

TCAA NEWS

Volume 7, Issue 1

News and Updates

January 2012

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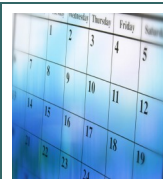
Riley Fletcher Basic Municipal Law Seminar to Be Live Streamed!

As another benefit to TCAA members, the 2012 Riley Fletcher Basic Municipal Law Seminar will be live streamed. The seminar will take place on February 24, 2012, at the Texas Municipal Center in Austin, Texas. But you will also be able to view it online, if you cannot make it to Austin. To register, go to www.texascityattorneys.org.



Need CLE Hours? The 2011 TCAA Fall Conference Seminar Materials and Videos Available Online

To view the 2011 TCAA Fall Conference Video, go to <http://www.tcaaseminars.org/>. (Use the case-sensitive password "FreeCLE" to view the sessions.) For seminar materials, including papers on such topics as group home regulation, redistricting, and more, visit the Texas City Attorneys Association Web site at www.texascityattorneys.org, click on "Seminar Materials," and then click on "Fall Conference 2011." Videos and materials from past TCAA conferences are also available on the site.



Save the date! TCAA's 2012 South Padre Island Conference will be held on June 6-8, 2012. Hotel and other information will be released soon.

Legal Defense Program

TCAA, in conjunction with the Texas Municipal League, files amicus briefs in support of cities on many different cases. To keep up to date with the status of those briefs, go to http://www.tml.org/legal_pdf/AmicusBrief.pdf.

Municipal Attorney Job Openings

For the most recent Texas Municipal League classifieds postings, please go to [http://
tml.associationcareernetwork.com/
JobSeeker/Jobs.aspx?abbr=TML](http://tml.associationcareernetwork.com/JobSeeker/Jobs.aspx?abbr=TML).

Recent Texas Cases of Interest to Cities

Note: Included cases are from the period beginning on the 10th of the previous month through the 10th of the current month.

Noise Ordinances: *City of Beaumont v. Starvin Marvin's Bar & Grill, L.L.C.*, No. 09-11-00229-CV (Tex. App.—Beaumont Dec. 22, 2011) (mem. op.). In January 2010, Starvin Marvin entered into a commercial lease agreement with an option to purchase the building and property located in Beaumont. The property is located within the General Commercial Multiple-Family Dwelling District.

Starvin Marvin's Bar & Grill is a restaurant that offers an outside patio where customers can enjoy food and live music. Prior to opening, Starvin Marvin made a substantial investment to upgrade and renovate the property, including renovations to the outside patio and stage. Starvin Marvin obtained all necessary permits from the city, including all electrical permits necessary for an expansion to the outdoor patio, which was electrically wired for sound and lighting with a stage built for live band performances.

Shortly after opening the restaurant in May 2010, however, a dispute arose between the restaurant and adjacent landowners and residents. The occupants of these properties called the Beaumont Police Department complaining of noise emanating from Starvin Marvin's outdoor patio. In late July 2010, Beaumont P.D. conducted a sound test in Starvin Marvin's parking lot and thereafter issued Starvin Marvin's manager a citation for violating the city's noise ordinance.

The owner of the restaurant, Marvin Atwood, complained to the city that the officer had improperly conducted the sound test from Starvin Marvin's property line and not "at the nearest residential line in a permanent residential zone" as stated in the zoning ordinance. The city dismissed the citation in August 2010. It was undisputed that Starvin Marvin's use of the property complies with the permitted uses of a GC-MD zone and the noise performance standards in the zoning ordinance.

The city later amended its noise ordinance. The recommendation from the city manager, as prepared by the city attorney, stated that "[t]his amendment is necessary to bring our current noise ordinance into compliance with a settlement agreement entered into between the World Wide Street Preachers Fellowship and the City of Beaumont." (The city entered into a settlement with the World Wide Street Preachers Fellowship in April 2008. In the settlement agreement, the city agreed to "have or shall adopt a revised Noise Ordinance which includes specific language and definitions, such as specific decibel levels and distance, so as to make the Beaumont City Noise

Ordinance comport with current Constitutional jurisprudence within sixty (60) days.")

