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### **Update: General Law City Sex Offenders Litigation**

Last Tuesday, the Second Court of Appeals in Fort Worth heard oral argument in the first of what is sure to be several appeals related to the authority of general law cities to adopt sex offender residency restriction ordinances (SORROs).

Over the last decade, dozens of home rule cities and some 50 general law cities have enacted SORROs. While each ordinance may have minor variations, the essential purpose is to prohibit a person who is required by state law to register as a sex offender from establishing a residence within a certain distance of places where children gather.

In November 2015, at least 46 of the general law cities received a letter from Texas Voices for Reason and Justice (TVRJ), a “statewide criminal-justice advocacy group” that represents sex offenders, asking those cities to repeal their SORROs.

Under current law, Texas has no statewide residency restriction for registered sex offenders. Instead, statutory provisions simply require sex offenders to register with the police department in the city where they live. Additionally, the parole panel is required to establish a “child safety zone,” an area a specified distance from the premises where children commonly gather, that a releasee is restricted from entering. However, the releasee may request that the parole panel modify the child safety zone at any time after the imposition of the condition of parole. Certain sex offenders on community supervision (probation, for example) may also be required to follow these guidelines as a condition of their probation. Once offenders have completed their sentence, there are no state regulations preventing them from being around children.

The 46 general law cities that chose to enact a SORRO did so based on provisions in the Local Government Code that delegate to them the state’s “police powers,” which are those necessary to protect the health and safety of citizens.

The TVRJ letters demanded that the cities repeal their SORROs by December 19, 2015, and threatened a lawsuit against any city that has not done so. In the face of that threat, at least 13

cities chose to repeal their ordinances. Those cities did so not because they lack SORRO authority. Rather, they did so because – as small, general law cities – they have limited resources to devote to litigation.

TVRJ followed through with its threat by filing lawsuits against several of the remaining cities, including the Cities of Alvarado, Argyle, Fulton, Hickory Creek, Krum, Meadows Place, Oak Point, Ponder, West Lake Hills, and Westworth Village.

The substance of the sex offenders’ claims – that general law cities have no authority to enact a SORRO – is largely based on a March 2007 [opinion](#) from the Texas attorney general’s office. The petitions allege that, because they are incorporated under the general laws, and no general law expressly delegates the authority to enact a sex offender residency restriction ordinance, the defendant cities are not authorized to enact one.

Of course, attorney general opinions are not binding on courts. Moreover, the three-sentence conclusions in the one cited by TVRJ should be treated as *dicta* because the purpose of the opinion wasn’t to opine on general law authority, and it provides essentially no analysis as to the question of general law authority to enact a SORRO.

The League filed an *amicus curiae* (“friend of the court”) brief in the case arguing that Sections 51.001 and 51.012 of the Local Government Code provide the express prerogative to enact a SORRO as an “ordinance, act, law, or regulation” necessary for public welfare and “good order.”

The League will provide updates on this case and others as they move through the process.

## **Exempt Employee Salary Rules Coming**

In 2015, the United States Department of Labor proposed rule changes under the Fair Labor Standards Act (FLSA) that will raise the minimum salary requirement for an employee to be exempt from overtime.

Currently, an employee must meet certain “duties” tests and receive a salary of at least \$23,660 to be exempt from overtime. The proposed regulations will increase that minimum salary to \$47,892. This could mandate overtime pay to an employee who would otherwise be exempt under a “duties test,” but makes less than \$47,892.

The change would give two options to a city with employees described above: (1) raise the salary of the employee; or (2) pay the employee overtime pay or compensatory time off for any hours worked over 40 in a seven-day period.

The National League of Cities filed [comments](#) regarding these proposed rules at the Department of Labor and sent [letters](#) to the United States Congress on the issue. [Additional information](#) about the proposed rules is available from the Department of Labor.

The final adoption of the rules is expected this summer.

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