



Current Immigration Issues Facing Texas Municipal Courts

by:

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Overview:

Alan is the principal of the Bojorquez Law Firm, PLLC in Austin, which exclusively represents municipalities state-wide. Alan previously served as in-house legal counsel for the Texas Municipal League. The firm serves as *City Attorney* and provides *Special Counsel* services to several cities across the state (home rule & general law). The firm's practice emphasizes the law regarding Economic Development, Elections, Environment, Ethics, Land Use & Development, Litigation, Open Government, Personnel, Real Estate and Utilities.

Education:

Texas Tech University (Doctor of Jurisprudence, Master of Public Administration, Bachelor of Arts-English/Political Science)

Professional Memberships:

- American Planning Association (Member)
- American Society for Public Administration (past National Council Member)
- International Municipal Lawyers Association (Member & Conference Presenter)
- State Bar of Texas – Government Lawyers Section (past Council Member)
- Texas City Attorneys Association (Member & Conference Presenter)

Notable Litigation:

Lead counsel in the City of Georgetown's successful Texas Supreme Court challenge of an adverse Attorney General's Open Records decision (*Russell v. Cornyn, 2001*)

Publications:

- *Texas Municipal Law & Procedure Manual*, Texas Municipal Clerks Association (5th Edition)
- *Religious Displays at City Hall*, Texas Town & City Magazine, Fall 2005
- *U.S. Supreme Court Validates Moratoriums*, Texas City Attorney Association Newsletter, Summer 2002
- *Sand Dollars: The Need for Coastal Erosion Prevention & Response in Texas*, State Bar of Texas Environmental Law Journal, Winter 1999

Presentations:

- *Give Me A Sign: Municipal Regulating of Signage*, UT Land Use Conference, March 2008
- *Development Agreements*, University of Texas Land Use Law Conference, March 2005
- *Blinded by the Light: Ethical Implications of "Sunshine Laws" for Governmental Attorneys*, State Bar of Texas Annual Meeting, Government Lawyers Section, June 2004
- *Ethics Commissions*, International Municipal Lawyers Ass'n Conference, October 2004
- *Public Access: The Basics of Open Meetings & Open Records*, Association of Mayors, Councilmembers & Commissioners Annual Conference (TML), July 2002

Honors & Appointments:

- *Outstanding Alumnus*, Master of Public Administration Program, Texas Tech University (2005)
- Adjunct Professor of Political Science, Texas State University-San Marcos (1999-2003)
- *McGrew Research Award*, American Society for Public Administration, CenTex (2003 & 2001)
- *Distinguished Alumnus Award*, Socorro High School (2001)

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In the News

Harris County, TX District Attorney's office proposed this May to bar illegal immigrants from receiving plea deals. The plan, which was proposed by District Attorney Patricia Lykos, would make any defendant who is in the country illegally, ineligible for probation OR deferred adjudication, including mandatory probations under State law. Under the plan, plea papers would be redrafted for defendants to swear to their immigration status. If defendants refuse to sign, they will not be eligible for any plea bargains and their cases will be set for trial. If the accused lies, he or she could be prosecuted for perjury. This proposed "No-Probation" plan has drawn outrage from local Hispanic leaders, criminal defense attorneys, and legal scholars who questioned its constitutionality. However, ICE (Immigration and Customs Enforcement) and the anti-illegal immigrant group, Border Watch, support the plan. At press time, the plan is still under review and all illegal immigration issues in Harris County courts are being handled on a case-by-case basis.

Irving, TX created quite a buzz in 2007 when it was referring illegal immigrants, including those arrested for Class C Misdemeanors, to ICE for detention and deportation. It led to the Mexican Consulate to issue a travel warning advising Mexican citizens to avoid Irving, Texas. Eventually, ICE declined to place holds on several suspected illegal immigrants because they faced only Class C Misdemeanors. Instead, ICE is directing local authorities to refer people suspected of Class B Misdemeanors or higher. Apparently, ICE felt that the Irving PD was abusing CAP (Criminal Alien Program), a partnership program ICE created to work with local law enforcement to help identify criminal unauthorized immigrants.

Farmers Branch, TX must pay \$470,000 in legal fees as a result defending an ordinance that would block apartment rentals to illegal immigrants. \$250,000 to apartment operators and \$220,000 to the advocacy organizations who sued the City over the ordinance. In total, the City's attempts to oust illegal immigrants have cost it's taxpayers more than \$2 million in legal fees. The City also faces additional lawsuits over a new version of the rental ban. *See Villas at Parkside Partners v. City of Farmers Branch, Texas* below.

