

# Recent State Cases of Interest to Cities

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# *City of Dallas v. Stewart*



# *City of Dallas v. Stewart*

- Real nuisance means no value and no taking but . . .
- Court not administrative determination
- *City of Dallas v. Stewart II*: has only 30 days to file an appeal with takings argument

# Tort Claims Act: Elections of Remedies

- *Amadi v. City of Houston*, No. 14–10–01216–CV ,2011 WL 5099184 (Tex. App.–Houston [14 Dist.] 2011, pet. filed).
- Cited by 16 cases (so far).



# Election of Remedies

- Texas Civil Practices and Remedies Code

## § 101.106

The 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 by the plaintiff against the governmental unit regarding the same subject matter unless the governmental unit **consents**.



***City of Houston v. Jenkins*, No. 14-11-00091-CV, 2012 WL 456950 (Tex. App.—Houston [14th Dist.] Feb. 14, 2012, pet. filed).**



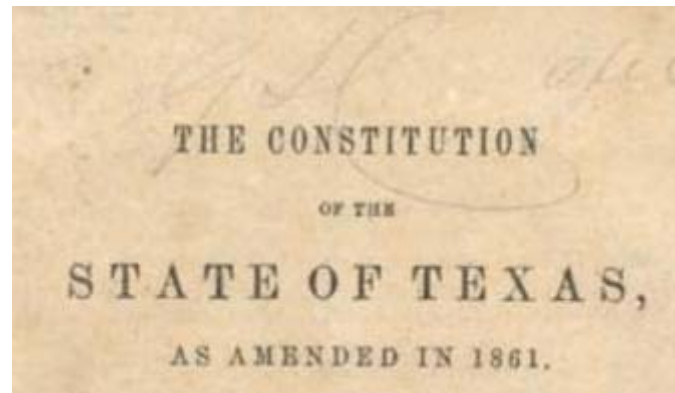
v.



# *City of Houston v. Jenkins*

- Tort Claims Act: Official Immunity
- When does dog go “off duty”?
- Liable for dog bite if bite occurs during ministerial duties

***De Leon v. City of El Paso*, 353 S.W.3d 285 (Tex. App.—  
El Paso Oct. 26, 2011).**



No Governmental Immunity for  
Constitutional Equal Protection  
Claims





***Tirado v. City of El Paso*, 361 S.W.3d 191 (Tex. App.—El Paso Jan. 11, 2012).**

- Obstructed stop sign causes injury
- City can be liable because of duty to maintain easements
- Cannot be shifted to landowner



***City of Paris v. Abbott*, 360 S.W.3d 567 (Tex. App.—  
Texarkana Oct. 21, 2011, pet. denied).**

- Letter from the City Manager Carruth:

*Notwithstanding any current moratoriums which may affect the property and as long as the property continues to be used as a mobile home park, its non-conforming use will be allowed. Further, this right to non-conforming use will transfer to you if you buy the property, and will be transferable by you to a new owner of the property.*

- Contract?



## *City of Paris v. Abbott*

- No.
  - No consideration
  - Cannot waive immunity by conduct

***RCI Entm't, Inc. v. City of San Antonio*, No. 04-11-00045-CV, 2012 WL 392930 (Tex. App.—San Antonio Feb. 8, 2012).**

**Sexually Oriented Business Ordinances**

**Preempted?**

**Penal Code-No**

**Poll Tax-No**

**Unconstitutional Content Restriction-No**



***8100 North Freeway, LTD. v. City of Houston*, No. 14-11-00301-CV, 2012 WL 749812 (Tex. App.—Houston [14th Dist.] Mar. 8, 2012).**

- Can a city require a direct line of sight at adult arcades?
- What is an adult arcade?
- Are there negative secondary effects from this . . . .



## *8100 North Freeway, LTD. v. City of Houston*



*City of Beaumont v. Starvin Marvin's Bar & Grill, L.L.C., No. 09-11-00229-CV, 2011 WL 6748506 (Tex. App.—Beaumont Dec. 22, 2011) (mem. op.).*



## *City of Beaumont v. Starvin Marvin's Bar & Grill, L.L.C*

- No vested property right to have a restaurant with live music





***City of San Antonio v. Diehl*, No. 08–10–00204–CV,  
2012 WL 1421877 (Tex. App.—San Antonio Apr. 25,  
2012).**

- City overpays workers compensation benefits with Chapter 143 line of duty payments
- Instead of taking it out of payments, city overpays and then takes overpayment out of future pay
- Texas Labor Code § 504.051: “If benefits are offset, the employer may not withhold the offset portion of the employee's wages until the time that benefits under this chapter are received.”



# City of San Antonio v. Diehl

- Diehl speaks:
- [Cross Examination]
  - Q. All right. Now, we had said or mentioned to the court awhile ago that a lot of officers have monthly deductions. Are you aware of that fact, that quite a few police officers have monthly deductions from their bi-weekly paycheck?
  - A. As an example—
  - Q. An example, yourself. Do you have monthly deductions?
  - A. Association dues.
  - Q. All right. Child support?
  - A. Child support, yes, sir.
  - .
- Q. Okay. Now, if you had only received 30 percent of your regular pay you would have had a problem meeting these deductions, would you not, I mean financially?
  - A. Yes, sir.
  - Q. All right. So it was a benefit to you if you received a full—the full line-of-duty pay, was it not?
  - A. Yes.
  - ...
- Q. And you were aware that you were going to—that the city intended to recoup those overpayments from you, were you not?
  - A. I knew that they were going to recoup something.

You owe the city some money back, you're welcome.



***Mata v. City of San Antonio*, No. 04–11–00311–CV,  
2012 WL 1364594 (Tex. App.—San Antonio Apr. 18,  
2012) (mem. op.).**

- Just say no to using cocaine
- Past practices prevail otherwise you would have been fired the first time.



***Leyva v. Crystal City*, 357 S.W.3d 93 (Tex. App.—San Antonio  
Oct. 12, 2011).**

- Whistleblower didn't follow administrative process to complain about termination
- City's policy did not provide procedure for terminated employee to file a grievance
- Thus, city loses step in fighting whistleblower claim
- Morale: make sure your city's policy includes grievance procedure for current and past (terminated) employees



*City of New Braunfels v. WWGAF, Inc., 11-10-000009-CV, 2012 WL 423919 (Tex. App.—Eastland Feb. 2, 2012, pet. filed) (mem. op.).*

- Step 1: Have city attorney sign/approve each ordinance
- Step 2: If Step 1 does not occur, be sure to argue that the ordinance automatically became valid under the validating acts in the trial court.
- Step 3: Appeal to Supreme Court.



***Zumwalt, et. al. v. City of San Antonio, acting by and through its San Antonio Water System Board of Trustees, 2012 WL 1810962 (Tex. App.—Austin May 17, 2012) (mem. op.).***

Helotes Dump Site Fire



***Zumwalt, et. al. v. City of San Antonio, acting by and through its San Antonio Water System Board of Trustees***

- SAWS is not an “operator” of the dump site, and thus responsible for cost of fire fighting, because providing water and regulating how it is used is not enough



*Atmos Energy Corp. v. Cities of Allen*, 353 S.W.3d 156 (Tex. Nov. 18, 2011).

- Get a GRIP
- Railroad Commission has appellate jurisdiction over a city's denial of an interim rate increase
  - But is limited to review of utilities' filings for compliance with Gas Utility Regulatory Act and applicable administrative rule

