

PREEMPTION: WILL THE REAL KING PLEASE RISE



Prepared and Presented by

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In 1990, Bonnie began her legal career and over the years has practiced in numerous areas such as in education law, state and local government, government contracts and construction litigation. In 2003, Bonnie opened her law office practicing primarily in the areas of state and local government law. Since 1994, Bonnie has served as the Assistant City Attorney for the Town of Flower Mound and the City of McKinney, Texas, among others. She is currently the City Attorney for the City of Princeton and the City of Pecan Hill, the prosecutor for the City of Balch Springs and assists the cities of Jacksboro, Highland Village, Nevada, McGregor and Glenn Heights with special development, code enforcement and land use issues. She routinely represents and advises local governments on a variety of issues, including contracts, procurement, construction, employment, code enforcement, land use, planning and zoning issues, variances, and municipal court.

Bonnie received her Bachelor of Arts degree at Hood College, Frederick Maryland in 1984, and her law degree in 1990 from George Washington University, the National Law Center, in Washington, D.C. Bonnie has authored and presented papers to various groups, including the GCAT, Texas Municipal League, the North Central Texas Council of Governments and Police Training Academy and the Texas Municipal Courts Education Center. Bonnie is fluent in Spanish and was named Legal Counselor to the Mexican Consulate in Houston on March 20, 1998. In February of 2003 she was appointed the Presiding Judge for the City of Cockrell Hill and in August of 2004 she became an Associate Judge for the City of Dallas, recently resigning to run for office and has served as the Chief Presiding Judge of the City of Royse City since 2007.

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"Laws Affecting Local Regulations and Public Resources for Non-Legal Immigrants" presented by Diane Wetherbee and Paige Mims, City of Plano. at the 2008 TCAA Summer Conference;

"Municipal Regulation of Alcohol" presented by Steven L. Weathered at the 2007 TCAA, TML 95th Annual Conference;

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I. ORDINANCES: MUNICIPAL AUTHORITY TO CREATE

A. HOME RULE MUNICIPALITIES

A home rule city, derives its power from the Texas Constitution, and may adopt an ordinance or charter provision, subject only to limitations imposed by the Legislature. In other words, a home rule city may adopt an ordinance and exercise its general police power to the extent not prohibited by the United States or Texas Constitutions or federal or state law.¹ The state legislature, however, can limit or augment a home-rule municipality's self governance.²

B. GENERAL-LAW MUNICIPALITIES

General-law municipalities, on the other hand, can exercise police power only as specifically authorized by the general laws of the United States or Texas Constitution or federal or state law.³ The Legislature has created the distinct forms of governments for each general law city.⁴ Inasmuch as a general law municipality can only exercise that power specifically authorized by statute, each such municipality must look to the specific statutory authority relative to its form of government for the nature and extent of its applicable authority.⁵

It is impossible to generalize the authority of each type of municipality; however, Chapter 51 of the Texas Local Government Code provides:

The governing body of a municipality may adopt, publish, amend or repeal an ordinance, rule, or police regulation that:

- (1) is for the good government, peace or order of the municipality or for the trade and commerce of the municipality; and
- (2) is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality.⁶

The provisions for the enforcement of municipal ordinances and the range of penalties is found in Chapter 54 of the Local Government Code, specifically:

- (1) The governing body of a municipality may enforce each rule, ordinance, or police regulation of the municipality and may punish a violation of a rule, ordinance, or police regulation.

- (2) A fine or penalty for the violation of a rule, ordinance, or police regulation may not exceed \$500. However, a fine or penalty for the violation of a rule, ordinance, or police regulation that governs fire safety, zoning, or public health and sanitation, including dumping of refuse, may not exceed \$2,000.
- (3) This section applies to a municipality regardless of any contrary provision in a municipal charter.⁷

As a practical matter, the ordinance will stipulate whether a violation of the particular ordinance imposes a maximum fine of \$500.00 or \$2000.00. The judge generally sets a standard window fine and a fine within the range of one dollar to the maximum limit may be imposed at time of trial by the judge or jury.

