
MUNICIPAL CORPORATIONS - MARYLAND

Mayor and City Council of Havre De Grace v. K. Hovnanian Homes of Maryland, LLC

Court of Special Appeals of Maryland - May 1, 2020 - A.3d - 2020 WL 2096150

Construction company that had performed infrastructure improvements involving water, sewer lines, and roads to one of three adjacent parcels, and who had allegedly entered into agreement with city to recoup costs for doing so from owners of other two parcels, file suit against city to compel execution and recordation of the agreement.

The Circuit Court granted construction company summary judgment. City appealed.

The Court of Special Appeals held that city council had no independent authority to enter into contract on behalf of the municipal corporation.

Under charter, city's power to enter into contracts was an executive, rather than legislative, power, thus contract between construction company and city council for recoupment of company's costs for infrastructure improvements to parcel involving water, sewer lines, and road was not authorized absent approval from mayor; city council had no independent authority to enter into such a contract on behalf of the municipal corporation.

EMINENT DOMAIN - NEW YORK

River Street Realty Corp. v. City of New Rochelle

Supreme Court, Appellate Division, Second Department, New York - March 11, 2020 - 181 A.D.3d 676 - 121 N.Y.S.3d 107 - 2020 N.Y. Slip Op. 01619

Property owner brought action challenging city's decision authorizing the taking of the property by eminent domain in order to relocate a firehouse, and finding that no environmental impact statement was required concerning that action.

The Supreme Court held that:

- City provided proper notice to public of hearing on its proposed taking;
- Error in city's post-hearing notice to property owner was harmless;
- City's taking was valid; and
- Environmental impact statement was unnecessary.

City provided proper notice to public of hearing on its proposed taking of owner's property by eminent domain in order to relocate a firehouse, where, following hearing, city made its determination and findings within 90 days of hearing's conclusion, as required by statute.

Failure of city's notice to property owner, following hearing on city's proposed taking of property by eminent domain in order to relocate a firehouse, to strictly comply with Eminent Domain Procedure Law article governing determination of need and location of a public project prior to acquisition was harmless error, where property owner had been advised of its judicial remedies in a prior notice, and commenced proceeding seeking judicial review of city's determination in a timely manner.

City's taking of property by eminent domain was valid; taking served public purpose of relocating firehouse, city had broad discretion to decide what land was necessary to fulfill its stated purpose, there was no evidence that taking was excessive, fact that a private developer would receive an incidental benefit as a result of taking did not invalidate it, and property owner's unsubstantiated allegations fell far short of clear showing necessary to establish that city acted in bad faith.

Environmental impact statement was not necessary concerning city's taking of property by eminent domain in order to relocate firehouse, and therefore city did not fail to comply with State Environmental Quality Review Act (SEQRA) when it issued negative declaration obviating need for such a statement; city filled required environmental assessment form prepared in connection with proposed condemnation, conducted requisite examination of relevant areas of environmental concern, and identified no major environmental impacts, and property owner failed to assert any significant potential for environmental harm that might result from project.

IMMUNITY - NEW YORK

Colon v. Martin

Court of Appeals of New York - May 7, 2020 - N.E.3d - 2020 WL 2200410 - 2020 N.Y. Slip Op. 02681

Leading motorist and passenger brought personal injury action against following motorist, city agency, and city, seeking to recover for injuries sustained when their vehicle was allegedly struck in the rear by following motorist's vehicle, which was owned by city and agency.

Plaintiffs appealed. The Supreme Court, Richmond County, granted defendants' cross motion for summary judgment dismissing the complaint for failing to comply with hearing provision under General Municipal Law. Plaintiffs appealed. The Supreme Court, Appellate Division, affirmed. Plaintiffs appealed.

The Court of Appeals held that:

- In an apparent matter of first impression, General Municipal Law provision governing examination of claims against a municipality did not operate to permit claimant to have a coclaimant present during an oral examination by municipality, and
- General Municipal Law provision governing examination of claims against a municipality operated to permit municipality to conduct separate examinations of coclaimants.

EMINENT DOMAIN - NORTH CAROLINA

Chappell v. North Carolina Department of Transportation

Supreme Court of North Carolina - May 1, 2020 - S.E.2d - 2020 WL 2108249

Landowners brought inverse condemnation action against North Carolina Department of

Transportation (NCDOT) after portions of property were designated as within a roadway corridor pursuant to Roadway Corridor Official Map Act.

After jury trial, the Superior Court entered judgment in favor of landowners and awarded damages.

After grant of NCDOT's petition for discretionary review prior to determination by Court of Appeals, the Supreme Court held that:

- Trial court acted within its discretion in declining to allow NCDOT to pursue exercise of statutory quick-take rights within instant action;
- Trial court acted within its discretion in excluding expert appraiser's opinion proffered by NCDOT;
- Trial court acted within its discretion in excluding, as unreliable and potentially misleading to jury, testimony of expert appraiser basing valuation of property on flood plain property values;
- Trial court acted within its discretion in admitting testimony of landowners' appraiser valuing at zero landowners' rights to property inside roadway corridor;
- Any error in instruction that jury, in awarding damages to landowners for inverse condemnation of portion of property, could consider evidence of damage to landowners' remaining property was harmless error;
- Trial court properly compensated landowners for the actual ad valorem taxes they paid following taking; and
- The prejudgment interest rate available under the "prudent investor" standard for determining the appropriate interest rate to apply to a judgment in an inverse condemnation case must be a rate produced by debt instruments or debt obligations, such as commercial bonds or treasury bills during the relevant time period.

Trial court acted within its discretion in declining to allow North Carolina Department of Transportation (NCDOT) to pursue exercise of statutory quick-take rights, in landowners' inverse condemnation action against NCDOT after portion of property was designated as within roadway corridor under Roadway Corridor Official Map Act; trial court did not deny NCDOT right to assert permissive counterclaim under any and all circumstances but rather only precluded turning action into direct condemnation action, action had been pending for over three years, and trial was imminent.

MUNICIPAL ORDINANCE - TEXAS

City of Fort Worth v. Rylie

Supreme Court of Texas - May 8, 2020 - S.W.3d - 2020 WL 2311941 - 63 Tex. Sup. Ct. J. 1036

Operators of pubs with electronic gaming machines known as "eight-liners" brought action seeking to have city ordinances regulating gaming machines declared invalid.

City counterclaimed, seeking to have "fuzzy animal exception" to state prohibition against gambling declared unconstitutional.

The District Court, on parties' cross-motions for summary judgment, declared that only conflicting portions of ordinances were preempted by state statute regulating skill or pleasure coin-operated machines, and that fuzzy-animal exclusion was constitutional. Parties cross-appealed. The Fort Worth Court of Appeals affirmed in part and reversed in part. Parties filed petitions for review.

The Supreme Court held that remand was warranted for Court of Appeals to decide in first instance

whether “eight-liners” were unconstitutional or illegal.

Question of whether pub operators’ electronic gaming machines known as “eight-liners” were unconstitutional or illegal presented relevant and justiciable issue of first impression that Court of Appeals failed to address, on operators’ appeal from trial court’s determination that only conflicting portions of city ordinances regulating amusement redemption machines and associated game rooms within city were preempted by state statute regulating skill or pleasure coin-operated machines, and, thus, remand was warranted for Court of Appeals to decide issue in first instance after full briefing and argument by parties; statute only applied to constitutional and legal gaming machines, and it could only preempt ordinances if “eight-liners” were unconstitutional and illegal.

LIENS - WASHINGTON

City of Seattle v. Long

Court of Appeals of Washington, Division 1 - May 4, 2020 - P.3d - 2020 WL 2112353

Truck owner, whose truck had served as his home, appealed from Municipal Court order that required him to pay impoundment charges and administrative fees and to set up a payment plan that required him to pay $50 per month under threat of a forced sale.

The Superior Court affirmed in part and reversed part. City petitioned for discretionary review, and truck owner cross-petitioned.

The Court of Appeals held that:

- Truck owner was not required to file a declaration of homestead for the Homestead Act to protect his truck;
- In a matter of first impression, a lien that resulted from the impoundment of truck did not attach to the vehicle in violation of the Homestead Act;
- City violated the Homestead Act by withholding truck from owner under threat to forcibly sell it unless he agreed to pay fees associated with truck’s impoundment;
- Impoundment of truck and requiring owner to pay the associated fees was not a disproportionate punishment for a parking violation, and thus, did not constitute excessive punishment under the Eighth Amendment;
- The state-created danger doctrine did not apply to provide truck owner relief from city’s impoundment of his truck on due process grounds; and
- Truck owner failed to make a plausible showing that impounding officer’s failure to consider whether impoundment was reasonable under owner’s individual circumstances, or whether reasonable alternatives existed to impoundment, had practical and identifiable consequences, as required to state a claim under State Constitution’s private affairs guarantee.

PUBLIC PENSIONS - MARYLAND

Couret-Rios v. Fire & Police Employees’ Retirement System of City of Baltimore

Court of Appeals of Maryland - May 1, 2020 - A.3d - 2020 WL 2092602

City sought review of hearing examiner’s decision awarding police officer line-of-duty (LOD) disability retirement benefits after officer suffered concussion, or traumatic brain injury, while he

was on duty with resulting memory loss and attention deficits.

The Circuit Court affirmed. City appealed. The Court of Special Appeals reversed. Officer petitioned for writ of certiorari, which was granted.

The Court of Appeals held that:

- A concussion may, in certain instances, lead to permanent physical incapacity qualifying a claimant for LOD disability benefits, and
- Evidence supported finding that officer's incapacities were physical entitling him to LOD disability benefits.

Although a "mild traumatic brain injury," or concussion, does not typically result in any permanent physical incapacities, there are scenarios in which a mild traumatic brain injury leads to the physical incapacity that is needed to qualify for line-of-duty (LOD) disability retirement benefits under city's fire and police employees' retirement system.

Evidence supported hearing examiner's finding that city police officer's attention and memory deficits, as a result of his concussion, or mild traumatic brain injury, incurred while on duty, were permanent physical incapacities entitling officer to line-of-duty (LOD) disability retirement benefits; hearing examiner relied on neurological evaluation performed by a licensed psychologist, and multiple doctors noted that officer suffered more severe symptoms and suffered longer than a typical mild traumatic brain injury patient would suffer.

EMINENT DOMAIN - MISSISSIPPI

Wiggins v. City of Clinton Mississippi

Supreme Court of Mississippi - May 7, 2020 - So.3d - 2020 WL 2213888

City brought action against landowner for approval of exercise of eminent domain.

The County Court approved the exercise. Landowner appealed.

The Supreme Court held that:

- There was no evidence that city's determination of public necessity was result of fraud or abuse of discretion, and
- Evidence was sufficient to support finding of a public use.

There was no evidence that city's determination of public necessity, as would support exercise of eminent domain to take landowner's property which formed part of urban-renewal area, was result of fraud or abuse of discretion.

Evidence was sufficient to support finding of a public use, as would support city's exercise of eminent domain to take landowner's property, where city had designated area an urban-renewal area pursuant to urban-renewal plan, and parcel at issue was included because of its historic significance.

