Government Law Section

of the State Bar of Texas



October 30, 2018

This month's article addresses alternative administrative matters and civil penalties a municipality is permitted to impose and under what conditions. It is submitted by Ryan Henry.

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Enid Howard, Chair
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Recent Case Updates

- **City properly brought enforcement of junked vehicle ordinance in district court, but city ordinance did not properly adopt alternative administrative procedure** *In re Philip T. Pixler,* 02-18-00181-CV (Tex. App. – Fort Worth, July 26, 2018).

  The city initiated civil administrative proceedings against a repair shop for junked vehicles. The city's administrative board issued administrative penalties. The owner failed to comply. The city then sued in district court for an injunction and sought civil penalties. The court held district court was the proper venue, the civil penalties were proper, but since the city did not properly adopt administrative procedures, the administrative penalties were void.

  Expanded summary here.

- **Lack of due care finding by accident review board is evidence only of negligence, not recklessness under emergency responder exception to TTCA** *Harris County v. George J. Spears*, 14-17-00662-CV (Tex. App. – Houston [14th Dist.], September 25, 2018)

  While responding to an emergency call (i.e. possible suicide and medical emergency), Deputy Corporal Baskins collided with the Plaintiff at an intersection. The county's accident review board held the deputy failed to use due care when entering the intersection. However, that amounts, at most, to negligence and the emergency responder standard is gross negligence. As a result, the county-

maintained immunity from Plaintiff's civil suit.

Expanded summary here.

- **U.S. 5th Circuit holds 1) IA and CID not required to share evidence and 2) disclosure of exculpatory evidence is a "trial" right, not a right before accepting a plea offer** *Alvarez v City of Brownsville,* 16-40772 (5th Cir. Sept. 18, 2018)

  This is a §1983/jail altercation case where the Plaintiff and jailors were involved in a tussle during a transport from cell to cell. IA started an investigation and reviewed the video footage. The criminal division of the PD started a criminal investigation, to which the plaintiff later plead guilty. IA and CID did not share information pursuant to policy. When the Plaintiff found out he was not given the video in his criminal case he asserted a *Brady* violation. He filed a civil lawsuit against the City. The US 5th Circuit held *Brady* is a trial right and no constitutional violation occurred.

  Expanded summary here.

  City and EDC established personal/specific jurisdiction over out-of-state financial institutions involved in failed EDC project *City of White Settlement, et al. v. Benjamin S. Emmons, and Source Capital, LLC*, 02-17-00358-CV (Tex. App. – Fort Worth, September 27, 2018)

  The City and EDC entered into agreements for an amusement park to be created. After various financial difficulties and failures, the City and EDC entered into an agreement with the subsequent purchases of the former company and the bank. However, the purchasers/bank used the income to support the other failing parks and not the one within the City. The City and EDC sued. The court went through a lengthy listing of evidence and testimony and determined the City established personal jurisdiction over the Defendants in order to bring suit.

  Expanded summary here.

CLE November- December 2018

Firearms Law 2018: What Every Texas Lawyer Needs to Know, November 1-2 (Dallas) (video)

Disaster Proof Your Practice, November 7 (Corpus Christi) (FREE COURSE)

Advanced Business Law 2018 November 8-9 (Dallas)

2018 Key Personnel & Victim Assistance Coordinator Seminar, November 7-9 (Kerrville)

42nd Annual Page Keeton Civil Litigation Conference, November 8-9 (Houston)

Civil Litigation Conference, November 8-9 (Houston)

Bernard O. Dow Leasing Institute, November 9 (Houston)

Leasing Institute, November 9 (Houston)

When Personal Injury Settlements Meet Special Needs Planning, November 13 (UT CLE Webcast)

37th Annual Jay L. Westbrook Bankruptcy Conference, November 14-16 (Austin)

66th Annual Taxation Conference, November 14-15 (Austin)

Prosecuting and Defending Truck and Auto Collision Cases 2018, November 15-16 (Houston)

2018 Elected Prosecutor Conference, November 28-30 (San Marcos)

Handling Your First (or Next) False Claims Act November 30 (Austin)

2018 Elected Prosecutor Conference, November 28-30 (San Marcos)

Advanced Civil Trial Course 2018, November 28-30 (Austin) (video)

Jury Selection in Impaired Driving Prosecutions, December 7 (Richmond)

Jury Selection in Impaired Driving Prosecutions, December 7 (Rockwall)

Jury Selection in Impaired Driving Prosecutions, December 7 (San Antonio)

LGBTQ Legal Issues in Changing Times: What Every Texas Practitioner Needs to Know, December 11 (Austin)

Advanced Real Estate Strategies, December 13-14 (Fredericksburg)

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