The proposed noise ordinance ("Ordinance 11-025") establishes allowable decibel levels and provides that any sound exceeding those levels is a violation of the chapter. The ordinance further provides that "[e]xterior noise levels shall be measured at the property line of an offended person."

The city adopted Ordinance 11-025 on March 8, 2011. Starvin Marvin retained an industrial hygienist to conduct sound testing at its location to determine if it complied with the new ordinance. The tests indicated any use of its outside patio, with or without music, would be a prima facie violation of the new ordinance. Thereafter, Starvin Marvin initiated this lawsuit seeking a declaratory judgment that Ordinance 11-025 is void or not enforceable against Starvin Marvin.

The city filed a plea to the jurisdiction. After an extensive hearing, the trial court denied the city's plea and granted Starvin Marvin's temporary injunction based on the doctrine of equitable estoppel, and in so doing, enjoined the city from enforcing Ordinance 11-025 against Starvin Marvin, its employees, and customers. The city filed this appeal.

The city argued that the trial court, as a court of equity, lacks jurisdiction to enjoin the enforcement of a penal ordinance or to declare the ordinance unconstitutional. Generally, a court of equity will not enjoin the enforcement of criminal law. However, if the penal ordinance is unconstitutional or void, and its enforcement threatens irreparable injury to vested property rights, then equity may intervene to protect those property rights.

The court first considered whether Starvin Marvin has a "vested property right." The U.S. Constitution does not create property interests, but rather the existence of a property interest is determined by reference to "existing rules or understandings that stem from an independent source such as state law[.]" The Texas Supreme Court has held that "property owners do not acquire a constitutionally protected vested right in property uses once commenced or in zoning classifications once made." Further, a lessee's rights do not exceed those of the property owners; as such, lessees do not have a constitutionally protected right to use property in a certain way, without restriction. Thus, the court concluded that Starvin Marvin's use of the leased property as a restaurant with live outdoor music is not a constitutionally protected vested property right.

Starvin Marvin did not show that enforcement of the ordi-

nance would cause an irreparable injury to a vested property right. As such, the court held that the trial court did not have jurisdiction to hear Starvin Marvin's causes of action for declaratory relief or its cause for relief based on equitable estoppel. In like manner, the court held that it did not have jurisdiction over those causes on this appeal. "Because we hold the trial court did not have jurisdiction over Starvin Marvin's estoppel cause of action, and that action formed the basis of the trial court's judgment, we vacate the trial court's judgment granting temporary injunction."

Ordinance Adoption: *City of New Braunfels v. WWGAF, Inc.*, No. 11-10-00009-CV (Tex. App.—Eastland Dec. 22, 2011) (mem. op). WWGAF, Inc., Texas Tubes, and Corner Tubes, Inc. ("businesses") all rent tubes and ice chests to customers in New Braunfels for use on the Comal and Guadalupe Rivers. The businesses challenged a city ordinance in which the city required businesses to pay a \$1.00 "river management fee" for each rental customer utilizing any public river exit.

At trial court, the businesses moved for partial summary judgment on the grounds that the city's ordinance authorizing a river management fee imposed an unconstitutional occupations tax. In the alternative, the businesses moved for partial summary judgment on the claim that the ordinance was void because it was adopted in violation of the city charter. The businesses also filed a motion for summary judgment in which they claimed to be entitled to a refund of fees paid to the city pursuant to the ordinance, in addition to attorneys' fees and costs. The trial court granted summary judgment in favor of appellees on all grounds, and awarded a total of \$813,446.25 to the three businesses, attorneys' fees, costs, and prejudgment and post judgment interest.