LIENS - NEW JERSEY

MasTec Renewables Construction Company, Inc. v. SunLight General Mercer Solar, LLC

Superior Court of New Jersey, Appellate Division - February 6, 2020 - A.3d - 2020 WL 579008

Subcontractor brought action against county improvement authority for payment owed by general contractor under a purported mechanics' lien against the project fund.

The Superior Court granted authority's motion to dismiss for failure to state a claim. Subcontractor appealed.

The Superior Court held that subcontractor lacked the right to file mechanics' lien.

The extent of lien protection under the Municipal Mechanics' Lien Law (MMLL) is limited to the amount the public agency owes to the prime contractor at the time the notice of lien claim is filed or thereafter becoming due; the former cannot be liable for more than the total amount of the prime contract, provided it pays the prime contractor in accordance with the terms thereof and withholds a sum sufficient to cover lien claims filed, and satisfaction of the claim cannot be had out of the public property which is the subject of the project.

Subcontractor who performed work on solar generating facility for county improvement authority lacked a right to file municipal mechanics' lien against the project fund created from authority's bond issuance, and therefore authority was entitled to dismissal of subcontractor's action for lien foreclosure pursuant to the Municipal Mechanics' Lien Law (MMLL); County Improvement Authorities Law (CIAL) specifically exempted authority from terms of the MMLL, and the Legislature could have made an exception for the type of contract at issue had it so intended, as it did with contracts subject to the Local Public Contracts Law (LPCL).

ZONING & PLANNING - NEW JERSEY

Shipyard Associates, LP v. City of Hoboken

Supreme Court of New Jersey - May 5, 2020 - A.3d - 2020 WL 2120903

As part of long-running dispute regarding proposed riverfront development, developer, which sought to replace planned tennis facilities with two high-rise residential buildings on pier, brought action to challenge application of two new ordinances to project.

The Superior Court granted developer's motion for summary judgment. City appealed, and the Superior Court, Appellate Division, affirmed. City appealed.

The Supreme Court held that:

- Purported environmental ordinance was a planning or zoning ordinance to which the Municipal Land Use Law applied;
- Municipal Land Use Law provides the holder of a final approval with vested rights for two years against any changes in zoning requirements, even changes based on ordinances that affect health and public safety; and
- Ongoing litigation tolled two-year period of protection against changes in zoning requirements under the Municipal Land Use Law.

EMINENT DOMAIN - OKLAHOMA

Natural Gas Pipeline Company of America LLC v. Foster OK Resources LP

Supreme Court of Oklahoma - May 5, 2020 - P.3d - 2020 WL 2124418 - 2020 OK 29

Operator of interstate natural gas pipelines filed condemnation action seeking additional easements over landowner's property to have consistent access to operate and maintain pipelines and to clear title issues involving pipelines.

The District Court overruled landowner's exceptions to commissioners' report as to just compensation. Landowner appealed.

The Supreme Court held that:

- Existing easement agreements with landowner did not divest operator of its right to eminent domain under Natural Gas Act;
- Operator's taking of permanent easements to clear title issues was necessary for public use;
- Operator's taking of temporary workspace easement was necessary for public use;
- Operator's taking of permanent access road easement met necessity standard even if another means of access to pipelines was available; and
- Issue of necessity of surveying landowner's property to compute just compensation was premature.

Easement agreements between landowner and operator of interstate natural gas pipelines did not prevent operator from seeking additional easements, via operator's right of eminent domain under Natural Gas Act, to have consistent access to operate and maintain pipelines and to clear title issues involving pipelines, where easements that operator requested were outside of scope of existing easement agreements, even if parties contemplated similar rights in those agreements.

Interstate natural gas pipeline operator's taking of permanent easements to clear title issues as to pipeline easements met the legal standard of necessity for public use under Natural Gas Act, where original easement agreements did not describe or include portion of lands owned by landowner under a river and did not mention above-ground structural support and erosion control system on an exposed segment of a pipeline, and the parties' letter agreement executed many years earlier was not recorded in county land records.

Interstate natural gas pipeline operator's taking of temporary easement for work performed to install additional support, recoat, and ensure the integrity of a pipeline met the legal standard of necessity for public use under Natural Gas Act, and was not fraudulent, in bad faith, or an abuse of discretion.

Interstate natural gas pipeline operator's taking of permanent access road easement over landowner's existing private road met the legal standard of necessity for public use under Natural Gas Act and did not amount to fraud, bad faith, or an abuse of discretion merely because another means of access to pipelines was available to operator, where continuous erosion of property required operator to have better access over property to maintain pipelines, operator was required to use private road to haul equipment to pipeline, and operator planned to use private road two to four times a year and also was responsible for maintaining road to restore any damage caused by its use of road.

Issue of necessity of surveying condemnee's property to compute just compensation for natural gas pipeline operator's taking of permanent and temporary easements pursuant to Natural Gas Act was premature and could not be determined upon Supreme Court's affirmance of order denying

condemnee's exceptions to report of commissioners, where condemnee requested jury trial on issue of just compensation, jury trial regarding just compensation had not occurred, and record was devoid of any evidence that commissioners incorrectly calculated damages due to a lack of survey.

IMMUNITY - OKLAHOMA

Farley v. City of Claremore

Supreme Court of Oklahoma - May 5, 2020 - P.3d - 2020 WL 2125444 - 2020 OK 30

Following workers' compensation award, surviving spouse and family of deceased city fireman who died while responding to an emergency request for assistance during a flash flood brought wrongful death action against city, seeking damages and injunctive relief.

The District Court granted city's motion to dismiss. Spouse appealed, and the Supreme Court retained the appeal.

The Supreme Court held that:

- Brother lacked survivor cause of action;
- Successful workers' compensation claim estopped parents and surviving spouse from bringing wrongful death action;
  City had immunity for statutory wrongful death action; and
- Spouse lacked standing to seek injunctive relief compelling city to comply with certain training standards for technical search and rescue incidents.

CONTRACTS - WASHINGTON

Conway Construction Company v. City of Puyallup

Court of Appeals of Washington, Division 1 - May 4, 2020 - P.3d - 2020 WL 2112362

Construction company, which was hired to do road improvements, sued city, asking the court to declare termination for default improper and asserted breach of contract and unjust enrichment claims.

After bench trial, the Superior Court found that city breached the contract when it terminated company and awarded company damages, attorney fees, and costs. City appealed.

The Court of Appeals held that:

- Conflict coordination provision in construction contract did not mean that, once construction company violated state safety regulation, city had right to terminate the contract without providing cure opportunity;
- Evidence established that construction company resolved the safety regulation breach, and thus, city failed to justify its termination of construction contract; and
- As matter of first impression, because city breached contract by terminating the contract, and did not provide construction company an opportunity to cure alleged defects, city was not entitled to its claimed post-termination damages and costs.

MUNICIPAL ORDINANCE - ALABAMA

Woodgett v. City of Midfield

Supreme Court of Alabama - May 1, 2020 - So.3d - 2020 WL 2097547

Motorists who had paid fines under city's ordinance providing for the automated photographic enforcement of red traffic lights within the corporate limits brought declaratory-judgment action challenging legality of ordinance.

The Circuit Court dismissed action. Motorists appealed.

The Supreme Court held that motorists' failure to challenge ordinance's legality when given notices of violations meant that no justiciable controversy existed.

No justiciable controversy existed in declaratory-judgment action by motorists challenging legality of city's ordinance providing for the automated photographic enforcement of red traffic lights within the corporate limits, and thus the trial court lacked subject-matter jurisdiction; motorists had all paid fines under the ordinance rather than making a challenge to ordinance's legality when they received their notices of violations, legislature and city had specifically vested the municipal court with original jurisdiction to adjudicate contested notices of violations under the ordinance and the local act authorizing the ordinance.

TRESPASS - DISTRICT OF COLUMBIA

Wicks v. United States

District of Columbia Court of Appeals - April 30, 2020 - A.3d - 2020 WL 2071978

Defendant, a "ticket scalper" banned from entering onto property of professional baseball team, was convicted of unlawful entry by the Superior Court and he appealed.

The Court of Appeals held that evidence was insufficient to show either that the sidewalk on which ticket scalper was standing immediately in front of ticket window was stadium property or that ticket scalper knew or should have known that he had entered onto stadium property.

EMPLOYEE BENEFITS - MASSACHUSETTS

Boss v. Town of Leverett

Supreme Judicial Court of Massachusetts, Franklin. - April 23, 2020 - 142 N.E.3d 1113

Retired town employee brought action for declaration that town was obligated to pay fifty percent of the full premium cost for health insurance for retired town employees and their dependent spouses.

The Superior Court granted summary judgment to employee. Town appealed.

After sua sponte transfer of case, the Supreme Judicial Court held that:

- Statute providing for town, after adoption of statute, to pay 50 percent of amount of health care premium "to be paid by a retired employee" requires town to cover 50 percent of premium that retired employee is to pay, not 50 percent of cost to cover retired employee individually if retired

employee's selected plan is for family rather than individual coverage, and
- Allegedly misleading language in ballot question did not invalidate town's adoption of such statute.

PUBLIC UTILITIES - MINNESOTA

Matter of Otter Tail Power Company

Supreme Court of Minnesota - April 22, 2020 - N.W.2d - 2020 WL 1933235

On certiorari appeal from a rate-case order, electric utility challenged decision of Minnesota Public Utilities Commission (MPUC) to include costs and revenues for two of utility's multi-value transmission-grid projects when setting the retail electric rates charged to utility's Minnesota customers.

The Court of Appeals reversed. MPUC petitioned for review, which was granted.

The Supreme Court held that specific and later-adopted statute expressly leaving modification of transmission-cost recovery rider to discretion of electric utility controlled over general statute granting MPUC power to receive and hold hearings on a petition, and thus MPUC lacked authority to require utility to include certain costs and revenues in existing rider through a requirement that utility amend petition in rate case to include those costs.

TAX - NEW YORK

Laertes Solar, LLC v. Assessor of Town of Harford

Supreme Court, Appellate Division, Third Department, New York - April 16, 2020 - N.Y.S.3d - 2020 WL 1886279 - 2020 N.Y. Slip Op. 02302

Town assessor appealed from decision of the Supreme Court, Cortland County, in favor of taxpayer in combined Article 78 and declaratory judgment proceeding in which taxpayer sought a declaration that solar energy system was exempt from property taxes.

The Supreme Court held that:

- Opt-out provision of statute that exempted from property taxation any increase in the value of real property by reason of the inclusion of a solar energy system for a period of 15 years was mandatory, and thus, a resolution by school district that purported to opt-out of a tax exemption for the value of a solar system subsequently installed on real property in the school district was inapplicable, and
- The 60-day period for school district to demand that taxpayer enter into a payment in lieu of taxes with regard to the property tax exclusion afforded a taxpayer for the inclusion of a solar energy system, absent a valid opt-out agreement by the district, began to run on the date the district was informed by taxpayer that the system existed.

REFERENDA - OREGON

Hurst v. Rosenblum

Supreme Court of Oregon, En Banc - April 9, 2020 - P.3d - 366 Or. 260 - 2020 WL 1808370

Electors petitioned to challenge Attorney General's certified ballot title for initiative petition addressing greenhouse gas emissions.

