jacksonville,17-0198, — S.W.3d. —* (Tex. June 1, 2018)

  In 2016 the Texas Supreme Court held the proprietary/governmental dichotomy applies in a breach of contact case. The Court went through several prior cases and indicated it is the action committed at the time (i.e. the lease contract) which counts in determining the proprietary/governmental purpose. "… [T]he focus belongs on the nature of the contract, not the nature of the breach. If a municipality contracts in its proprietary capacity but later breaches that contract for governmental reasons, immunity does not apply. Conversely, if a municipality contracts in its governmental capacity but breaches that contract for proprietary reasons, immunity does apply."

  Expanded summary here.

CLE for the month of July-August:

2018 Prosecutor Trial Skills Course, July 8-13, 2018 (San Antonio)

Real Estate Law 101: 2018, July 11, 2018 (San Antonio)

Advanced Real Estate Law Course 2018, July 12-14 (San Antonio)

Government Law 101: 2018, July 18, 2018 (San Antonio)

Advanced Government Law 2018, July 19-20, 2018 (San Antonio)

Criminal Law 101: 2018, July 22, 2018 (San Antonio)

Advanced Criminal Law Course 2018, July 23-26, 2018 (San Antonio)

2018 Advanced Trial Advocacy Course, July 23-27, 2018 (Waco)

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