

Bond Case Briefs

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MUNICIPAL ORDINANCE - TEXAS

Ex Parte Sedigas

Court of Appeals of Texas, Waco - October 12, 2016 - Not Reported in S.W.3d - 2016 WL 5944788

Defendants who were charged with misdemeanor violation of city's "no touch" ordinance for sexually-oriented businesses filed pretrial applications for writ of habeas corpus, challenging ordinance's constitutionality.

The County Court at Law denied applications and certified defendants' right of appeal. Defendants appealed.

The Court of Appeals held that:

- Ordinance was not facially overbroad; and
- Possible punishment of one year in prison and a \$4,000 fine was not grossly disproportionate to the offense so as to violate Eighth Amendment.

City ordinance was not facially overbroad in violation of First Amendment's protection of free expression in prohibiting any employee who appeared nude or semi-nude in a sexually oriented business from knowingly or intentionally touching a customer or the clothing of a customer on the premises of a sexually oriented business. Ordinance only applied at the time that the employee was nude or semi-nude on the premises of a sexually-oriented business and touched a customer.

Possible punishment of one year in prison and a \$4,000 fine was not grossly disproportionate, so as to violate Eighth Amendment prohibition against cruel and unusual punishment, to city ordinance making it a class A misdemeanor offense for any employee who appeared nude or semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.