The Supreme Court held that:

- Caption was likely to mislead voters;
- Caption should have referred to two-step phase-out of greenhouse gas emissions;
- It was appropriate to include "requires rules" in caption;
- "No" result statement accurately identified and described then-existing law;
- Summary adequately emphasized that initiative required agency to ensure compliance; and
- Summary should have referred to two-step phase-out.

Ballot title caption for initiative petition that stated, in part, "Greenhouse gas emissions from industry, fossil fuels must be eliminated" was likely to mislead some voters, and thus caption required modification for failure to substantially comply with statutory requirements; even though ballot title summary explained requirement in full, placement of comma between "industry" and "fossil fuels" could have led some voters to interpret caption as requiring elimination of fossil fuels, rather than requiring elimination of greenhouse gas emissions from fossil fuels.

ZONING & PLANNING - RHODE ISLAND

Town of Exeter by and through Marusak v. State

Supreme Court of Rhode Island - April 29, 2020 - A.3d - 2020 WL 2050779

Towns filed separate actions for declaratory and injunctive relief regarding proposed Rhode Island Department of Environmental Management (DEM) construction project which included offices, laboratory space, and visitor center, alleging that project was required to comply with town zoning ordinances.

After consolidation, the Superior Court granted state's motion for summary judgment, and towns appealed.

The Supreme Court held that:

- Comprehensive Planning and Land Use Regulation Act did not confer immunity on the state from application of towns' zoning ordinances, and
- State was required to bring issue of project's compliance with town's comprehensive plan to the State Planning Council for review.

PENSIONS - TEXAS

Degan v. Board of Trustees of Dallas Police and Fire Pension System

United States Court of Appeals, Fifth Circuit - April 27, 2020 - F.3d - 2020 WL 1982244

Beneficiaries of city pension fund for police and firefighters brought action against pension system's board of trustees, alleging that changes to pension fund violated United States and Texas Constitutions.

The United States District Court for the Northern District of Texas dismissed the action. Beneficiaries appealed.

The Court of Appeals held that:

- Removal of single lump-sum distribution option did not support Fifth Amendment takings claim, and
- Restriction on pension fund which removed single lump-sum distribution option could not support regulatory takings claim.

Beneficiaries of city pension fund for police and firefighters lacked protected property interest, under Texas law, in method of withdrawal from the fund, and thus, removal by board of trustees for pension fund of single lump-sum distribution option did not support per se Fifth Amendment takings claim by beneficiaries.

Restriction on city pension fund for police and firefighters which removed single lump-sum distribution option could not support beneficiaries' Fifth Amendment regulatory takings claim, where beneficiaries would continue to receive benefits from the fund in the form of annuity payments, and purpose of removal of lump-sum option was to protect pension fund.

STATE MANDATES - CALIFORNIA

Coast Community College District v. Commission on State Mandates

Court of Appeal, Third District, California - April 3, 2020 - Cal.Rptr.3d - 2020 WL 1649919 - 20 Cal. Daily Op. Serv. 3073 - 2020 Daily Journal D.A.R. 3131

Community College Districts filed petition for writ of mandate challenging decision of Commission on State Mandates on claims for subvention for costs associated with 27 sections of Education Code and attendant regulations imposing "minimum conditions."

The Superior Court denied petition and entered judgment. Districts appealed.

The Court of Appeal held that:

- Districts were entitled to subvention for costs associated with regulations that set forth "minimum conditions" that involved core functions of community college that were legally compelled by State;
- Regulation requiring governing board of community college district to adopt policy relating to open access to qualified persons, to publish policy, and to file copy of policy with Chancellor involved state-mandated activity, as required to support subvention claim;
- Court of Appeal would not consider subvention claims that were not adequately argued in appellate briefs;
- District was not entitled to subvention for costs associated with educational master plans, under regulations that implemented statutes enacted prior to January 1, 1975;
- Former regulation providing that community college district "may only establish such mandatory student fees as it is expressly authorized to establish by law" did not impose state-compelled mandate;
- Remand to Commission was required for consideration of claims for subvention for costs associated with former regulation governing approval of new college or educational centers;
- Regulation requiring governing board of community college district to provide and publicize organized and functioning counseling program in each college within district was not limited to counseling services for transfer students;
- Regulation requiring each community college to have "stated objectives for its instructional program and for the functions which it undertakes to perform" involved state-mandated activity;

- Regulations authorizing community college district to enter into contracts with certain third party entities to provide instruction to community college students did not legally compel districts to do so; and
- District was not entitled to subvention for costs associated with regulations and former regulation relevant to provision of community service classes.

IMMUNITY - GEORGIA

Gwinnett County, Ga v. Ashby

Court of Appeals of Georgia - April 15, 2020 - S.E.2d - 2020 WL 1873232

Spectator, who was attending her son's football practice at county park when she allegedly sustained severe personal injuries when her foot slipped into an uncovered drain, brought personal injury action against county for the negligent acts of its agents or employees.

The trial court denied county's motion to dismiss on grounds of sovereign immunity, and county appealed.

The Court of Appeals held that:

- Georgia Tort Claims Act provision under which the state waived its sovereign immunity for the torts of state officers and employees while acting within the scope of their official duties or employment did not constitute a waiver of county's sovereign immunity from personal injury negligence action;
- Spectator failed to allege that a county motor vehicle was involved, as required to support her claim that county waived its sovereign immunity to the extent of its liability coverage; and
- County did not waive sovereign immunity under the Recreational Property Act when it charged a fee for spectator's son's participation in football.

IMMUNITY - IDAHO

Noel v. City of Rigby

Supreme Court of Idaho, Pocatello, September 2019 Term - April 16, 2020 - P.3d - 2020 WL 1889103

Child and her parents brought action against city after child was injured while playing on playground equipment in city park.

After jury trial resulted in verdict in favor of city, the District Court granted new trial. City appealed.

The Supreme Court held that:

- Issue of whether city's construction or maintenance of playground equipment was willful and wanton, as would violate applicable duty under recreational use statute, was jury question;
- Trial court acted within its discretion in granting new trial;
- Trial court abused its discretion in excluding expert's opinion regarding whether city's construction or maintenance of city park's playground equipment rose to level of willful and wanton conduct;
- As a matter of apparent first impression, Medicaid write-offs are "collateral sources" from which double recovery is prohibited on a claim for damages;

- Jury could consider comparative negligence; and
- Trial court acted within its discretion in admitting evidence of park's seasonal closure at time of child's injury.

EMINENT DOMAIN - MARYLAND

Maryland Reclamation Associates, Inc. v. Harford County

Court of Appeals of Maryland - April 24, 2020 - A.3d - 2020 WL 1969946

Following unsuccessful litigation regarding landowner's efforts to construct and operate a rubble landfill, landowner filed a separate inverse condemnation case alleging that county's actions constituted an unconstitutional taking of its property.

The Circuit Court entered judgment on general jury verdict for landowner. County appealed, and the Court of Special Appeals reversed and remanded. Landowner petitioned for writ of certiorari and county cross-petitioned for conditional writ, which the Court of Appeals granted.

The Court of Appeals held that landowner's failure to exhaust administrative remedies by bringing inverse condemnation claim before county board of appeals precluded landowner from prevailing in subsequent stand-alone action.

REFERENDA - OHIO

State ex rel. Ohioans for Secure and Fair Elections v. LaRose

Supreme Court of Ohio - April 14, 2020 - N.E.3d - 2020 WL 1861844 - 2020 -Ohio- 1459

Election organization petitioned for writs of mandamus against Secretary of State, Ballot Board, and Attorney General, after its initiative petition was split into four separate proposals.

The Supreme Court held that:

- Organization was entitled to writ of mandamus directing Ballot Board to certify proposed constitutional amendment as written;
- Organization was entitled to writ of mandamus directing Secretary of State to convene meeting of Ballot Board;
- Organization was not entitled to writ of mandamus directing Attorney General to certify proposed amendment; and
- Organization was not entitled to extension of time in which to collect signatures.

IMMUNITY - TEXAS

Reyes v. Jefferson County

Supreme Court of Texas - April 17, 2020 - S.W.3d - 2020 WL 1898542 - 63 Tex. Sup. Ct. J. 786

Motorist brought action against county under Texas Tort Claims Act (TTCA) for injuries he allegedly sustained when county police officer collided with motorist's automobile.

The District Court denied county's plea to the jurisdiction. County filed interlocutory appeal. The Court of Appeals reversed. Motorist petitioned for review.

The Supreme Court held that county had actual notice of action, and thus motorist was not required to provide notice under TTCA.

County had actual notice of motorist's personal injury action against county, and thus motorist was not required to provide notice of claim to county to bring action under Texas Tort Claims Act (TTCA), arising out of police officer's collision with motorist; even if county did not believe it was liable after investigation by its authorized claims administrator, motorist's communication with administrator, coupled with administrator's acknowledgment, investigation, and denial of his claim, established county's subjective awareness that motorist was claiming county was at fault in manner ultimately alleged in lawsuit.

INSURANCE - VIRGINIA

VACORP v. Young

Supreme Court of Virginia - April 9, 2020 - S.E.2d - 2020 WL 1789093

School bus passenger injured in collision brought action against manager of school board's self-insurance risk pool, seeking a declaratory judgment regarding the scope of coverage for board's uninsured motorist (UM) and underinsured motorist (UIM) coverage.

The Richmond Circuit Court granted summary judgment to passenger. Manager was awarded an appeal.

The Supreme Court held that board's UM/UIM coverage was not capped at $50,000.

School board's uninsured motorist (UM) and underinsured motorist (UIM) coverage was not capped at $50,000, but rather coverage was for $1 million, as specified in contract entered into with manager of self-insurance risk pool; there was no statutory cap on UM/UIM coverage under remedial construction afforded to statutes, board had freedom to contract for more coverage than $50,000 floor, and insurance purchased from risk pool was valid and collectible.

ELECTIONS - ARIZONA

Morrissey v. Garner

Supreme Court of Arizona - April 21, 2020 - P.3d - 2020 WL 1918688

Mayor brought action to enjoin the recall election obtained by political action committee via recall petition.

The Superior Court enjoined election based on insufficient number of signatures on recall petition. Committee appealed.

The Supreme Court held that proper basis for determining requisite signatures for recall petition was to use number of voters in the most recent primary election at which mayor was voted into office.

Proper basis for determining requisite signatures for recall petition to obtain recall election of town mayor was to use number of voters in the most recent nonpartisan primary election at which mayor was voted into office, rather than 25% of number of votes cast in general election 16 years earlier, which was year that town began using primary elections for all mayoral elections, where town had statutory and constitutional authority to use primary elections to elect local officials, and mayor was declared elected on date of general election by majority vote in primary election.

From Houston to New York, America's Muni Finances Are in Tatters.

- **State budget shortfalls to top $650 billion over 3 years: CBPP**
- **Baltimore mulls police cuts and Houston defers cadets**

In Dayton, Ohio, Mayor Nan Whaley has furloughed a quarter of the city's workforce and is warning that more cuts may follow. In Baltimore, which has one of the highest murder rates in the nation, Mayor Bernard Young is negotiating layoffs with the police union. And in Houston, Mayor Sylvester Turner is deferring all five police cadet classes.