Case Law Update

Villas at Parkside Partners v. City of Farmers Branch, Texas, 577 F.Supp.2d 858 (N.D. Tex. 2008). - On May 28, 2008 a federal Judge struck down a Farmer's Branch ordinance designed to block apartment rentals to illegal immigrants. The judge held that the ordinance was preempted by federal immigration law based on the supremacy clause of the U.S. Constitution. Secondly, the ordinance was unconstitutional based on the Due Process Clause of the 14th Amendment because it was void for vagueness (i.e. The ordinance did not sufficiently define the offense that would subject a landlord in Farmer's Branch to criminal penalties).

Lozanov. City of Hazleton, Pennsylvania, 496 F.Supp.2d 477 (M.D. Pa., 2007). – On July 26, 2007 a federal judge struck down a local ordinance that punished landlords who rented to illegal immigrants and businesses that hired them. The judge held that the ordinance was unconstitutional because the regulation of employment of undocumented workers was preempted by federal law. Furthermore, the provision punishing landlords violated the due process rights of tenants/landlords.

Gray v. City of Valley Park, Missouri, No. 07-0088, 2008 WL 294294 (E.D. Mo., 2008). - On January 31, 2008 the federal judge in this case upheld the right of local governments to enforce laws against illegal immigration by denying business licenses to employers who hire illegal aliens. The ordinances at issue in this case required employers to use the federal government's E-Verify program to determine the eligibility of potential employees. In addition, every business entity that applies for a business license to engage in any type of work in the city must sign an affidavit, prepared by the city attorney, affirming that they do not knowingly utilize the services or hire any person who is an undocumented worker. The judge rejected the plaintiff's preemption, due process, and equal protection challenges to the ordinance.

Chicanos Por La Causa, Inc. v. Napolitano, 544 F.3d 976 (9th Cir. 2008) – This past September, the Ninth Circuit upheld a federal district judge's ruling in this matter. The ruling holds that an Arizona law called the Legal Arizona Worker's Act is not preempted by federal law and does not violate the due process, or commerce clause of the constitution. The law authorizes the state court to suspend or revoke the business licenses of employers who knowingly hire "unauthorized aliens," as defined under federal law, and mandates that employers utilize an Internet-based system known as E-Verify, established by the U.S. Department of Justice, to confirm a new employee's eligibility for employment.

Texas Attorney General Update

Opinion No. GA-0695

When asked about the constitutionality of proposed legislation that would provide for the suspension or revocation of the business license of employers of undocumented aliens, the AG said that if the Texas Legislature were to enact a statewide licensing statute that closely tracks the Legal Arizona Workers Act (at issue in *Chicanos Por La Causa, Inc. v. Napolitano* above), and the Fifth Circuit Court of Appeals were to adopt the reasoning of the Ninth Circuit Court of Appeals, such a statute would be upheld on the grounds that, as a licensing statute, it is within the exception to the Federal Immigration Reform and Control Act of 1986.

Opinion No. GA-0696

When asked about the duties and compensation of foreign-language interpreters appointed under Code of Criminal Procedure article 38.30, the AG said that in a criminal proceeding, foreign-language interpreters are required to interpret for a witness or the person charged. They are not required to perform translation work for the district attorney in preparation for a criminal proceeding, and their compensation under article 38.30 does not cover such work. As far as funding for translation services needed by the district attorney (or county attorney performing the duties of a district attorney) to prepare for trial, the county may not reduce the funding it provides the prosecutor's office as a result of any State funding. The commissioners court has authority to prepare the county budget, but it can be enjoined from adopting a budget that fails to provide essential funding for a prosecuting attorney's office.

Opinion No. GA-0699

When asked whether the Texas Legislature has the authority to deter local governments from adopting policies that hinder enforcement of federal immigration laws, the AG said that the Texas Legislature is not prohibited from adopting some form of legislation designed to compel local governments to comply with any duties they may have under federal immigration laws, so long as such legislation is not inconsistent with federal law.

Legislative Update

Texas H.B. 266 – This bill, introduced by Leo Berman (R-Tyler) would prohibit admission of illegal immigrants to public institutions of higher education. It essentially amends the Education Code to require the verification of a person’s legal immigration status before they may be admitted or readmitted to any public institution of higher education. This bill never made it out of committee before the legislative session ended.

Texas S.B. 362 – This bill would require voters to present their identification to an election officer before they could vote. Known as the “Voter ID Bill,” it created a great deal of controversy this last legislative session. The legislative session ended before the bill was passed. However, Governor Perry has called a Special Session.