On appeal, the city claimed that the trial court erred in granting summary judgment regarding the validity of the fee, both on the grounds that businesses' evidence was insufficient to establish the fee as an unconstitutional tax, and because the businesses failed to challenge the procedural defects of the fee ordinance within the applicable statute of limitations. The court of appeals first addressed businesses' argument that the ordinance didn't follow the procedure proscribed by the city charter, and therefore should be declared void. *See Loos v. City of Houston*, 375 S.W.2d 952, 956 (Tex.Civ.App.—Houston 1964, writ ref'd n.r.e.). At trial, the businesses attached as evidence the ordinance file for the ordinance in question, as well as the relevant provisions from the city charter governing the adoption of ordinances. Section 3.10 of the city charter requires, among other things, that: (1) the city attorney approve each ordinance in writing or else file legal objections to the ordinance with the city secretary; and (2) the city secretary note on every ordinance the dates and medium of the ordinance's publication to demonstrate compliance with the notice publication requirements of the city charter.

Because the ordinance file showed that the city attorney did not sign the ordinance or otherwise file any objections to it, and that the city secretary did not make any notations regarding publication, the court of appeals determined that the summary judgment evidence was sufficient to show that the city failed to enact the ordinance in compliance with the city charter.

Although the city did not submit any summary judgment evidence to raise a fact issue on whether the ordinance complied with the charter, the city did contend on appeal that the businesses were barred from challenging the validity of the ordinance more than three years after it was enacted pursuant to Local Government Code Section 51.003(a). But the court of appeals determined that because the city raised the issue on appeal, and did not raise the defense to the businesses' motion at trial court, the city was waived its defense under the Texas Rules of Civil Procedure: "Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal." TEX. R. CIV. P. 166a(c). As a result, the court of appeals determined that the city did not raise a fact issue or allege any legal defense to businesses' motion for summary judgment. Since the court determined that the trial court did not err in granting summary judgment on the grounds that the ordinance did not comply with the city charter, it did not consider the city's contention that the trial court erred when it established the river management fee as an unconstitutional tax.

The city also argued on appeal that the trial court erred in awarding businesses a full refund of all river management fees paid from 2001 to 2007 because the businesses were barred by the statute of limitations from receiving a refund of any fees paid prior to two years before the suit was filed (May 30, 2007). *See* TEX. CIV. PRAC. & REM. CODE § 16.003(a). By raising the statute of limitations defense in its response to the businesses' motion for summary judgment, the city created a fact issue that precluded the trial court from granting summary judgment. The court of appeals determined that the trial court erred when it granted summary judgment and ordered the city to refund fees paid between 2001 and 2007, and remanded the refund issue and the issue of attorneys' fees and costs back to the trial court to determine the appropriate amount.

Development Agreements/Immunity Waiver: *Town of Flower Mound v. Rembert Enters., Inc.*, No. 02-10-00408-CV (Tex. App.—Fort Worth Dec. 8, 2011). Rembert is the developer of a residential subdivision in Flower Mound (the Property). When Rembert applied to Flower Mound for approval of its development permits, Flower Mound required Rembert to construct Auburn Drive on the property and other land Rembert did not initially own as a condition of approval. Rembert and Flower Mound thereafter entered into three separate development agree-

ments, and Rembert constructed Auburn Drive as set forth in those agreements.

Flower Mound paid Rembert fifty percent of the Auburn Drive construction cost, but Rembert alleges one of the Development Agreements (the Agreement) required Flower Mound to reimburse Rembert the full cost of constructing Auburn Drive through a combination of impact fee credits and direct reimbursement. Rembert alleges that Flower Mound's failure to fully reimburse the Auburn Drive construction costs is a breach of the Agreement or, alternatively, constitutes a compensable taking.

The city answered Rembert's petition and filed a plea to the jurisdiction that they amended on two occasions. The trial court conducted an evidentiary hearing on the city's second amended plea to the jurisdiction and granted the plea in part. The city appealed the trial court's partial denial of their plea to the jurisdiction, and Rembert appealed the trial court's partial grant of the city's plea.