New York's governor, Andrew Cuomo, may have only been referring to his state when he declared on national television in March that "we are broke," but he was, in a broader sense, speaking for the vast bulk of city and county and state governments in America.

Never before have U.S. municipalities been hit so hard or so quickly or in so many different ways as they are right now by the coronavirus pandemic.

Continue reading.

Bloomberg Markets

By Amanda Albright, Danielle Moran, and Fola Akinnibi

May 2, 2020, 6:00 AM PDT

TRESPASS - ALABAMA

Bailey v. City of Leeds

Court of Civil Appeals of Alabama - March 13, 2020 - So.3d - 2020 WL 1223460

Decedents' relatives brought action against city based on claims that city employees trespassed on decedents' graves and that employees negligently removed adornments and damaged or destroyed them.

The Circuit Court entered summary judgment for city. Relatives appealed.

The Court of Civil Appeals, held that:

- Decedents' relatives' lack of ownership of the real estate on which the cemetery plots were located was not a basis for precluding relatives from maintaining trespass claim;
- City employees' alleged disturbance, while conducting maintenance work, of the land on which cemetery plots were located could not be a basis for a trespass claim; and

- Genuine issue of material fact as to information that the city provided regarding its intention to remove adornments and regarding what items could be placed on the cemetery plots and where they could be placed precluded summary judgment on the negligence claim.

HOUSING FINANCE CORPORATIONS - ALASKA

Anderson v. Housing Finance Corporation

Supreme Court of Alaska - April 17, 2020 - P.3d - 2020 WL 1898227

Mortgagor brought action against Alaska Housing Finance Corporation (AHFC), which held deed of trust and promissory note, alleging due process violations arising out of non-judicial foreclosure.

The Superior Court granted summary judgment of AHFC. Mortgagor appealed.

The Supreme Court held that:

- AHFC was government actor that was required to satisfy restrictions imposed on state action by due process clause;
- Mortgagor's interest in home was sufficient property interest to invoke due process;
- Mortgagor did not waive due process rights by signing promissory note and deed of trust;
- AHFC's failure to expressly provide opportunity to be heard prior to non-judicial foreclosure violated due process; and
- Mortgagor was not required to demonstrate prejudice.

EMINENT DOMAIN - GEORGIA

Torres v. City of Jonesboro

Court of Appeals of Georgia - April 16, 2020 - S.E.2d - 2020 WL 1887109

After the trial court dismissed two condemnation petitions, condemnees moved for attorney fees and costs.

The trial court denied the motion for attorney fees. Condemnees appealed.

The Court of Appeals held that city, the condemnor, waived its objection to the admission of expert's testimony that the condemnees incurred $51,206.15 in fees and costs during condemnation proceeding.

City, the condemnor, waived its hearsay objection to the admission of expert's testimony that condemnees incurred $51,206.15 in fees and costs, during condemnees' proceeding to recover attorney fees and costs after condemnation petitions were dismissed, where city failed to contemporaneously object to the testimony.

PUBLIC CONTRACTS - ILLINOIS

Restore Construction Company, Inc. v. Board of Education of Proviso Township High Schools District 209

Supreme Court of Illinois - April 16, 2020 - N.E.3d - 2020 IL 125133 - 2020 WL 1880809

Contractors brought action against school district's board of education, seeking recovery under quantum meruit, among other claims, for repair and restoration work performed for fire-damaged high school.

The Circuit Court granted board's motion to dismiss. Contractors appealed. The Appellate Court reversed. Board's petition for leave to appeal was allowed.

The Supreme Court held that lack of competitive bidding and absence of formal vote by board did not preclude quantum meruit claims.

Lack of competitive bidding and absence of formal, recorded vote by board of education did not preclude contractors' quantum meruit claims against school district to recover for emergency repair and restoration work performed, despite contention that contracts were ultra vires; district was operating under fiscal management of a financial oversight panel that was fully apprised of the work performed, school code specifically provided that enumerated powers were not exclusive, and hiring an entity to do repair and restoration work was among types of action boards were authorized to undertake.

EMINENT DOMAIN - MINNESOTA

State by Commissioner of Transportation v. Elbert

Supreme Court of Minnesota - April 22, 2020 - N.W.2d - 2020 WL 1933237

Landowners and Department of Transportation each sought review of court-appointed commissioners' award of damages, including severance damages attributable to presumed loss of access to property abutting highway during highway construction project, following grant of permanent and temporary easements to Department via condemnation petition.

The District Court granted Department's motion for partial summary judgment. Landowners appealed. The Court of Appeals affirmed. Landowners sought review, which was granted.

The Supreme Court held that:

- A court will not presume that access to property abutting highway is destroyed when Department obtains a temporary easement;
- Department did not take the right of access when it took a temporary construction easement; and
- Landowners were not entitled to severance damages based on construction-related interferences premised on assumed loss of access from project as a whole.

A court will not presume that access to a landowner's property abutting highway is destroyed, entitling the landowner to loss-of-access damages, when Department of Transportation is granted a temporary easement via a condemnation petition for a highway construction project.

Department of Transportation did not take the right of access to property abutting highway when it used condemnation petition to acquire temporary construction easement for highway construction project, and therefore landowners were not entitled to compensation for a taking an a loss-of-access theory, where landowners retained reasonably convenient and suitable access to their abutting property at all times during construction.

Landowners were not entitled to severance damages for construction-related interferences during highway construction project for which Department of Transportation acquired temporary

construction easement via condemnation petition, where focus of appraisal pertaining to severance damages used calculations for construction-related interference coming from project as a whole based on a presumed loss of access stemming from general construction on highway, and landowners never lost access to their property.

ZONING & PLANNING - OHIO

Litchfield Township Board of Trustees v. Forever Blueberry Barn, L.L.C.

Supreme Court of Ohio - April 21, 2020 - N.E.3d - 2020 WL 1918145 - 2020 -Ohio- 1508

Township board of trustees filed complaint seeking to enjoin owner of property that was designated as residential from using barn for weddings and other social gatherings.

After initially entering injunction, the Court of Common Pleas rescinded injunction based on viticulture zoning exemption. Township appealed. The Ninth District Court of Appeals reversed and remanded. On remand, following a hearing, the Court of Common Pleas again found that owner's barn met requirements for zoning exemption. Township appealed. The Court of Appeals affirmed. Township sought review, and the Supreme Court accepted for review one proposition of law.

The Supreme Court held that trial court properly applied primary-use test in determining that primary use of barn was vinting and selling wine, such that zoning exemption applied.

Trial court properly applied primary-use test when it determined that primary use of property owner's barn, and the events held therein, was to facilitate sale of wine by conditioning the rental of the barn on the purchase of its wine, such that barn, which was located in residential district, was exempt from township's zoning restrictions, under statute providing that township could not regulate zoning of building located on land on which grapes were cultivated that was "used primarily for vinting and selling wine," though only a small percentage of barn's overall space was used for vinting and selling wine; given that winery was in initial stages of production, it was not unreasonable to use barn space for other purposes, and use of space for other purposes did not mean that vinting and selling wine was not barn's primary purpose.

EMINENT DOMAIN - VERMONT

Carpenter v. United States

United States Court of Federal Claims - April 3, 2020 - Fed.Cl. - 2020 WL 1650878

Owners of property abutting railway corridor filed rails-to-trails case, seeking just compensation for Fifth Amendment taking allegedly effected by Surface Transportation Board's (STB) issuance of notice of interim trail use (NITU) authorizing conversion of railway corridor into recreational trail under National Trails System Act.

Parties cross-moved for partial summary judgment.

The Court of Federal Claims held that:

- Successors-in-interest had property interest required for takings claim, and
- STB's issuance of NITU constituted compensable taking of that property.

Under Vermont law, railroad acquired by quitclaim deed only easement over land used as railroad corridor, not fee simple title, and thus, successor-in-interest to land had property interest necessary to support takings claim based on Surface Transportation Board's (STB) conversion of corridor into recreational trail under National Trails System Act; deed followed recording of survey and location selection in exercise of railroad's eminent domain power, deed contained language conveying only what railroad required for its "own proper use, benefit and behoof" which was easement for its railway, and railroad's corporate charter prohibited it from exercising eminent domain power to acquire fee simple interest.

Surface Transportation Board's issuance of notice of interim trail use (NITU), authorizing conversion of railroad corridor to recreational trail under National Trails System Act, effected compensable taking of property interest of successor-in-interest to railroad's easement; NITU severed railroad's claim to land because recreational use fell outside scope of easement, and burdens of easement ran with land, so all reversionary rights vested with successor-in-interest upon severance.

SPECIAL ASSESSMENTS - WASHINGTON

Kittitas County v. Washington State Department of Transportation

Court of Appeals of Washington, Division 2 - April 21, 2020 - P.3d - 2020 WL 1921926

County brought declaratory judgment action against Department of Transportation, seeking to require Department to pay assessment for noxious weed control efforts in county.

The Superior Court granted summary judgment to Department. County appealed.

The Court of Appeals held that:

- Statutory funding mechanism for county's noxious weed control was a special assessment rather than a rate, and thus it required clear and express authority to be assessed against state-owned land, and
- No such authority existed.

Statutory funding mechanism for county's noxious weed control was a special assessment rather than a rate, and thus it required clear and express authority to be assessed against state-owned land; purpose of charge was to compensate a noxious weed control board for the services provided to specific lands benefiting from that board's noxious weed control efforts, and charge was designed to be proportional to the benefit received by the assessed land.

Statutes setting out special assessments for funding of county noxious weed control districts do not expressly authorize levy of charges against state-owned lands and thus may not be levied against such lands.

MUNICIPAL GIFTS OF PUBLIC FUNDS - WASHINGTON

Peterson v. State

Supreme Court of Washington - April 17, 2020 - P.3d - 2020 WL 1888727

Taxpayer, who was also the principal owner of a railroad services company, brought action against port district, among others, arising out of its failure to charge two railroads for using a portion of

track that such railroads or their predecessors had assisted the United States in building in exchange for the right to use the track for free, which track was located on land that the United States had subsequently sold to the port district, and port district had leased to taxpayer's company.

Railroads intervened as defendants, and additional taxpayers intervened as plaintiffs. The Superior Court awarded summary judgment to port district. Taxpayers appealed, and the Court of Appeals affirmed. Taxpayers petitioned for review.

The Supreme Court held that port district did not act with donative intent when it failed to charge railroads for their use of track, and thus its actions did not violate state constitutional provision barring municipal gifts of public funds.

Port district did not act with donative intent when it failed to charge two railroads for their use of track that they or their predecessors helped build when the land was owned by the United States in exchange for the right to use the track for free, and thus its actions did not violate state constitutional provision barring municipal gifts of public funds; there was no evidence port district attempted to hide the arrangement, which was also reflected in a recorded indenture, from the state auditor, obligation to honor the railroads' agreement with the United States was a condition of the sale of the land to the port district, and there was no showing of grossly inadequate consideration to the port district or significant cost to taxpayers.

MUNICIPAL ORDINANCE - COLORADO

Caldara v. City of Boulder

United States Court of Appeals, Tenth Circuit - April 10, 2020 - F.3d - 2020 WL 1814596

Citizens of city and entities with various interests in the sale or possession of weapons within city brought action challenging municipal ordinance that, inter alia, prohibited the sale or possession of assault weapons within city.