Notwithstanding the foregoing, a Type B General Law Municipality may prescribe the fine for the violation and if it is a jury trial, the fine may only be imposed upon the jury's verdict.⁸ A seemingly forgotten provision from a previous century (1875) provides:

On a two-thirds vote of the members present, the governing body of a Type A general-law municipality may remit a fine or a penalty, or a part of a fine or penalty imposed or incurred under law or under an ordinance or resolution adopted in accordance with law.⁹

Within the parameters of this global declaration of authority, one must consider whether the federal government or state government has enacted legislation which pre-empts in whole or in part, the regulation in a particular area, either expressly or implicitly. The debate of whether a particular regulation is preempted guarantees job security to most attorneys, especially in the area of implied preemption.

II. DOCTRINE OF PREEMPTION

A municipality may only enact an ordinance that is consistent, and does not conflict, with federal and state law. Essentially, municipalities are prohibited from adopting ordinances that are covered by a federal or state statute, or where the legislature intended federal or state law to exclusively occupy the field. However, the mere fact that the legislature has passed a law on a particular subject matter does not mean the subject matter is completely preempted. If any reasonable construction can leave intact both a state statute and local ordinance, pre-emption does not occur.¹⁰

However, what constitutes an absolute preemption versus a case of conflict without preemption is generally left to the courts. For example, a comprehensive animal control ordinance, due to its broad application, was not preempted by the state's "first bite" law.¹¹ This is likely to still be the case; however, dangerous dog procedures under the Texas Health & Safety Code, §522.001 *et seq.* will likely preempt any procedures related specifically to the classification, determination and disposition of dangerous dogs, as therein defined.

As a general rule of thumb, if a state statute or federal regulation sets forth specific rules, procedures or penalties, the municipality, if it adopts an ordinance, should mirror that rule, procedure or penalty. If the statute does not completely address all issues, the doctrine of preemption will likely allow non-conflicting provisions that may have some overlap.

A. EXPRESS PREEMPTION

Express preemption occurs when a federal or state law has a provision that plainly prohibits states and municipalities from legislating in that area. The Texas Penal Code expressly preempts ordinances relative to criminal offenses, specifically:

No governmental subdivision or agency may enact or enforce a law that makes any conduct covered by this code an offense subject to a criminal penalty.¹²

Additional express preemption provisions are found in the following non-exhaustive examples.

- **Immigration:**

The Immigration and Reform Control Act (IRCA)¹³ expressly preempts any state or local law that attempts to impose civil or criminal sanctions upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

- **Telecommunications**

The Federal Telecommunications Act¹⁴ provides:

(a) In general

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(b) State regulatory authority

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this

title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) State and local government authority *[aka “Safe Harbor Provision”]*

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

(d) Preemption

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b) of this section, the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

Southwestern Bell Telephone, LP v. City of Houston, 529 F.3d 257 (5th Cir. 2008)(City of Houston ordinance relative to relocation of facilities challenged; Court held that the City’s ordinance fell under the safe-harbor provision of Section 253(c) of the FTA)

Jordan v. Ector County, 516 F.3d 290 (5th Cir. 2008)(held that the City’s ordinance fell under the safe-harbor provision of Section 253(c) of the FTA).

- **Cell Phones**

H.B. 55 (1) makes the use of a wireless communication device while operating a motor vehicle within a school crossing zone a class C misdemeanor, unless the vehicle is stopped or the device is being used in a hands-free mode; (2) requires a city that enforces the prohibition to post a sign that complies with standards adopted by the Texas Department of Transportation at each school crossing zone in the city in order to inform an operator of a motor vehicle of the prohibition (the standards must provide that the sign can be attached to an existing sign); (3) provides that the prohibition does not apply to either an operator of an authorized emergency vehicle if the operator is using the device in an official capacity, or an operator of a radio frequency device who is licensed by the Federal Communications Commission; and (4) *provides for the*

preemption of all city ordinances that are inconsistent with specific provisions of the bill.