The city's main argument is that the trial court does not have subject matter jurisdiction over Rembert's breach of contract claim because the Agreement does not involve the provision of goods and services as required for a waiver of immunity under local government code chapter 271. Section 271.152 of the local government code states:

A local governmental entity that is authorized by statute or the constitution to enter into a contract and that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract, subject to the terms and conditions of this subchapter.

A "[c]ontract subject to this subchapter" is defined by section 271.151(2), in relevant part, as "a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity."

The city argued that, even though Rembert used goods and services to construct Auburn Drive, the Agreement is not a contract for "goods or services" because it is ultimately a contract for the conveyance of improved real property. To the contrary, the court held that the Agreement involved more than the conveyance of improved real property, a distinction that is illustrated by two supreme court opinions concerning the provision of goods or services to a municipality by contract. *See Kirby Lake Dev., Ltd. v. Clear Lake City Water Auth.*, 320 S.W.3d 829 (Tex. 2010); *Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Political Subdiv. Prop./Cas. Joint Self-Ins. Fund*, 212 S.W.3d 320 (Tex. 2006).

In *Ben Bolt*, even though the service provided to the Fund was not the primary purpose of the contract, the members' provision of claim dispute services was sufficient to

fall within the waiver of immunity under Local Government Code Section 271.152. In *Kirby Lake*, several developers entered into agreements with the Clear Lake Water Authority. The development agreements required the developers to build water and sewer facilities and lease the facilities to the Water Authority free of charge. The court of appeals held that the developers' "agreement to hire third parties to construct the Facilities and to build the streets, roads, and bridges" was "sufficient to constitute the provision of services to the [Water] Authority."

In this case, the Agreement required Rembert to "construct Auburn Drive . . . together with all related appurtenances in addition to all other facilities necessary to serve the Property," to "acquire in fee simple all rights-of-way necessary for the Right-Turn Lane," to "design and construct the Right-Turn Lane in accordance with [Flower Mound]'s engineering standards," and to "work with TxDOT and [Flower Mound] to determine the proper location and alignment of the Right-Turn Lane." The court held that the Agreement required Rembert to provide services to Flower Mound in the manner, at least, of constructing Auburn Drive; designing and constructing the Right-Turn Lane; and working with TxDOT concerning the location, alignment, design, and construction of the Right-Turn Lane. "We hold, based on Rembert's third amended petition and the parties' plea to the jurisdiction evidence, that Local government Code Section 271.152 waives Flower Mound's immunity from suit with regard to the Agreement because the Agreement is a contract for the provision of services to Flower Mound within the meaning of that statute."

Rembert also claimed that the Declaratory Judgment Act waived the city's immunity. He attempted to distinguish his declaratory judgment claim from his breach of contract claim by arguing that a judicial interpretation of the Impact Fee Act and Flower Mound ordinances is required to determine whether Flower Mound is required to reimburse Rembert fifty or one hundred percent of the cost of constructing Auburn Drive. "But in every suit against a governmental entity for money damages, a court must first determine the parties' contract or statutory rights; if the sole purpose of such a declaration is to obtain a money judgment, immunity is not waived." The court held that – although the Declaratory Judgments Act typically waives immunity when the construction of a statute or ordinance is involved – the trial court in this case must construe the Impact Fee Act, Flower Mound's ordinances, and the Agreement to determine whether Flower Mound breached the Agreement. Thus, Rembert's declaratory judgment claim is merely a recast of its breach of contract claim, and immunity has not been waived.

Finally, the court held that, should the city prevail on its contention that the Agreement and Flower Mound's ordinances limit Rembert's reimbursement to fifty percent, Rembert should be permitted to proceed on its alternative

claim that city's ordinances and resulting development condition constituted a compensable taking.