The United States District Court abstained and stayed the proceedings pending resolution of pending state-court case. Plaintiffs appealed.

The Court of Appeals held that abstention under Pullman was proper.

Pullman abstention was warranted in action challenging Colorado city ordinance that, inter alia, prohibited sale or possession of assault weapons within city; issues of whether ordinance violated Colorado statute because at least some firearms covered by ordinance could be legally possessed under state or federal law and whether municipal firearms regulations were matters of local or statewide concern had not been conclusively resolved by state courts, there was no impediment to plaintiffs litigating applicability of state statute to ordinance in state courts, and if state courts were to conclude that ordinance was preempted by state statute, such determination would eliminate need for determination of whether ordinance violated federal constitution.

LIABILITY - INDIANA

King v. Hendricks County Commissioners

United States Court of Appeals, Seventh Circuit - March 31, 2020 - F.3d - 2020 WL 1531356

Estate brought action against police officer and county, asserting claims under § 1983, Americans with Disabilities Act (ADA), and the Rehabilitation Act, arising out of death of resident, who suffered from paranoid schizophrenia, at hands of officer who was responding to resident's call for help when he was suffering a mental health crisis.

The United States District Court granted summary judgment to defendants. Estate appealed.

The Court of Appeals held that:

- Officer's use of force did not violate the Fourth Amendment, and
- There was no ADA Title II or Rehabilitation Act violation.

Officer's use of deadly force, shooting and killing resident who suffered from paranoid schizophrenia, was reasonable under the Fourth Amendment, thus precluding resident's estate's § 1983 claim, where resident pointed a large knife at officers who went to his home to perform a welfare check after he called 911 and requested help, resident disregarded officers' repeated comments to drop the knife, and then charged at officer.

If resident, who suffered from paranoid schizophrenia, was denied access to medical services, it was because of his violent, threatening behavior, not because he was mentally disabled, and thus no violation of ADA Title II or the Rehabilitation Act occurred when resident died at hands of officers whom he called for help when he was suffering a mental health crisis; officer's failure to control resident, or disarm him of the knife he was pointing toward officers, was not due to deliberate indifference or inadequate training to deal with disabled individuals, but rather, because resident threatened officer with the knife before officer could subdue him.

MISAPPROPRIATION - INDIANA

Robertson v. State

Supreme Court of Indiana - March 30, 2020 - N.E.3d - 2020 WL 1501683

Office of Attorney General (OAG) two brought claims against county bookkeeper for misappropriation of public funds and sought relief under the Crime Victims Relief Act (CVRA).

The Superior Court denied bookkeeper's motion to dismiss. Bookkeeper appealed. The Court of Appeal affirmed. Transfer was granted.

The Supreme Court held that:

- Statute of limitations on claim to recover misappropriated public funds did not begin until OAG received a final, verified audit report, and
- Cause of action for relief under CVRA accrued, and statute of limitations began to run, when State Board of Accounts (SBOA) provided OAG with copy of its preliminary investigatory report.

Statute of limitations for Office of Attorney General (OAG)'s complaint against county bookkeeper to recover misappropriated public funds did not begin until OAG received from State Board of Accounts (SBOA) the final, verified audit report.

Office of Attorney General's (OAG) cause of action against county bookkeeper, seeking relief under the Crime Victims Relief Act (CVRA) for her alleged misappropriation of public funds, accrued, and two-year statute of limitations period began to run, when State Board of Accounts (SBOA) provided

OAG with copy of its preliminary investigative report, such that OAG knew or should have known of the injury.

SCHOOLS - MAINE

MSAD 6 Board of Directors v. Town of Frye Island

Supreme Judicial Court of Maine - April 14, 2020 - A.3d - 2020 WL 1862206 - 2020 ME 45

School district brought action against town, seeking declaratory judgment that town's efforts to withdraw from school district were unlawful, and individual taxpayers intervened.

The Superior Court granted summary judgment to district and entered declaratory judgment. Town and taxpayers appealed.

The Supreme Judicial Court held that:

- Question of town's ability to withdraw from school district was not purely local and municipal in character, and thus authority to withdraw from district was not granted to town under home rule provision of state constitution;
- Amendment to previously-enacted private and special law, precluding town's withdrawal from school district without legislative authorization in form of amendment to relevant statutory chapter, was not implicitly repealed by subsequent enactment of statutory process for withdrawal from school district;
- Such amendment did not violate special legislation clause of state constitution;
- Such amendment was rationally related to legitimate interest of financing public education and thus did not violate taxpayers' equal protection rights.

EMPLOYMENT - MONTANA

Turner v. City of Dillon

Supreme Court of Montana - April 7, 2020 - P.3d - 2020 WL 1685819 - 2020 MT 83

Former municipal employee brought wrongful discharge action against city and mayor.

The District Court denied city's and mayor's motion to dismiss for failure to state a claim based on the statute of limitations and motion for summary judgment, and, following jury trial, entered judgment on jury verdict for former employee. City and mayor appealed.

The Supreme Court held that filing of wrongful discharge claim with city was not a prerequisite to filing suit and did not toll one-year statute of limitations.

ZONING & PLANNING - NORTH CAROLINA

PHG Asheville, LLC v. City of Asheville

Supreme Court of North Carolina - April 3, 2020 - S.E.2d - 2020 WL 1650898

Hotel developer petitioned for writ of certiorari seeking review of city's denial of application for conditional use permit to an eight-story hotel in city's central business district but outside traditional

downtown core.

The Superior Court reversed and remanded. City appealed. The Court of Appeals affirmed. City petitioned for discretionary review, which was allowed.

The Supreme Court held that developer presented competent, material, and substantial evidence that proposed hotel satisfied relevant ordinance standards for grant of conditional use permit.

Developer presented competent, material, and substantial evidence to city council that its proposed eight-story hotel in city's central business district but outside traditional downtown core satisfied the relevant standards in city's land use ordinance for grant of conditional use permit, by presenting testimony from architects, an appraiser, a traffic engineer, a certified planner, and developer's vice president, and thus city lacked authority to deny developer's application for conditional use permit absent any competent, material, and substantial evidence presented in opposition to developer's showing.

IMMUNITY - VERMONT

Civetti v. Turner

Supreme Court of Vermont - April 3, 2020 - A.3d - 2020 WL 1651229 - 2020 VT 23

ndividual who was injured in motor vehicle accident allegedly caused by the noncompliant town road filed lawsuit to recover for his injuries.

Superior Court granted motion to dismiss for failure to state cause of action, and individual appealed.

The Supreme Court held that:

- State statutes served to shift town road commissioner's liability and defenses to the town, which stood in its officer's shoes and thus could assert only such defenses as would be available to road commissioner,
- Whether town road commissioner, in allegedly failing to ensure that town road complied with standards established by town for its roads, was performing a discretionary function could not be determined on motion to dismiss plaintiff's claims based on qualified immunity.

PUBLIC UTILITIES - MINNESOTA

LSP Transmission Holdings, LLC v. Sieben

United States Court of Appeals, Eighth Circuit - March 25, 2020 - F.3d - 2020 WL 1443533

After proposed 345-kilovolt intrastate electric transmission line was approved and two incumbent electric utilities gave formal notice of their intent to construct line, out-of-state transmission developer brought action against the Commissioners of the Minnesota Public Utilities Commission (PUC) and the Minnesota Department of Commerce, alleging Minnesota statute granting incumbent electric utilities a right of first refusal to build and own electric transmission lines that connected to their existing facilities violated the dormant Commerce Clause.

Incumbent utilities intervened as defendants. The United States District Court granted defendants' motions to dismiss for failure to state a claim. Developer appealed.

The Court of Appeals held that:

- Statute did not facially discriminate against out-of-state entities;
- Statute did not have purpose of discriminating against out-of-state entities;
- Statute did not have effect of discriminating against out-of-state entities; and
- Statute did not violate dormant Commerce Clause under *Pike* balancing test, 90 S.Ct. 844.

Minnesota statute granting incumbent electric utilities a right of first refusal to build and own electric transmission lines that connected to their existing facilities did not facially discriminate against out-of-state entities, as would have violated dormant Commerce Clause; Minnesota's preference was for electric transmission owners who had existing facilities, regardless of whether they were Minnesota-based entities or based out-of-state, and incumbent utilities in Minnesota included entities headquartered in Minnesota and four other states.

Minnesota statute granting incumbent electric utilities a right of first refusal to build and own electric transmission lines that connected to their existing facilities did not have purpose of discriminating against out-of-state entities, as would have violated dormant Commerce Clause; statute was not primarily aimed at protecting in-state interests but at maintaining a regulatory system that had worked and provided adequate and reliable services at reasonable rates to Minnesota residents, state regulation inherently involved siting, permitting, and constructing transmission lines, and Federal Energy Regulatory Commission (FERC) left such control to state authority and had not deemed that state right of first refusal laws used highly ineffective means to accomplish state interests.

Minnesota statute granting incumbent electric utilities right of first refusal to build and own electric transmission lines that connected to their existing facilities did not have effect of discriminating against out-of-state entities, as would have violated dormant Commerce Clause; although many incumbent utilities that possessed right of first refusal under statute were headquartered in Minnesota and controlled most of state's transmission lines, Minnesota allowed entities other than utilities, such as independent transmission companies, to qualify as incumbents, and if entity did not already own existing transmission facility in Minnesota, then entity, whether from Minnesota or out of state, faced incidental hurdle of seeking approval and gaining transmission facilities in Minnesota.

Burden imposed by Minnesota statute granting incumbent electric utilities right of first refusal to build and own electric transmission lines that connected to their existing facilities was not clearly excessive in relation to Minnesota's legitimate interests in regulating its electric industry and maintaining its historically-proven status quo for constructing and maintaining electric transmission lines, and thus statute did not violate dormant Commerce Clause under *Pike* balancing test, 90 S.Ct. 844; the states had authority over location and construction of electrical transmission lines, incumbents were not obligated to exercise right of first refusal, and there was no evidence cumulative effect of state right of first refusal laws would eliminate competition in the market completely

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PUBLIC RECORDS - NEVADA

Las Vegas Metropolitan Police Department v. Center for Investigative Reporting, Inc.

Supreme Court of Nevada - April 2, 2020 - P.3d - 2020 WL 1650320 - 136 Nev. Adv. Op. 15

Requester filed petition for writ of mandamus, seeking to inspect or obtain copies of all records

related to rapper's murder within city police department's custody and control.

Before the scheduled hearing, police department and requester reached agreement, whereby police department would produce portions of its records, along with index identifying and describing any redacted or withheld records.

The District Court dismissed petition as moot, based on parties' agreement, concluded that requester had prevailed, for purposes of attorney fee award under Nevada Public Records Act (NPRA), and awarded requester attorney fees. Police department appealed.

The Supreme Court held that:

- Appellate court would apply catalyst theory to determine whether requesting party prevailed, for purposes of award of attorney fees and costs under NPRA, when parties reached agreement that afforded requesting party access to requested records before court entered judgment on merits, and
- As matter of first impression, requester was "prevailing party" and, thus, was entitled to reasonable attorney fees and costs under NPRA, when parties reached agreement that afforded requester access to requested records before court entered judgment on merits.

