



THE TEXAS MUNICIPAL LAWYER™

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WHO OWNS THE DIRT? EASEMENT VS. OWNERSHIP

There has long been confusion among private landowners and municipalities regarding who owns the land under an easement granted to a municipality. An easement is the right to use the land of another without owning the land. A common type of easement is a right-of-way granted to a municipality for public use. Just because the municipality has a right to pave the surface or bury pipe, does not necessarily mean the municipality owns the dirt. In short, if all that was conveyed to the municipality was an easement, the landowner, not the municipality, owns the land. However, the landowner is subject to the municipality's public uses. To settle these easement conflicts, it is important to determine the landowner's and the municipality's rights.

According to case law, landowner rights to the land under easements are limited. Landowners have standing if the property is damaged by an individual not affiliated with a municipality conducting activity for a public purpose on the easement. For example, if a worker not affiliated with a municipality damages the landowner's property while working in a public easement, then the landowner has standing to sue. However, had a municipal worker or a municipal contractor damaged the easement property conducting work for a public purpose, the landowner would not have standing to sue.

Municipal rights to easements are broad if related to a public use. The city has a right to enter and use a public easement in any way consistent with the easement's purpose. Public purpose easements range from street right-of-ways to utility pipelines. Some courts say a public use is one that is: regulated by the state, and affects a public interest. This broad test can lend almost any easement for a "public use." Additionally, the easement's use can change as long as it is a "compatible use" to the original purpose in the dedication. Therefore, if the easement was created for public use and if changed, the use is compatible, then the municipality has a duty to maintain the easement and an absolute right to enter and alter the property.

To avoid uncertainty between the landowner's and municipality's rights, some government agencies are now acquiring fee simple title (i.e., full ownership) of the land for roads, drainage, and utilities, rather than mere easements.

INTEGRITY AT CITY HALL

Q: May a public official accept expenses for meals, lodging and transportation costs in exchange for a speaking engagement at a conference or similar event?

A: Yes. Section 36.07 of the Penal Code does not prohibit these types of expense reimbursements at a conference or similar event in which the public servant renders a service, such as a speaking en-

agement. However, if the expense is intended to defray a political cost that is not reimbursable with public money, the official would not be allowed to accept it. (Continued on Page 2)

HO, HO, HO!!

December 7th, 2012

5:00 pm - 11:00 p.m.

Annual Christmas Party
& 10th Anniversary

Celebration. Live Music, Food, Fun!!



[View Invitation](#)

SimpliCITY™
Municipal Law Training

SimpliCITY Training Literature is available for download at:
www.texasmunicipallawyers.com/training-cityofficials.html

UPCOMING EDUCATIONAL OPPORTUNITIES

March 21-22, 2013

17th Annual Land Use Planning Conference, Austin, Texas

Alan will present a session on Chapter 245 of the Texas Local Government as it relates to nonconforming structures and grandfathering.

PAST EDUCATIONAL OPPORTUNITIES

December 6, 2012

Texas Certified Public Manager Seminar, San Marcos, Texas

Alan presented a session on *Open Government* to municipal, non-profit, and private sector professionals

Have any *City Hall Hearsay* to share? Email us at:

texasmunicipallawyers@gmail.com

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Recent ethics issues in the news regarding use of political contributions to pay property taxes and house payments by Texas officials, are two examples of prohibited use of public funds. If in doubt, check with the Texas Ethics Commission at:

<http://www.ethics.state.tx.us/>

CLIENT NEWS

City of Troy



Troy Safe Routes Ground Breaking

Members of the Troy community recently participated in a ground breaking ceremony held at Mays Elementary School for the Safe Route to School Project. The project allows for construction of a sidewalk from Church Street to Mays Middle school and will help promote a partnership within the community to combat childhood obesity by encouraging a healthy and active lifestyle.

**City of Fairfield
December 9, 2012**

Christmas Tour of Homes

For more events, visit:

<http://fairfieldtexas.com/>

**City of Salado
December 8 & 9, 2012**

Christmas Stroll

For more information, visit:

<http://www.saladotx.gov/annualevents.html>

**City of Lakeway
Through January 1, 2013**

City Hall Trail of Lights

1102 Lohmans Crossing

For more information visit:

<http://www.cityoflakeway.com/index.aspx?NID=721>

ABOUT THE FIRM

Alan, Cathy, Dottie, Elaine, Jill, Joseph and Sarah thoroughly enjoyed the International Municipal Lawyers Association (IMLA) Conference this year in Austin.

We are proud to have been a part of the conference and appreciate



Alan Receives IMLA Award

the opportunities and recognition firm members received. In addition to speaking opportunities for Jill and Joseph, and Dottie's recognition as a Local Government Fellow, Alan is the 2012 recipient of the IMLA President's Award for Most Outstanding State Chairperson.

We are proud to announce Senior Associate Cathy Riedel was recently recognized by the Texas



Cathy's Award

Court Clerks Association (TCCA) Board of Directors with an award for her support and dedication to TCCA at the Annual Conference in Galveston. She also attended the conference and presented an informative session on juvenile offenders called, "The Devil Made Me Do It: Adolescent

Decision Making."

Jill and Sallie recently hosted a development review workshop for local officials and staff members at the



City receives hands-on training

City of Troy. The hands on interactive event resulted in streamlining the development review process while ensuring equitable review and full enforcement of city ordinances.

For more information, or to schedule training, please contact Jill or Sallie at 512-250-0411.



HEARSAY...

Recently overheard by firm members at City Hall:

"I brought a couple one dollar bills to give you if it has gotten that bad." – *Citizen at Liberty Hill city council meeting complaining of a recent tax increase.*



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