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# THE TEXAS MUNICIPAL LAWYER™

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## DEADLINE FOR ADA CLAIMS

In the case of *Frame v. City of Arlington*, the Fifth Circuit Court of Appeals held the statute of limitations (two-years in Texas) for bringing a non-compliance claim under the Americans with Disabilities Act (ADA) begins to run when the city completes the construction or alteration of the non-complaint structure, and the burden of proving expiration of the limitations period is on the city.

The case arose when a group of disabled persons who depend on motorized wheelchairs for mobility filed suit seeking injunctive relief (repairs) against the City of Arlington for failing to make the city's curbs, sidewalks, and certain parking lots ADA-compliant. The district court dismissed the suit upon the city's motion that the suit was barred by the two-year statute of limitations. The plaintiffs appealed.

The ADA prohibits public entities from discriminating against individuals by excluding them from the benefits of public services, programs, or activities. Curbs, sidewalks, and parking lots can create liability under the ADA. The plaintiffs claimed that the limitations period began when they "discovered" the non-compliant structures, while the

city claimed that period commenced when construction was completed. The appellate court agreed with the city; however, the court remanded the case to district court so the city can actually prove the statute of limitations expired.

## OPEN MEETINGS ACT CHALLENGE

The Open Meetings Act lawsuit (*Rangra v. Brown*; mentioned in our August '09 newsletter) made it to the Fifth Circuit Court of Appeals, but was dismissed due to lack of "standing" (i.e., the plaintiffs' terms of office expired before the Fifth Circuit heard oral arguments in the case). As a result, an entirely new lawsuit based on the same legal principals is being brought by officials from several Texas cities. If you are a city official and believe the threat of imprisonment for casual conversations about city business violates your First Amendment right to *freedom of speech*, there is an opportunity to become a plaintiff in the new lawsuit. Interested persons should contact **Rod Ponton**, Alpine's City Attorney, at [rod\\_ponton@yahoo.com](mailto:rod_ponton@yahoo.com), or **Scott Houston**, TML's Director of Legal Services, at [shouston@tml.org](mailto:shouston@tml.org).

## EQUAL PROTECTION IN PERMITTING

The U.S. Court of Appeals for the Fifth Circuit recently ruled a district court's dismissal of an equal protection claim was improper when a city denied an applicant's request for a license to operate a used car dealership while granting the license to a similarly situated party.

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## EDUCATIONAL OPPORTUNITIES

- **February 26, 2010:** Alan presents his paper, "Open Government & The Net: Bringing Social Media into the Light", as a panelist at a conference for the City-County Communications and Marketing Association. The event is titled, "Back to the Future: The Digital Natives are Restless," and will be held at the historic Uptown Theater in Grand Prairie, TX. <http://www.3cma.org/index.aspx?nid=478>
- **February 27, 2010, 10:30 a.m.:** Alan speaks on "Access to Government Records" for the People's Law School program at the University of Texas Law School
- **March 24-26, 2010:** Alan speaks on both *Zoning Procedures* and *Tree Preservation* at the University of Texas School of Law's annual **Land Use Conference** in Austin, Texas

The case (*Lindquist v. City of Pasadena, Texas*) arose when the City denied the Lindquists a license to operate a used car dealership because the proposed location of their business violated the City's licensing ordinance. However, the City granted the Lindquists' competitors a license to operate a used car dealership on a lot similar. The Lindquists sued the City alleging that the ordinance was facially invalid under both the U.S. and Texas Constitutions -- asserting (1) the ordinance violated their equal protection rights; and (2) the City Council's arbitrary denial of their request for a license violated their due process rights.

In support of their equal protection claim, the Lindquists alleged no *rational basis* exists for the disparate treatment. The district court dismissed the case for failure to state a claim because it sounded like a *selective enforcement* case and was therefore deficient in the absence of any allegation that the City's actions were motivated by illegitimate aims or ill will. The Fifth Circuit reversed, stating that to bring an equal protection claim for denial of a permit or license, the plaintiff must show that the difference in treatment with others similarly situated was *irrational*. To show the irrational basis, the plaintiff must carry the heavy burden of negating any reasonably conceivable state of facts that could provide a rational basis for their differential treatment. The case was

remanded to the lower court so the Lindquists can attempt to meet this burden. Their due process claim, however, was properly dismissed because it was essentially the equal protection claim recast as a due process claim.

**CLIENT NEWS**

**Dripping Springs, Texas**—The 23rd Annual Founders Day Celebration will be April 9-11, 2010. For more information, please go to FoundersDayFestival.com.



**Salado, Texas**—Congratulations to Dianna Zulauf for receiving her recertification as a Municipal Clerk. Way to go, Dianna!

**INTEGRITY AT CITY HALL**

**Q:** May a city council member accept transportation, meals and lodging from a corporation in return for participating in a seminar if the reason they were invited is their position with the city?

**A:** Accepting payment of these expenses is not a violation of Texas Penal Code § 36.07 (Honorarium) if they are in con-

nection with the council member providing services, such as making a presentation to the audience. The payment could be a prohibited political contribution under Election Code Ch. 251 if it is intended to defray expenses related to an official activity that are not reimbursable with public money. Ethics Advisory Op. No. 484 (Aug. 6, 2009).

**ABOUT THE FIRM**

We have a couple of new faces at the firm. Please welcome both team members when you talk to them.

Jill Hoffman has joined as an associate at the firm. Ask her about her experience in the Peace Corps; it's quite fascinating.

Kathy Williams has joined us from Emerson as the new office manager. She has over 28 years of experience, and we are very pleased she has joined the team.

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