- **Fireworks:**

H.B. 539 would: (1) add “skyrockets with sticks” and other fireworks with rudders or fins to the enumerated list of impermissible fireworks; (2) *expand state fireworks law to preempt a city’s regulation or prohibition on fireworks except within city limits or, for home rule cities, within 5,000 feet of the city limits if the regulation was in place before January 2, 2007*; (3) require a city or county to provide “just and adequate compensation” for damages caused to any person by an ordinance, order, or rule to discontinue otherwise permitted or licensed sale, manufacture, storage, possession, or transport of fireworks; (4) charge the fireworks advisory council with the establishment of a fireworks public awareness and safety campaign, as a cooperative effort between industry and local governments; (5) prohibit the discharge of fireworks, in certain circumstances, in a manner reasonably likely to harm another person and with intent to harm another person; (6) change the age at which a child may be sold fireworks from 12 to 16; and (7) prohibit the employment of persons younger than 16 years old to manufacture, distribute, sell, or purchase fireworks in the course of the person’s business, and prohibit a person of 16 or 17 years of age from selling fireworks at a retail sales location without being accompanied by a person who is at least 18 years old. *(Effective 01/02/08)*

- **Feral Pigeons.**

City cannot pass an ordinance forbidding the killing of all feral pigeons since it is expressly authorized by Parks & Wildlife Code, § 64.002(b).¹⁵

- **Wrecker/Towing Services**

The governing statute, the FAA Authorization Act of 1994, as amended, establishes that “a State ... may not enact or enforce a law, regulation or other provision having the force and effect of law related to a price, route or service of any motor carrier...¹⁶ Towing companies performing non-consensual tows are motor carriers.¹⁷ The purpose of the statute is it to eliminate state and local regulation that reduces competition and curtails market expansion. The Act expressly addresses what is covered by the federal regulation, what is not covered, and what the state may address.

Cardinal Towing & Auto Repair, Inc. v. City of Bedford, 180 F.3d 686 (5th Cir. 1999)(involving the City’s right to contract). The ordinance provided for the selection of a single company to perform non-consent tows, to clarify responsibility, to minimize administrative confusion and facilitate supervision. The limitation on the number of tow companies on the rotation list assists with the economic viability for such companies, since too many on the list, regardless of merit, may atrophy incentives to improve service.

Harris County Wrecker Owners of Equal Opportunity v. City of Houston, 943 F.Supp 711 (S.D. Tex. 1996)(city ordinance preempted to the extent not restricted to purely safety regulations). The ordinance contained a licensing scheme governing both consensual and non-consensual tows, with an industry wide scope. The City did not argue proprietary function and therefore, it was not addressed by the court. The stated motivations behind the regulations were economics, community development and social policies.

City of Columbus v. Ours Garage and Wrecker Service, 536 U.S. 424 (2002) held 49 U.S.C. Section 14501(c) does not bar a State from delegating to municipalities the State's authority to establish safety regulations governing motor carriers of property, including tow trucks.

GA-0183 addressed whether 49 U.S.C. § 14501(c)(1) preempts Chapter 145 of the Texas Civil Practice and Remedies Code (April 26, 2004)

- **Conflict of Interest**

Chapter 171 “preempts the common law of conflicts of interest as applied to local public officials” and “is cumulative of municipal charter provisions and municipal ordinances defining and prohibiting conflicts of interest.”¹⁸

B. IMPLIED PREEMPTION

The United States Supreme Court has summarized implicit preemption as follows:

[A] federal statute implicitly overrides state law either when the scope of a statute indicates that Congress intended federal law to occupy a field exclusively, or when state law is in actual conflict with federal law. We have found implied conflict pre-emption where it is impossible for a private party to comply with both state and federal requirements, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.¹⁹

These two categories are generally referred to “field preemption” and “conflict preemption.”

Field Preemption - Field preemption applies if a regulation is so comprehensive that it is clear that the federal or state government intended to fully occupy the field.

- Immigration:

IRCA encompasses a comprehensive regulatory scheme for regulating every aspect of immigrant employment and any local law supplementing in this area would likely be duplicative and preempted.

Conflict Preemption - Absent express preemption, a law can also conflict with federal or state law which would result in preemption.

- if a local regulation created different timelines or penalties than federal laws there would be a conflict and the local law would probably be preempted.