ANNEXATION - NORTH CAROLINA

Town of Pinebluff v. Moore County

Supreme Court of North Carolina - April 3, 2020 - S.E.2d - 2020 WL 1652564

Town brought action against county, seeking a writ of mandamus directing county board of commissioners to adopt a resolution authorizing town's extraterritorial jurisdiction expansion.

The Superior Court granted summary judgment to town. County appealed.

The Supreme Court held that no irreconcilable conflict existed between amended subsection of extraterritorial jurisdiction statute, allowing town to extend its extraterritorial jurisdiction two miles beyond an annexed area, and previously-enacted subsection of statute, which stated that, absent certain exceptions, a city could not extend its extraterritorial jurisdiction into an area in which county was exercising each of its powers enumerated by subsection, and therefore amendment did not repeal by implication the previously-enacted subsection; interpreted together, statute stated that town could extend its extraterritorial jurisdiction beyond annexed area only if the extension also complied with the provisions of previously-enacted subsection.

JURISDICTION - TEXAS

Preston Hollow Capital, LLC v. Bouldin

United States District Court, S.D. Texas, Galveston Division - January 30, 2020 - Slip Copy - 2020 WL 486783

Preston Hollow, an independent municipal finance company, filed this case back in June 2019, seeking to recover millions of dollars from Mark Bouldin ("Bouldin") under a guaranty agreement.

Bouldin, a Florida resident, is the President of Senior Care Ownership one of the entities with an ownership interest in Senior Care. The lawsuit alleges that Senior Care borrowed roughly $44

million raised through the sale of tax-exempt bonds to construct senior living facilities. Preston Hollow invested more than $21 million in the financing. Bouldin guaranteed the bond and loan obligations of Senior Care.

Branch Banking and Trust Company ("BB&T") was the original indenture trustee with respect to the bonds and the loans relating to the financing. Because BB&T was formed under North Carolina law and has its principal place of business in North Carolina, BB&T is a citizen of North Carolina for purposes of the diversity jurisdiction analysis.

In August 2019, Preston Hollow added Senior Care as a defendant, suing Senior Care for the unpaid loan Bouldin had guaranteed.

On January 8, 2020, the judge entered an order requiring Preston Hollow, as the plaintiff in this action, "to file a letter explaining the citizenship of all parties within seven days." Preston Hollow submitted a letter on January 15, 2020. In that letter, Preston Hollow informed me that it believes that Defendant Senior Care Living VI, LLC ("Senior Care") has three members: Senior Care Ownership, Inc. ("Senior Care Ownership 3"), which is a corporation organized under the laws of Florida with its principal place of business in Florida; and two limited liability companies. Preston Hollow represented to that it is unable to determine the membership of those two limited liability companies. In its January 15, 2020 letter, Preston Hollow also indicated that it has 66 members, seven of whom are individuals, 28 are partnerships or limited partnerships, 16 are limited liability companies, nine are trusts, three are employee retirement or pension benefit plans, and three are other business organizations. Preston Hollow said that its members prefer not to disclose details of their involvement in Preston Hollow.

Importantly, Preston Hollow argued that the citizenship status of its members is not relevant because Preston Hollow is not a real party in interest in this case. Instead, Preston Hollow asserted that it is suing exclusively as an agent of BB&T, the real party in interest.

The judge rejected Preston Hollow's claim that it is merely bringing this lawsuit in a representative capacity on behalf of BB&T. "Tellingly, Preston Hollow is unable to point to any document that gives it the authority to bring a claim on behalf of BB&T, the trustee. Instead, Section 7.20 of the MTI expressly provides that Preston Hollow has the right to bring a claim "in lieu of" the trustee." "It is clear that Preston Hollow has the right to bring an affirmative claim for relief *instead* of the trustee, not *on behalf of* the trustee. This is a significant distinction, which ultimately means that Preston Hollow is acting as a representative of the bondholders, not as an agent for the trustee.

The judge noted that, far from acting solely in a representative capacity, Preston Hollow has a pecuniary interest in this litigation and fully expects to receive a significant portion of any damage award obtained in this case. "In conclusion, I find that Preston Hollow is a real and substantial party to the controversy pending before me. Preston Hollow is not only a representative of all the bondholders, it is also a real party in interest with its own stake in the litigation."

"Preston Hollow has indicated that its 66 members prefer not to disclose details of their involvement in Preston Hollow. While I appreciate this, I believe such information is essential for me to determine whether diversity jurisdiction exists. To this end, I (again) order Preston Hollow to file a letter explaining the citizenship of Preston Hollow's members. Such letter should also be filed by Friday, January 31, 2020."

LIABILITY - UTAH

Cochegrus v. Herriman City, Rosecrest Village Homeowners Association, Inc.

Supreme Court of Utah - March 26, 2020 - P.3d - 2020 WL 1482588 - 2020 UT 14

Pedestrian brought negligence action against city, homeowners' association that was abutting property owner, and association's management company arising from her trip and fall on metal rod protruding out of hole in city's grassy park strip between sidewalk and street.

The Third District Court granted summary judgment for defendants. Pedestrian appealed.

The Supreme Court held that:

- Genuine issues of material fact existed as to whether defendants had constructive knowledge of rod, and
- Genuine issues of material fact existed as to whether association and company had a duty to pedestrian.

Genuine issues of material fact existed as to whether city, homeowners' association that was abutting property owner, and association's management company had constructive knowledge of metal rod protruding out of hole in city's grassy park strip between sidewalk and street, precluding summary judgment in pedestrian's negligence action arising from her trip and fall.

Genuine issues of material fact existed as to whether homeowners' association, which was abutting property owner, and its management company had a duty to pedestrian, precluding summary judgment in pedestrian's negligence action arising from her trip and fall on metal rod protruding out of hole in city's grassy park strip between sidewalk and street.

IMMUNITY - WASHINGTON

Ehrhart v. King County

Supreme Court of Washington.April 2, 2020--- P.3d ----2020 WL 1649891

Patient's wife brought action against county public health department, alleging negligence after patient died after contracting hantavirus.

The Superior Court granted conditional partial summary judgment to wife. County appealed.

After grant of direct discretionary review, the Supreme Court of Washington held that:

- County was not responsible for enforcing state regulation setting out duties of local health officer or the local health department, and thus any failure by county to enforce regulation could not support application of failure-to-enforce exception to public duty doctrine to allow instant action;
- Such regulation required county only to make a determination about how to respond to report of hantavirus case, not to make a particular determination; and
- Regulation was intended to protect public as a whole, and thus failure-to-enforce exception to public duty doctrine did not apply.

FRANCHISE FEES - CALIFORNIA

Zolly v. City of Oakland

Court of Appeal, First District, Division 1, California - March 30, 2020 - Cal.Rptr.3d - 2020 WL 1498339 - 20 Cal. Daily Op. Serv. 2827

Solid waste disposal customers brought action to challenge constitutionality of franchise fees which city charged waste management entities, a portion of which was redesignated as a solid waste management fee.

The Superior Court sustained city's demurrer, and taxpayers appealed.

The Court of Appeal held that:

- Complaint sufficiently stated claim that franchise fee which city charged waste haulers was not reasonably related to the value received and thus was a tax requiring voter approval;
- Challenge that city's future redesignated franchise fee increases for solid waste haulers was an unconstitutional tax did not present an actual controversy proper for adjudication and thus was not ripe; and
- Customers' payment of solid waste disposal fee did not cause customers to incur hardship, as required for claim to be ripe.

Complaint sufficiently stated claim that franchise fee which city charged waste haulers was not reasonably related to the value received and thus was a tax requiring voter approval; complaint noted that contracts required initial franchise fees, asserted that the contracts were not the product of bona fide negotiations and that various financial analyses were not performed, and that grand jury found the franchise fees ware disproportionately higher than fees in surrounding area and that city's procurement process was mishandled and subject to political considerations, and complaint noted that waste hauling rate increases for customers ranged from 79.76 percent to 155.37 percent.

Challenge that portion of city's future franchise fee increases for solid waste haulers, which had been redesignated as solid waste disposal fees, was an unconstitutional tax did not present an actual controversy proper for adjudication and thus was not ripe; while the ordinance imposing the redesignated fee provided for fee increases, it was uncertain whether or when those will occur, as increases were not implemented if hauler's gross receipts for the prior calendar year were less than the calendar year before that, actual amount of any such increase also was uncertain, and court could not assess whether those future unknown increases exceeded the city's future costs.

Customers' payment of solid waste disposal fee, which consisted of part of redesignated franchise fee for waste hauling contracts, did not cause customers to incur hardship, as required for customers' declaratory judgment action claiming fee was an unconstitutional tax to be ripe; challenge to the current redesignated fee was time-barred such that any harm currently incurred was based on their own failure to timely challenge the fee, any harm they might incur from future fee increases was uncertain, and customers did not show they would be unable to pursue appropriate legal remedies should the anticipated harm ever materialize.

ELECTIONS - CALIFORNIA

City of Redondo Beach v. Padilla

Court of Appeal, Second District, Division 7, California - March 23, 2020 - Cal.Rptr.3d -

2020 WL 1328970 - 20 Cal. Daily Op. Serv. 2581 - 2020 Daily Journal D.A.R. 2620

Charter city filed petition for writ of mandate against the Secretary of State, seeking to prohibit the Secretary from applying to the city the California Voter Participation Rights Act (VPRA), requiring political subdivisions to consolidate local elections with statewide on-cycle elections if the local jurisdiction's turnout falls at least 25% below the locality's average voter turnout in the previous four statewide general elections.

The Superior Court issued writ of mandate. Secretary appealed.

The Court of Appeal held that Legislature did not demonstrate clear intention to apply the VPRA to charter cities.

Legislature did not demonstrate clear intention to apply to charter cities the California Voter Participation Rights Act (VPRA), requiring political subdivisions to consolidate local elections with statewide on-cycle elections if the local jurisdiction's turnout falls at least 25% below the locality's average voter turnout in the previous four statewide general elections; in other statutes, Legislature used specific language when intending the term "political subdivision" to include charter cities, Legislature made contemporaneous amendment of the California Voting Rights Act (CVRA) to expressly include charter cities, and senator's comments suggested that Legislature deliberately left unresolved the question whether VPRA applied to charter cities.

LIABILITY - GEORGIA

City of Lafayette v. Chandler

Court of Appeals of Georgia - March 9, 2020 - S.E.2d - 2020 WL 1129674

Driver brought action for damages against city arising from collision with fire truck driven by city firefighter.

The State Court denied city's motion to dismiss. City appealed.

The Court of Appeals held that driver's ante litem notice of action strictly complied with statutory requirement to provide specific amount of monetary damages sought.

Driver's ante litem notice of action for damages against city arising from collision with fire truck driven by city firefighter, which stated that driver would seek to recover $1,000,000 in monetary damages, strictly complied with statutory requirement to provide specific amount of monetary damages sought as an offer of compromise, despite city's argument that the figure was only a "generalized stab" at the presumptive limits of its insurance policy; requirement did not require driver to provide actual dollar amount of damages allegedly incurred, but only to provide specific amount of monetary damages being sought.