Tort Claims Act-Election of Remedies: *City of Houston v. Amazquita*, No. 14-11-00087-CV (Tex. App.—Houston [14th Dist.] Jan. 5, 2012) (mem. op.). In this case, plaintiff initially sued the city, the police department, and a police officer for negligence in causing a collision with a vehicle occupied by plaintiff. Plaintiff subsequently amended his petition to drop the claims against the police department and the police officer. The city then sought dismissal of plaintiff's claims against the city under Civil Practice and Remedies Code Section 101.106(b), which provides that "[t]he filing of a suit against any employee of a governmental unit constitutes an irrevocable election by the plaintiff and immediately and forever bars any suit or recovery . . . against the governmental unit regarding the same subject matter unless the government unit consents." The court rejected the argument, explaining that the city had consented to suit via the Tort Claims Act.

Summary Judgment: *Browne v. City of San Antonio*, No. 04-11-00219-CV (Tex. App.—San Antonio Jan. 4, 2012) (mem. op.). In this case, Browne (plaintiff) challenges the trial court's granting of the city's objections to her summary judgment evidence (affidavits) and the city's motion for summary judgment. The appellate court held that plaintiff waived any complaint with regard to the summary judgment affidavits and affirmed the trial court's summary judgment in favor of the city.

Tort Claims Act-Election of Remedies: *City of Houston v. Gov't Emp. Ins. Co.*, No. 01-11-00173-CV (Tex. App.—Houston [1st Dist.] Dec. 29, 2011). In this case, a city employee had a car accident with an individual. The Government Employee Insurance Company (plaintiff), as subrogee of the owner of the car, sued the city and the city employee. Plaintiff subsequently amended the petition omitting the city employee as a defendant. The city argued that it was immune from suit under Civil Practice and Remedies Code Section 101.106(b), which provides that "[t]he filing of a suit against any employee of a governmental unit constitutes an irrevocable election by the plaintiff and immediately and forever bars any suit or recovery . . . against the governmental unit regarding the same subject matter unless the government unit consents." The court rejected the argument. The court explained that plaintiff, by voluntarily dismissing its claims against the city employee and thereby foregoing the city's need to file a 101.106(e) motion, had satisfied the election of remedies provision and was not barred by 101.106(b) from pursuing its claims against the city. See also the related case of *City of Houston v. Gunn*, No. 01-11-0034-CV (Tex. App.—Houston [1st Dist.] December 29, 2011), which is procedurally similar and reaches the same conclusion.

Tort Claims Act-Election of Remedies: *City of Houston v. Washington*, No. 14-11-00305-CV (Tex. App.—Houston [14th Dist.] Dec. 22, 2011) (mem. op.); *City of Houston v. Uribe-Mendoza*, No. 14-11-00647 (Tex. App.—Houston [14th Dist.] Dec. 22, 2011) (mem. op.); and *City of Houston v. Marquez*, No. 01-11-00493-CV (Tex. App.—Houston [1st Dist.] Dec. 8, 2011) (mem. op.). In each of these cases, a plaintiff sued both the city and a city employee for negligence in causing a collision with a vehicle occupied by plaintiff. The city responded in each instance with a motion to dismiss its employee pursuant to the election of remedies provision of the Tort Claims Act, Texas Civil Practice and Remedies Code Section 101.106(e). In each case, the plaintiff non-suited the employee. The city argued that it was immune from suit under Civil Practice and Remedies Code Section 101.106(b), which provides that "[t]he filing of a suit against any employee of a governmental unit constitutes an irrevocable election by the plaintiff and immediately and forever bars any suit or recovery . . . against the governmental unit regarding the same subject matter unless the government unit consents." The appellate courts rejected the argument, holding that Section 101.106(b) applies only when the governmental unit has not consented to suit. In each case, the city consented to suit based on the negligent use or operation of a motor-driven vehicle. In other words, the Tort Claims Act itself constitutes consent to suit.