C. LIMITED WAIVER OF PRE-EMPTION

There are also laws that allow limited municipal regulation within the permissive confines of the statutory language. For example:

- **On Site Sewage Facilities**

Chapter 366 of the Health and Safety Code provides minimum state standards for regulation of on-site sewage facilities. Chapter 366 implicitly repeals Section 342.002 of the Health and Safety Code and Texas Local Gov't, §§ 51.012, 214.012(2), 214.014 and 217.002 to the extent they might regulate such facilities. A municipality may regulate such facilities more stringently, but from experience, it is with permission of the TNRCC.²⁰ Local standards must not directly conflict with Chapter 366.²¹

- **Tobacco Product Vending Machines**

A home rule city is authorized to adopt an ordinance restricting the location of tobacco product vending machines, or ban them entirely, and by doing so does not run afoul of Chapters 154 and 155 of the Tax Code relative to permits for engaging in business.²²

- **HUD Code Manufactured Housing/Mobile Homes**

Regulation of HUD-Code Manufactured Housing is governed by Chapter 1201 of the Texas Occupations Code, and specifically enumerates the instances of permissible municipal regulation.²³ The Attorney General has opined that a home rule city is not precluded from regulating unoccupied or unsafe manufactured homes that pose a risk to the public health and welfare.²⁴ Zoning ordinance that referred only to “mobile homes” without addressing distinction between “HUD-Code Manufactured homes” and “mobile homes” failed to comply with the Act requirement that HUD-Code Manufactured housing be allowed and be distinct from mobile

homes and therefore could not be enforced against homeowner to move her HUD-Code Manufactured home.²⁵

- **Alcoholic Beverages:**

Texas Alcoholic Beverage Code expressly preempts local regulation of alcoholic beverages unless otherwise provided or specifically authorized.²⁶ The preemption provisions are outlined as follows:

1.06. Code Exclusively Governs - Unless otherwise specifically provided by the terms of this code, the manufacture, sale, distribution, transportation, and possession of alcoholic beverages shall be governed exclusively by the provisions of this code.

61.36. Local Fee Authorized

* * *

(c) Nothing in this code shall be construed as a grant to any political subdivision of the authority to regulate licensees except by collecting the fees authorized in this section and exercising those powers granted to political subdivisions by other provisions of this code.

109.57. Application of Code; Other Jurisdictions

(a) Except as is expressly authorized by this code, a regulation, charter, or ordinance promulgated by a governmental entity of this state may not impose stricter standards on premises or businesses required to have a license or permit under this code than are imposed on similar premises or businesses that are not required to have such a license or permit.

(b) It is the intent of the legislature that this code shall exclusively govern the regulation of alcoholic beverages in this state, and that except as permitted by this code, a governmental entity of this state may not discriminate against a business holding a license or permit under this code.

City attempts to regulate alcohol sales, whether more or less restrictive than the TABC, have been the subject of numerous Attorney General and judicial opinions:

- City ordinance prohibiting sale of alcohol within 300 feet of residential area pre-empted.²⁷
- The Attorney General opined that a home rule municipality may not prohibit the sale of alcoholic beverages in glass containers within the corporate city limits but it could prohibit the sale of all glass beverage containers within the corporate city limits because the latter is broader in application than Section 109.57.²⁸
- City ordinance providing for a city beer license held void.²⁹

- Ordinance limiting hours of operation of package store invalid.³⁰
- Ordinance allowing sale of liquor on Sunday void.³¹
- City cannot prescribe lesser penalty than Code.³²
- Municipality may not adopt an ordinance prohibiting the possession of open container of alcoholic beverage in motor vehicles.³³
- Municipality may not adopt an ordinance prohibiting the consumption of alcoholic beverage by persons operating motor vehicles.³⁴
- Zoning ordinance requiring specific use permit for operation of private club in dry area preempted.³⁵
- GA-561 Alcohol Regulations Do Not Apply to BYOBs

Under the terms of the Texas Alcoholic Beverage Code, a pool hall may operate on a BYOB (“bring your own bottle”) basis without a permit or license from the Texas Alcoholic Beverage Commission. Moreover, the City of Corsicana may not by municipal ordinance regulate the possession or consumption of alcoholic beverages within a pool hall that operates on a BYOB basis.