LIABILITY - HAWAII

Hyun Ju Park v. City and County of Honolulu

United States Court of Appeals, Ninth Circuit - March 13, 2020 - 952 F.3d 1136 - 20 Cal. Daily Op. Serv. 2177 - 2020 Daily Journal D.A.R. 2235

Bartender brought § 1983 action alleging that city and county government and police officers violated her substantive due process right to bodily integrity under Fourteenth Amendment when one off-duty office shot her while reloading his police department firearm in reckless and dangerous manner, and other officers failed to intervene.

After plaintiff settled with first officer, the United States District Court for the District of Hawai'i dismissed remaining claims, and plaintiff appealed.

The Court of Appeals held that:

- Officers were not acting under color of state law when they failed to stop fellow officer from recklessly attempting to load his already-loaded firearm while intoxicated;
- Facial deficiencies of police department policy regarding off-duty carry of service weapons were not obvious;
- Evidence that officer had drunkenly brandished his firearm in presence of other officers while off-duty was insufficient to establish pattern of prior, similar incidents; and
- Evidence of three prior instances in which officers attempted to conceal each other's misconduct was insufficient to demonstrate police chief's deliberate indifference.

PUBLIC UTILITIES - MAINE

NextEra Energy Resources, LLC v. Maine Public Utilities Commission

Supreme Judicial Court of Maine - March 17, 2020 - A.3d - 2020 WL 1270497 - 2020 ME 34

Power company petitioned for a certificate of public convenience and necessity (CPCN) for the construction and operation of a clean energy connection project to deliver 1,200 megawatts of electricity from Québec to the New England Control Area.

The Public Utilities Commission granted the petition, and intervenor appealed.

The Supreme Judicial Court held that:

- Intervenor had standing to appeal from the issuance of a CPCN;
- Commission did not legally err when it that found power company was not required to submit the statutorily required results of an independent third-party investigation into the use of nontransmission alternatives;
- Commission did not err as a matter of law by concluding the term public need was a general standard of meeting the public interest;
- The statute governing construction of power transmission lines did not require the Commission to undertake consideration of any mitigation of adverse impacts;
- Substantial evidence existed to support the Commission's finding that a proposed power transmission line project would not adversely impact the State's renewable energy generation goals; and
- Parties to a stipulation that recommended approvals and findings regarding issuance of the CPCN, CPCN conditions, and nontransmission alternatives, represented a sufficiently broad spectrum of interests.

INDEMNIFICATION - OHIO

Ayers v. City of Cleveland

Supreme Court of Ohio - March 25, 2020 - N.E.3d - 2020 WL 1445287 - 2020 -Ohio- 1047

After prevailing in action against city detectives on civil claims alleging police misconduct in the course of criminal investigation, judgment creditor brought statutory indemnification claim against city.

The Court of Common Pleas entered summary judgment in favor of judgment creditor. City appealed and judgment creditor cross-appealed. The Court of Appeals reversed and remanded. Creditor sought further review.

The Supreme Court held that creditor could not enforce detective's indemnity rights against city under political-subdivision employee indemnification statute.

Political-subdivision employee indemnification statute did not permit judgment creditor to enforce police detective's indemnification rights directly against city; statute provided that a political subdivision was required to "indemnify and hold harmless an employee," so that the right of indemnification was personal to the employee, statute did not require political subdivisions to indemnify any judgment against an employee, and statute did not provide that a third party could enforce the right of indemnification on behalf of an employee.

IMMUNITY - RHODE ISLAND

Diorio v. Hines Road, LLC

Supreme Court of Rhode Island - March 30, 2020 - A.3d - 2020 WL 1501920

Landowners brought action against town, town solicitor, and town's building and zoning official for declaratory judgment and injunctive relief, negligence, private nuisance, trespass, and intentional infliction of emotional distress arising from dispute with neighbor about a retaining wall that was subject of settlement agreement with town.

The Superior Court granted summary judgment for defendants. Landowners appealed.

The Supreme Court held that:

- Solicitor had prosecutorial immunity;
- Building official did not have prosecutorial immunity; and
- Monetary claims against town were subject to abatement and dismissal due to failure to name town treasurer as defendant.

WATER DISTRICTS - TEXAS

City of Conroe v. San Jacinto River Authority

Supreme Court of Texas - March 27, 2020 - S.W.3d - 2020 WL 1492411

Conservation and water reclamation district brought action under Expedited Declaratory Judgments Act (EDJA) seeking declaration that city was liable for breaching its water-sale contract and seeking declarations regarding legality and validity of contracts.

The District Court denied pleas to the jurisdiction and motions to transfer venue. Cities and utility companies filed interlocutory appeal and petition for writ of mandamus. The Court of Appeals denied mandamus petition, and affirmed in part and reversed in part.

The Supreme Court held that:

- Trial court could exercise jurisdiction over declaration that district was authorized to set rates for water-system operators;
- Trial court lacked jurisdiction to declare whether specific rate amount set in particular rate was valid; and
- City was not immune.

Execution of bilateral groundwater reduction plan contracts between water-system operators and legislatively created conservation and reclamation district charged with regulating water resources of San Jacinto River Basin to provide operators with surface water in exchange for monthly payments constituted public security authorization under Expedited Declaratory Judgment Act (EDJA), and therefore trial court could exercise jurisdiction over declaration that district was authorized to set rates for water-system operators pursuant to procedures set forth in those contracts, since contracts were executed in close temporal proximity to bonds' issuance and their revenues were immediately pledged as sole source of repayment securing district's bonds.

Rate order and rates established under bilateral groundwater reduction plan contracts between water-system operators and legislatively created conservation and reclamation district charged with regulating water resources of San Jacinto River Basin to provide operators with surface water in exchange for monthly payments did not constitute public security authorizations under Expedited Declaratory Judgment Act (EDJA), and therefore trial court lacked jurisdiction to declare their legality or validity, since rate order and rates did not have authorizing connection with bonds and did not implicate district's statutory authority to impose rate.

City was not immune to action brought by conservation and water reclamation district under Expedited Declaratory Judgments Act (EDJA) seeking declaratory judgment that city was liable for breaching its water-sale contract and seeking declarations regarding legality and validity of contracts, since EDJA proceedings were in rem and did not impose personal liability.

EMINENT DOMAIN - CALIFORNIA

Pakdel v. City and County of San Francisco

United States Court of Appeals, Ninth Circuit - March 17, 2020 - F.3d - 2020 WL 1270732 - 20 Cal. Daily Op. Serv. 2369 - 2020 Daily Journal D.A.R. 2350

Co-owners of multi-unit building owned through tenancies-in-common brought § 1983 action asserting federal regulatory takings claim against city/county, its board of supervisors, and its department of public works, relating to city/county ordinance's requirement, for expedited conversion program to clear a backlog in lottery system for converting tenancy-in-common property to condominium property, that conversion applicants agree to offer any existing tenants lifetime leases in converted property.

The United States District Court granted defendants' motions to dismiss for lack of subject matter jurisdiction and for failure to state a claim. Plaintiffs appealed.

The Court of Appeals held that:

- Co-owners' belated request for exemption did not satisfy finality requirement for ripeness for federal court's adjudication of federal regulatory takings claim, and
- Discretion to excuse noncompliance with prudential finality requirement would not be exercised.

City/county ordinance imposing requirement, for city/county's expedited conversion program to clear a backlog in lottery system for converting tenancy-in-common property to condominium property, that conversion applicants agree to offer any existing tenants lifetime leases in converted property, was not an "exaction," as would be subject to rough proportionality test for Fifth Amendment taking; lifetime lease requirement was a general requirement imposed through legislation, rather than an individualized requirement to grant property rights to the public imposed as a condition for approving a specific property development.

City/county ordinance imposing requirement, for city/county's expedited conversion program to clear a backlog in lottery system for converting tenancy-in-common property to condominium property, that conversion applicants agree to offer any existing tenants lifetime leases in converted property, was not a physical taking, for purposes of Fifth Amendment taking claim asserted by plaintiff co-owners of multi-unit building owned as tenancies-in-common, where plaintiffs voluntarily applied for conversion under the program.

Co-owners of multi-unit building owned through tenancies-in-common failed to show final decision by city/county applying the challenged ordinance to co-owners' property, as would be required for ripeness for adjudication, in federal court, of federal regulatory takings claim asserted in § 1983 action against city/county, where a final decision was made before co-owners belatedly sought an exemption, from city's department of public works, from being required under the ordinance to offer any existing tenants post-conversion lifetime leases, which requirement was part of city/county's expedited conversion program to clear a backlog in lottery system for converting tenancy-in-common property to condominium property.

Federal court of appeals would not exercise its discretion to excuse co-owners of multi-unit building owned through tenancies-in-common from nonjurisdictional prudential requirement, for ripeness for federal court's adjudication of federal regulatory takings claim, of showing final decision by city/county applying challenged ordinance to co-owners' property, on co-owners' appeal from dismissal of § 1983 action challenging ordinance's requirement, for expedited conversion program to clear a backlog in lottery system for converting tenancy-in-common property to condominium property, that conversion applicants agree to offer any existing tenants lifetime leases in converted property, where there were no concerns about different claims proceeding simultaneously in state and federal court, and city/county raised ripeness issue at first opportunity.

OPEN MEETINGS - GEORGIA

Williams v. DeKalb County

Supreme Court of Georgia - March 13, 2020 - S.E.2d - 2020 WL 1227278

County resident brought action against county, chief executive officer, and members of the board of commissioners, setting forth claims for mandamus, declaratory, and injunctive relief, and criminal and civil penalties, based on allegations that commissioners violated the Open Meetings Act by not giving proper notice of their intent to pass ordinance increasing their pay and that statute giving commissioners authority to increase their own pay violated the state constitution.

The Superior Court dismissed the action. Resident appealed.

The Supreme Court held that:

- Plaintiff lacked standing to seek declaratory relief;
- Plaintiff lacked citizen standing to seek relief under the mandamus statute;
- Plaintiff lacked taxpayer standing;
- Remand was required to determine if plaintiff had standing to pursue claim against chief executive officer;
- As matter of first impression, plaintiff had standing to request civil penalty for violations of the Open Meetings Act;
- Plaintiff stated claim for violation of the agenda requirements of the Open Meetings Act; and
- Commissioners were not entitled to official immunity from Open Meetings Act claims.

LEASES - INDIANA

City of New Albany v. Board of Commissioners of County of Floyd

Supreme Court of Indiana - March 23, 2020 - N.E.3d - 2020 WL 1332950

County brought action against building authority, which had been formed by county and city and from which county had been leasing a criminal justice center, for a declaratory judgment and specific performance as to county's alleged right under turn-over provision in lease to demand that building authority transfer title to the center.

After intervention in the action by city, which had been subleasing space in the center from county, the Superior Court entered a declaratory judgment in county's favor and ordered that title to the center be vested in the county. City appealed. The Court of Appeals affirmed, and adhered to that determination on rehearing. Parties petitioned for transfer, which the Supreme Court granted.

The Supreme Court held that turn-over provision in lease was valid under statute governing transfer of property between governmental entities.