Whistleblower Act-Good Faith Report: *City of Fort Worth v. Lane*, No. 02-11-00048-CV (Tex. App.—Fort Worth Dec. 22, 2011) (mem. op.). The issue in this case is whether Lane (plaintiff), an attorney working in the city's internal audit department, established waiver of immunity under the Texas Whistleblower Act by making a good faith report of a violation of law. Plaintiff called the city's fraud hotline, filed a complaint with the employee relations department, and contacted the FBI regarding the city auditor's handling of a request for proposal (RFP). Plaintiff believed that the RFP was subject to the competitive procurement laws. The court held that a reasonably prudent employee in plaintiff's situation would have believed that the city was required to comply with the competitive procurement laws and that plaintiff's report was made in good faith. The court thus affirmed the trial court's order denying, in part, the city's plea to the jurisdiction.

Governmental Immunity-Emergency Service Exception: *City of San Antonio v. Rosenbaum*, No. 04-11-00498-CV (Tex. App.—San Antonio Dec. 21, 2011) (mem. op.). Plaintiffs sued the city for damages arising from the death of Rosenbaum, caused when her motorized wheelchair became lodged under a brush truck driven by a firefighter. The appellate court concluded that the city retained its immunity under the 9-1-1 emergency service exception to the waiver of immunity and reversed the trial court's order denying the city's plea to the jurisdiction.

Governmental Immunity-Employee: *City of Dallas v. Martin*, No. 07-0288 (Tex. Dec. 16, 2011). The material facts, procedural background, issues, and arguments presented in this case are similar to those considered in *City of Dallas v. Albert*, No. 07-084 (Tex. Aug. 26, 2011), which was summarized in the September 2011 *TCAA Newsletter* (http://www.tml.org/legal_tcaanews/News-September2011.pdf). In both cases, firefighters and police officers (plaintiffs) sued the City of Dallas for underpayment of wages based on a city ordinance.

For the reasons set out in *City of Dallas v. Albert*, the court here held that: (1) the ordinance, adopted through referendum election, did not result in the city's loss of immunity from suit; (2) the city is immune from suit as to the declaratory judgment action; (3) by non-suiting its counterclaim, the city did not reinstate immunity from suit as to the plaintiffs' claims that were pending against the city when it non-suited the counterclaim; and (4) the case must be remanded to the trial court to consider whether the legislature waived the city's immunity by amending Local Government Code Section 271.152.

Governmental Immunity-Employee: *Lowell v. City of Baytown*, No. 07-1011 (Tex. Dec. 16, 2011) (per curiam). In this case, firefighters sued the city seeking declaratory and injunctive relief, in addition to lost pay and benefits resulting from the city's alleged failure to pay them properly during temporary assignment of higher-classified duties. The trial court granted the city's jurisdictional plea asserting government immunity. The court of appeals affirmed in part and reversed in part. The Texas Supreme Court remanded the case to the trial court so that the firefighters could amend their pleadings (1) to argue that the legislature, through its enactment of Local Government Code Sections 271.151-.160, has authorized retrospective relief, such as the back pay and related damages sought by the firefighters; and (2) to seek prospective declaratory and injunctive relief against specific city officials rather than the city.

Default Judgment-Award of Damages: *Larry v. City of Prairie View Bd. of Adjustment*, No. 01-10-00943-CV (Tex. App.—Houston [1st Dist.] Dec. 15, 2011) (mem. op.). The issue in the case is whether the trial court erred by failing to award Larry (plaintiff) damages. The appellate court affirmed the trial court's judgment, reasoning that the plaintiff did not request and failed to provide any evidence of lost profit damages at the default judgment hearing or with supporting affidavits.

Recent Texas Attorney General Opinion of Interest to Cities

Note: Included opinions are from the period beginning on the 10th of the previous month through the 10th of the current month.

Opinion No. GA-0896 (Open Meetings): The attorney general concluded that electronic communications can, depending on the facts of a particular case, constitute a deliberation and a meeting for purposes of the Texas Open Meetings Act.