Open Question:

Chapter 16 of the TABC relative to Wineries presents a zoning issue for cities. Is it a bar, convenience store, manufacturer, or all of them? The permit allows them to operate as all three. The question is how to regulate them, where to put them without falling afoul of the preemption provisions.

- **Junked Vehicles:**³⁶

An ordinance adopted by a governing body of a municipality may provide for a more inclusive definition of junked vehicle subject to regulation under this subchapter.³⁷

Open Questions:

The statute allows now for a city to adopt an ordinance with a more inclusive definition but does it also allow for expansion of procedures for notice and abatement.

Is a City able to opt for optional procedures and definitions, such as:

- International Property Maintenance Code
Fine but no abatement

“No inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled.”³⁸ GA-0526 (2007).

- General Nuisance
Chapter 342, Texas Health and Safety Code
Chapter 217, Texas Local Government Code
Fine and Abatement

URBAN NUISANCE. Any condition that exists and because of violations of this Article, is in a state of disrepair, such that it could reasonably cause injury, damage, harm or inconvenience to a considerable portion of the community and the use and enjoyment of property, materially interfering with the property use or comfort and enjoyment of surrounding property, taking into consideration the nature and use of the properties in the area and the character of the community in which they are situated, which condition would be substantially offensive and annoying to persons of ordinary sensibilities, taste and habits in the community. Such urban nuisance includes yet is not limited to:

1. Fences that are leaning, falling down, missing boards or otherwise deteriorated;
2. Motor vehicles, or parts thereof, that do not qualify as junked vehicles as defined by City ordinances and State statutes but that are wrecked, dismantled or partially dismantled, on blocks, stands, trailers, under tarps or other similar covering.

D. Miscellaneous Preemption Cases:

A. Federal Preemption

Dallas Area Rapid Transit v. Amalgamated Transit Union Local No. 1338, 173 S.W.3d 896 (Tex. App.—Dallas 2005), *reversed*, 273 S.W.3d 659 (Tex. 2008)(held immunity is not preempted).

In re Global Santa Fe Corp., 2006 WL 3716495 (Tex. App.—Houston [14th Dist.] 2006), *conditional grant of mandamus*, 275 S.W.3d 477 (Tex. 2008) (Multidistrict Litigation Pretrial Courts)

Mo. Pac. R.R. v. Limmer, 180 S.W.3d 803 (Tex. App.—Houston [14th Dist.] 2005), *reversed and rendered*, 299 S.W.3d 78 (Tex. 2009)(When railroad crossing improvements are federally funded, federal regulations specify what warning devices must be used, and the United States Supreme Court has held that *section 20106* of the Federal Railroad Safety Act of 1970 expressly preempts state tort law actions challenging the adequacy of those devices. (citations omitted)

B. Attorney General Opinions

- GA-564 State Law Procedures Govern Retired Officers Concealed Carry

A federal statute, 18 U.S.C. § 926C, which authorizes a qualified retired law enforcement officer to carry a concealed firearm if the officer also carries proof that he or she has demonstrated weapons proficiency under state law, does not preempt Texas Occupations Code section 1701.357, which provides a means by which some honorably retired peace officers may obtain the proof required by federal law. Those retired peace officers who cannot obtain certification under section 1701.357 may do so under section 411.199 of the Texas Government Code and section 1701.355 of the Texas Occupations Code. An honorably retired peace officer who is certified as proficient under Texas Occupations Code section 1701.357 must recertify on an annual basis.

- GA-586 Local Civil Service Rules on Applicant Points Preempted

A local civil service commission may not adopt a rule that awards additional points to an applicant on the basis of residency within the municipality.

- GA-585 Lengthened Terms Equals Majority Vote Election to Fill Vacancy

Article XI, section 11(b) of the Texas Constitution requires a municipality that has lengthened its non-civil service officers' terms of office to fill a vacancy by majority vote of the qualified voters at a special election. This constitutional requirement prevails over an inconsistent city charter provision.

C. State Preemption

- **Smoking Ban.**

As an aside, in 2009, the Legislature introduced numerous bills relative to a ban on smoking that would preempt local ordinances. Such measures failed but are likely to be re-introduced in the next legislative session.

