



THE TEXAS MUNICIPAL LAWYERTM

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FIRST AMENDMENT RIGHTS OF ELECTED OFFICIALS UPHELD IN LANDMARK CASE

A recent decision of the US Court of Appeals for the Fifth Circuit held that the First Amendment's protection of elected officials' speech, even when made pursuant to their official duties, is analogous to that afforded regular citizens. Additionally, the Court held that if a state seeks to restrict the speech of elected officials on the basis of content, it must show that the regulation: (a) furthers a compelling state interest, and (b) is narrowly tailored to serve that interest.

The case (*Rangra, et al. v. Brown, et al.*) arose from alleged violations of the Texas Open Meetings Act ("TOMA") by a quorum of the Alpine City Council for their discussion of public matters via email outside of an open meeting. The district attorney prosecuted the charges, but later dropped them. Fearing future prosecutions and restrictions of their free speech rights, the accused council members brought a civil action against the district attorney and the AG. The trial court dismissed the council members' suit, holding that elected officials, like public employees, enjoy no First Amendment protection of their speech made pursuant to their official duties.

The Fifth Circuit reversed the dismissal stating that, unlike public employees, elected officials are dif-

ferent because their role in society makes it imperative that they be allowed to freely express themselves on matters relevant to the public. The Court also considered section 551.144 of TOMA to be content-based because whether a quorum of public officials may communicate with each other outside of an open meeting depends on whether the content of their speech refers to "public business."

The case is being remanded back to the trial court so the state can try to establish that section 551.144 is narrowly tailored to further a compelling state interest. If the state can prove these two requirements then the law will stand, otherwise it may be unconstitutional.

INTEGRITY AT CITY HALL

Can a city council member represent private clients before municipal boards?

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Yes, absent a local ethics ordinance or home-rule charter provision to the contrary. If the council member is being paid to advocate on a client's behalf, the council

member probably has to file an *affidavit* with the city secretary and abstain from any council action on the subject pursuant to Tex. Loc. Gov't Code Ch. 171. The council member must also file a *Conflicts Disclosure Statement* with the city

explaining the business relationship with the private client under Tex. Loc. Gov't Code Ch. 176. When walking the fine line between official and private business, the council member must be careful not to take any actions that could be construed as Abuse of Official Capacity, Coercion of a Public Servant, Misuse of Official Information, or Obstruction of a Public Servant, all of which are criminal offenses under Tex. Pen. Code Art. 36-39.

Furthermore, council members who are attorneys in private practice and their law firms are prohibited from representing clients before municipal boards or courts, according to the rules governing lawyers. Council members in other professions should consult their profession's code of ethics for additional guidance.

EDUCATIONAL OPPORTUNITIES

- **August 20-21:** Alan coordinates and hosts the '09 Legislative Update for the Texas Municipal Clerks Association, in Irving, TX. Associate Trey Jackson will be presenting updates on Water & Wastewater issues.
- **September 4:** Alan speaks on Employment Law & the Net, for the Texas Municipal Human Resources Association's Employment Law Seminar, at Moody Gardens, Galveston, TX.

TEAM PROFILE: DAMIEN SHORES, LAW CLERK



Damien Travis Shores graduated Phi Beta Kappa with a Bachelor of Arts in History from the University of Texas at

Austin. He is currently a third-year law student at St. Mary's School of Law in San Antonio and a member of Phi Delta Phi. Prior to joining the firm he was a Mickey Leland intern with the Texas Commission on Environmental Quality where he conducted legal research and wrote memoranda for attorneys in the litigation and environmental law divisions.

As the firm's law clerk, Damien performs extensive research and writing in assisting the firm's attorneys and clients with legal needs. Damien also drafts conference papers and articles for the firm's monthly newsletter. Recently, Damien spent two weeks in May on vacation in Thailand.



CLIENT NEWS: DRIPPING SPRINGS FARMERS MARKET A HUGE SUCCESS

On June 20, 2009, the Dripping Springs Farmers Market, sponsored by the City of Dripping Springs Parks, Recreation and Open Spaces Department, officially began. The Farmers Market is held at the intersection of RR 12 and US 290 from 9-11 a.m. the 1st and 3rd Saturdays of each month, until the 3rd Saturday of October 2009.

According to Dripping Springs City Secretary and Farmers Market Co-Manager JoAnn Touchstone, the citizens of Dripping Springs are very pleased with the success of the bi-monthly event. She added that most of the attendees of the farmers market previously had to commute to Austin to receive fresh produce, but the addition of the Farmers Market in Dripping Springs has presented citizens more local and fresh options.

The Farmers Market currently has 11 individual local vendors who sell fresh fruits, vegetables, flowers, beef, lamb and eggs. Ms. Touchstone stated that there are plans to add the availability of homemade soaps and locally harvested honey.

For more information about the Drippings Springs Farmers Market, please visit <http://dsfarmersmarket.yolasite.com/>

or contact JoAnn Touchstone at jtouchstone@cityofdrippingsprings.com.



LEGAL Q & A

Q Does a Municipality need a Certificate of Convenience and Necessity (CCN) to provide water and sewer services?

A Usually not, particularly inside the City Limits. A CCN is a monopoly service area granted by the TCEQ. Many cities apply for CCNs outside their ETJ's to control future growth in the environs of the ETJ. There are, however, good reasons to seek a CCN both inside and outside the city. CCNs are becoming a tool for growth management.

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