TML/TCAA Legal Defense Program: Amicus Briefs and Attorney General Opinion Comments Filed

Recreational Use Statute: *Sullivan v. City of Fort Worth*, No. 11-0478, in the Texas Supreme Court. In this Recreational Use Statute case, TML argued that the legislature's broad definition of "recreation" in Section 75.001(3)(L) of the Texas Civil Practices and Remedies Code should be analyzed objectively. Thus, a city should be able to avail itself of the protections afforded by the act when a woman who was injured while at a wedding in a city park sued the city. Even though the woman was walking in a city park at the time of her injury, the court of appeals incorrectly characterized her action as a state of being—"being a guest at a wedding"—which considered one, but only one, of the multiple reasons why she had been in the park, rather than focusing on what she was doing in the park when she stumbled and fell, which was walking down stairs. TML's brief in support of the city's petition for review was filed on December 19, 2011.

Fourth Amendment-Strip Searches: *Florence v. Bd. of Chosen Freeholders*, No. 10-945, in the U.S. Supreme Court. TML joined the Texas Municipal League Intergovernmental Risk Pool, Texas Association of Counties, Texas Conference of Urban Counties, and the Texas Chief Deputies Association in this brief to the U.S. Supreme Court. The principal issue in the case is whether strip searches performed on inmates entering a jail facility violate the Fourth Amendment to the U.S. Constitution. Amici argued that: (1) safety concerns related to jail staff outweigh

TML/TCAA Legal Defense Program: Amicus Briefs and Attorney General Opinion Comments Filed (Continued)

an inmate's privacy interests; (2) the security of jail personnel is compromised by easily-concealable items like weapons, drugs, and other contraband that can be hidden in body cavities; (3) alternatives to strip searches are not feasible; and (4) the American Corrections Association's standards relating to searches are not binding. The brief was filed on August 26, 2011, and oral arguments were heard on October 12, 2011.

Americans with Disabilities Act: *City of Arlington v. Frame*, No. 11-746, in the U.S. Supreme Court. TML and TCAA, joined by the League of California Cities, the National League of Cities, the City of Dallas, the International City/County Management Association, the U.S. Conference of Mayors, the Texas Association of Counties, and the National Association of Counties, submitted this brief to the U.S. Supreme Court. Amici argued that sidewalks are "facilities" rather than "services, programs, or activities." The brief was filed on January 11, 2012.

Property Tax: RQ-1026-GA, Taxation of pollution control property under Section 11.31, Tax Code. TML and TCAA submitted comments to the attorney general arguing that under Texas Tax Code Section 11.31 and Texas Commission on Environmental Quality (TCEQ) administrative rules, the so-called "Prop 2" pollution control property tax exemption only applies to pollution control equipment installed to reduce pollution at an industrial or manufacturing facility, and was not intended to apply to entities that use equipment to produce end products that control or reduce pollution. Consequently, TCEQ does not have the authority to exempt from taxation equipment that provides no environmental benefit at the site of the facility.

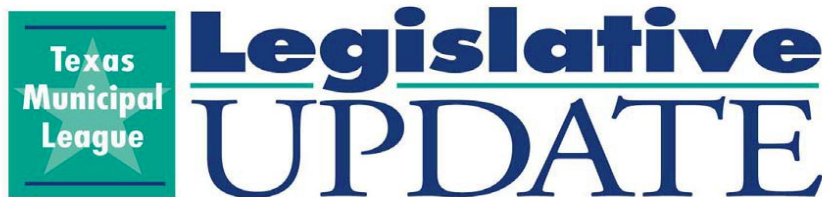
LisTCAA



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LisTCAA is a Web-based communication system that is intended to facilitate the direct exchange of information between member attorneys. It should be used to ask questions, share information, and collaborate on municipal law issues.

We encourage you and others to join this complimentary service and participate – whether you have a question, an answer, or just want to stay connected.



As a supplement to TCAA News, please check the TML Legislative Update Newsletter at:

http://www.tml.org/legis_update_current.asp

Please contact Scott Houston, TCAA General Counsel, with your news, questions, and/or comments by e-mail at legalgovt@tml.org or by phone at 512-231-7400.

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