- **Sex Offenders.**

State law does not preempt a home-rule municipality's ordinance prohibiting registered sex offenders from living within a specified distance from locations where children typically congregate. Whether a particular ordinance is permitted by the Texas Constitution is a question that must be determined by a court after considering all of the relevant facts applicable to a specific ordinance; to date, however, no court has found that a statutory residence restriction violates any federal constitutional provision.³⁹

¹ See TEX. CONST. Art. XI, § 5. See also Tex. Local Gov't Code, § 51.072 (has full power of local self government).

² *Wilson v. Andrews*, 10 S.W.3d 663 (Tex. 1999).

³ TEX. CONST. Art. XI § 4.

⁴ See generally Tex. Local Gov't Code, Chapter 5, Organization of Municipal Government and Chapters 6 and 22 (Type A), Chapters 7 and 23 (Type B) and Chapters 8 and 24 (Type C).

⁵ See generally Tex. Local Gov't Code, §§ 51.011, 51.032 and 51.051 (governing body may adopt ordinance, not inconsistent with state law, deemed proper for municipal government).

⁶ Tex. Local Gov't Code, § 51.001 (West 1999).

⁷ Tex. Local Gov't Code, § 54.001 (West 1999).

⁸ See Tex. Local Gov't Code, § 54.002 (West 1999).

⁹ Tex. Local Gov't Code, § 54.003 (West 1999). This provision, if enforced, may implicate the separation of powers doctrine.

¹⁰ *Fair v. City of Galveston*, 915 F. Supp. 873 (S.D. Tex.), *aff'd*, 100 F.3d 953 (5th Cir 1996).

¹¹ *City of Richardson v. Responsible Dog Owners*, 794 S.W.2d 17 (Tex. 1990).

¹² Tex. Penal Code, § 1.08 (West 1994).

¹³ Public Law 99-603.

¹⁴ 47 U.S.C. § 253.

¹⁵ Tex. Att’y Gen. Op. No. JC-0048 (1999).

¹⁶ . 49 U.S.C. §14501(c).

¹⁷ 49 U.S.C. §14501(c)(2)(C)

¹⁸ Tex. Local Gov’t Code, § 171.007

¹⁹ Dallas Area Rapid Transit v. Amalgamated Transit Union Local No. 1338, 275 S.W.3d 659 (Tex. 2007)(citing *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995);

²⁰ Tex. Att’y Gen. Op. No. DM-343 (1995).

²¹Tex. Att’y Gen. Op. No. JM-1278 (1990).

²² Tex. Att’y Gen. Op. No. DM-433 (1997).

²³ Tex. Occup. Code, §1201.008.

²⁴ Tex. Att’y Gen. Op. No. LO-09-093.

²⁵ *Freeport v. Vandergriff*, 26 S.W.3d 680 (Tex.App.—Corpus Christi 2000, review denied).

²⁶ *See Dallas Merchant’s & Concessionaire’s Assn v. City of Dallas*, 852 S.W.2d 489 (Tex. 1993).

²⁷ *Id.*

²⁸ Tex. Att’y Gen. Op. No. GA-0110

²⁹ *Munoz v. City of San Antonio*, 318 S.W. 2d 741 (Tex. Civ. App. – San Antonio, 1959, writ dism’d)

³⁰ *Royer v. Ritter*, 531 S.W. 2d 448 (Tex. Civ. App. – Beaumont 1975, writ ref. n.r.e.)

³¹ *Arroyo v. State*, 62 S.W. 503 (Tex. Cr. App. 1902)

³² Op. Tex. Atty. Gen. C-754 (1966)

³³ Op. Tex. Atty. Gen. JM-112 (1983)

³⁴ Op. Tex. Atty. Gen. JM-619 (1987)

³⁵ *Courtney v. City of Sherman*, 792 S.W. 2d 135 (Tex. App. -Dallas 1990, writ den’d.)

³⁶ Transp. Code, §683.071

³⁷ Transp. Code. §683.0711

³⁸ 2000 International Property Maintenance Code, §302.8

³⁹ GA-0526 (2007).