



Legislative UPDATE

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Texas Supreme Court Denies Reconsideration of Contracts Liability Opinion

A previous edition of the *Legislative Update* [summarized](#) a Texas Supreme Court decision that will affect certain city contracts. In [Wasson Interests v. City of Jacksonville](#), the Texas Supreme Court created a judicial, non-legislative waiver of governmental immunity where none had existed for decades. At issue was whether the governmental-proprietary distinction found in the Texas Tort Claims Act applies to contractual claims against a city. The Court held that it does, without any hint from the Texas Legislature that it ought to.

The City of Jacksonville filed a “motion for rehearing” with the Court asking it to re-examine its opinion, which many city attorneys see as incorrect. The League participated as *amicus* on the motion. Unfortunately, the court denied the motion on June 3. The issue will be considered by the TML Legislative Policy Committee on General Government on August 19.

Accommodation Doctrine Applies to Severed Groundwater

Last month, the Texas Supreme Court issued an opinion in [Coyote Lake Ranch v. City of Lubbock](#). The opinion concludes that the accommodation doctrine, which had previously applied only to mineral estates, applies to severed groundwater.

The case involved the City of Lubbock’s purchase of Coyote Lake Ranch’s groundwater to help supply its residents with water. The ranch’s operations consisted of agriculture, raising cattle,

and recreational hunting. The city announced plans to increase the amount of water extracted from the ranch in 2012. The ranch objected to the proposed plan, alleging that it would interfere with its surface operations and sued to enjoin the city from moving forward.

The city argued that it had full rights under the deed to pursue its water extraction plan, which included occupying the ranch, mowing the grass, and drilling wells. Additionally, it argued that the law imposes no duty on groundwater owners, as it does mineral owners, to accommodate the surface owner.

The Texas Supreme Court recognized that parties have the right to contract, which extends to a mineral owner's use of land. However, the Court pointed out that the city's deed "leaves unclear whether the City can do everything necessary or incidental to drilling anywhere, as it claims, or only what is necessary or incidental to fully access the groundwater, as the ranch argues."

The Court reviewed mineral rights cases, beginning with the 1862 decision in *Cowan v. Hardeman*, and noted that mineral and surface estates must exercise their respective rights with due regard for the other's rights. The Court stated that this principle underlies the accommodation doctrine as it applies to mineral interests that the Court announced in 1971 in *Getty Oil Co. v. Jones*.

The Court concluded the dispute over the city's right to use the ranch was much the same as that between Getty Oil and Jones. The groundwater estate is dominant for the same reason as the mineral estate. Both are benefitted by an implied right to the reasonable use of the surface and the surface estate must allow the exercise of the implied right. Because of that, the Court extended the accommodation doctrine to a severed groundwater estate and the surface estate.

Importantly, the Court distinguished that the accommodation doctrine applies to conflicts "that are *not* governed by the express terms of the parties' agreement," which seems to leave room for cities to contract around the application of the accommodation doctrine.

Peace Officer-Involved Shootings: **Attorney General Adopts Forms**

House Bill 1036, passed during the 2015 legislative session, added Articles 2.139 and 2.1395 to the Code of Criminal Procedure. These new laws require that the OAG capture and compile information on injuries or deaths resulting from the discharge of firearms both by and against peace officers in the State of Texas. A report of an officer-involved injury or death must be submitted by the relevant law enforcement agency to the OAG within 30 days of the incident.

The Office of the Attorney General (OAG) recently adopted final forms to report peace officer-involved shootings ([1 TAC §54.70](#)). The forms are available on the OAG website at <https://www.texasattorneygeneral.gov/cj/peace-officer-involved-shooting-report>.

Payday Lending Clearinghouse Updates

The League's "Payday Lending Clearinghouse" webpage, available at www.tml.org/payday-updates, includes information related to the regulation of payday and auto title lenders. It is updated from time-to-time to reflect recent developments. Interested city officials should note that the federal Consumer Finance Protection Bureau has proposed a rule regulating payday lending nationwide. For more information, visit the clearinghouse page.

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