Turn-over provision in lease for criminal justice center between lessor building authority, which had been created by city and county, and lessee county, providing that, upon expiration of term of lease, the authority would convey title to the center to the county upon the county's request, was valid under statute providing that governmental agencies could "transfer or exchange…property," though authority asserted that turn-over provision was inconsistent with statute granting authority power to "acquire real or personal property by gift, devise, or bequest and hold, use or dispose of that property," as property had not been gifted, devised, or bequested; transfer statute applied to governmental agencies, including but not limited to municipal corporations like building authority, and the statutes were not in conflict.

There was no conflict between the statute granting building authorities power to acquire property by "gift, devise, or bequest and hold, use, or dispose of that property," and statute providing that governmental agencies, including a building authority, could "transfer or exchange…property"; there was nothing to suggest that statute regarding powers of building authorities provided the sole manner for disposing of property belonging to an authority, fact that there were multiple statutes that gave authorities ability to transfer property did not mean statutes were inconsistent, absent some language indicating as much, statutes could operate under their separate requirements, and statutes were adopted during same legislative session, such that neither was supplemental to or overwritten by the other.

HIGHWAYS - NEBRASKA

County of Cedar v. Thelen

Supreme Court of Nebraska - March 20, 2020 - N.W.2d - 305 Neb. 351 - 2020 WL 1321467

County filed civil complaint for a permanent injunction at same time as a criminal complaint charging landowner with obstructing a public road based on his repeated instances of erecting electric fence within ditch right-of-way along county road.

The District Court granted injunction following bench trial. Landowner appealed.

The Supreme Court held that criminal prosecution of landowner did not provide an adequate remedy at law that would preclude injunctive relief for county.

Criminal prosecution of landowner for obstructing public road based on his repeated instances of erecting electric fence within ditch right-of-way along county road did not provide an adequate remedy at law that would preclude permanent injunctive relief for county, where multiple criminal prosecutions did nothing to curb landowner's behavior, and landowner expressed opinion that fines associated with repeat misdemeanor convictions were "cheap pasture rent."

EMINENT DOMAIN - NEW HAMPSHIRE

Torromeo Industries v. State

Supreme Court of New Hampshire - March 13, 2020 - A.3d - 2020 WL 1237205

Property owner sought judicial review of determination of Board of Tax and Land Appeals (BTLA) ordering $35,000 in just compensation for state's taking of owner's land by eminent domain.

The Superior Court awarded property owner $70,800 in condemnation damages. After state's motion for reconsideration was denied, state appealed.

The Supreme Court held that:

- There was no evidence supporting determination that before taking value of residential lot was the same as its after taking value under sales comparison approach;
- Finding that there had been no change to rental income from residential lot following the taking was not dispositive with regard to whether lot changed value under income capitalization approach; and
- Even if there were evidence supporting determination that value of residential lot remained the same before and after the taking under the income capitalization approach, trial court's determination would not be affirmed on that basis.

LIABILITY - WASHINGTON

Schulz v. State

Court of Appeals of Washington, Division 3 - March 17, 2020 - P.3d - 2020 WL 1268991

Landowners brought action against the Department of Natural Resources (DNR) to recover for property damage caused by forest fires, alleging the DNR was negligent in its efforts to suppress the

fires on DNR managed lands, allowing the fires to spread to neighboring properties.

The Superior Court granted summary judgment for the DNR, and landowners appealed.

The Court of Appeals held that:

- Landowners failed to allege that the DNR failed to use due care to prevent the spread of fire from its land to neighboring properties, as required to state a claim for negligence based on a breach of the DNR's duty as a landowner, and
- The public duty doctrine applied to landowners' claims.

IMMUNITY - ALABAMA

Ex parte City of Millbrook

Supreme Court of Alabama - March 6, 2020 - So.3d - 2020 WL 1071325

Civic center patron who fell on a sidewalk at the end of a ramped walkway leading from the front of the civic center to the parking lot brought negligence action against city based on allegation that city failed to maintain, repair, or design the sidewalk to ensure its safety for pedestrian traffic.

The Circuit Court denied city's motion for summary judgment. City petitioned for a writ of mandamus.

The Supreme Court held that city failed to establish that the civic center facilitated the recreational use of land.

City failed to establish that civic center facilitated the recreational use of land, as required for civic center to fall within the definition of "outdoor recreational land" given in recreational-use statutes limiting liability for non-commercial public recreational use of land, and thus city was not entitled to mandamus relief from the denial of its motion for summary judgment in negligence action by civic center patron who fell on a sidewalk at the end of a ramped walkway leading from the front of the civic center to the parking lot; city's mandamus petition included no discussion of the relationship of the civic center to the surrounding land or how the civic center facilitated the recreational use of that land.

ENVIRONMENTAL - CALIFORNIA

King and Gardiner Farms, LLC v. County of Kern

Court of Appeal, Fifth District, California - February 25, 2020 - Cal.Rptr.3d - 2020 WL 913788 - 20 Cal. Daily Op. Serv. 1691 - 2020 Daily Journal D.A.R. 1786

Farm company and environmental organizations filed separate petitions for writ of mandate and complaint for declaratory and injunctive relief against county, naming oil associations as real parties in interest and alleging that ordinance facilitating oil and gas exploration, drilling, and production violated California Environmental Quality Act (CEQA) and State Planning and Zoning Law.

Actions were consolidated. Following trial, the Superior Court found environmental impact report (EIR) was deficient in analyzing environmental impacts of ordinance on rangeland and of road paving mitigation measure, but denied all other CEQA claims, and issued judgments. Petitioners appealed.

The Court of Appeal held that:

- EIR improperly deferred formulation of mitigation measures for water supply impacts;
- EIR improperly delayed implementation of mitigation measures for water supply impacts;
- Insufficient evidence supported county's implied finding that all feasible measures to mitigate water supply impacts had been adopted;
- County's failure to disclose specific information about mitigation measures and extent of water supply impacts prejudicially violated CEQA;
- Purported mitigation measures for conversion of agricultural land would not render impacts of ordinance insignificant;
- EIR insufficiently responded to comments proposing clustering of oil and gas infrastructure; and
- Standard of whether ambient noise would increase beyond maximum in general plan due to ordinance was inadequate threshold of significance.

CITY CHARTER AMENDMENT - FLORIDA

City of Naples v. Ethics Naples, Inc.

District Court of Appeal of Florida, Second District - February 21, 2020 - So.3d - 2020 WL 854895

City filed a declaratory judgment action against sponsor of citizens' initiative to amend city charter to create an independent ethics commission responsible for amending the city's ethics code, challenging the proposed amendment as unconstitutional.

Sponsor counterclaimed for writ of mandamus, and both moved for judgment on the pleadings. The Circuit Court entered judgment in favor of sponsor. City appealed.

The District Court of Appeal held that:

- City's failure to challenge proposal in its entirety was fatal to city's pre-election challenge against the constitutionality of the proposal to amend city charter, and
- Ballot title and summary for proposed amendment fairly and accurately informed voters of the chief purposes of the amendment and were not misleading to the public.

City's failure to challenge, in its entirety, citizen initiative's proposal to amend city charter to create an independent ethics commission responsible for amending city's ethics code was fatal to city's pre-election challenge to the constitutionality of the proposal to amend the city charter, and thus measure would be placed on ballot, although city had challenged the mechanism for appointing members to the ethics commission; city had not challenged the first subsection which would create the independent ethics commission, the provisions setting forth the ethics commission's authority and responsibilities and the minimum requirements of the ethics code, or the provision establishing an office of ethics and governmental integrity that would report to the ethics commission.

Ballot title and summary for citizen initiative's proposed amendment to city charter to create an independent ethics commission, set minimum requirements for the ethics code, and establish an ethics office, fairly and accurately informed voters of the chief purposes of the amendment, as required by statute, and were not misleading to the public, although mandatory language in one section did appear incongruous with advisory function of the commission in the rest of the proposal; ethics commission was specifically described as independent, commission's authority over ethics code was described as setting minimum requirements rather than creating an entirely new ethics code, and language used in summary and title aligned with full text of the proposed amendment.

COMPOST - IDAHO

Department of Environmental Quality v. Gibson

Supreme Court of Idaho, Boise, December 2019 Term - March 11, 2020 - P.3d - 2020 WL 1164516

Department of Environmental Quality (DEQ) brought civil enforcement action against operator of composting facility under Environmental Protection and Health Act.

After bench trial, the District Court assessed civil penalty and issued injunction. Operator appealed.

The Supreme Court held that:

- Rule governing motions to amend or alter judgment was proper procedural mechanism for operator's request that trial court "reconsider" its findings;
- Operator's argument of federal preemption was an affirmative defense, and thus failure to timely assert argument resulted in its waiver;
- Facility was a "non-municipal solid waste facility" rather than a "municipal solid waste landfill," and therefore facility was subject to regulation under Department of Environmental Quality's solid waste management rules rather than under state Solid Waste Facilities Act;
- Statute setting out time limit for civil or administrative proceedings to recover for violation of Environmental Protection and Health Act is not a statute of repose;
- Investigation of facility by employee of Department did not constitute a search that could be subject to Fourth Amendment;
- Grass clippings and leaves left at facility were "solid waste" subject to regulation under Environmental Protection and Health Act; and
- As a matter of first impression, statute providing for award of attorney fees to prevailing party in proceedings involving state agencies or political subdivisions allows court to award fees on a claim-by-claim basis.

SCHOOL DISTRICTS - MISSISSIPPI

Butts v. Aultman

United States Court of Appeals, Fifth Circuit - March 19, 2020 - F.3d - 2020 WL 1301048

County residents who lived outside of city filed § 1983 action against county, school board, and state officials alleging that state legislature's decision to administratively consolidate two school districts and restructure school board responsible for governing newly-formed district violated their equal protection right to participate equally in district's decision-making process.

After transfer, the United States District Court denied plaintiffs' motion for temporary restraining order and preliminary injunction, and granted defendants' motion to dismiss. Plaintiffs appealed.

The Court of Appeals held that:

- Fact that new district's interim board would consist entirely of members of one former district's board did not violate equal protection rights of residents in other former district;
- Plaintiffs lacked standing to assert claim that statute administratively consolidating district violated their equal protection rights; and
- New school board did not discriminate against former county school district employees on basis of

geographic affiliation.

State law providing that, once two school districts were administratively consolidated, new district's interim board would consist entirely of members of one former district's board, who had been appointed by city board of aldermen, did not violate equal protection rights of residents in other former district, absent allegation that state acted with intent to impinge on fundamental right or to invidiously discriminate against suspect class; it was rational for legislature to conclude that board transition period would best promote efficient and smooth consolidation, and that statute gave state officials additional time to prepare for upcoming elections for permanent board.

County residents who lived outside of city lacked standing to assert claim that state statute administratively consolidating city school district and county school district violated their equal protection right to participate equally in district's decision-making process, even though only two of new school board's five members were to be elected by residents outside of city, despite fact that they accounted for 57% of county's population, where remaining three members were to be appointed by city board of aldermen.

After city school district and county school district were administratively consolidated, new school board did not discriminate against former county school district employees on basis of geographic affiliation, in violation of Equal Protection Clause, when it fired them and retained former city school district employees, where city was higher performing school district than county, and superintendent may have felt that most seamless and efficient way to implement consolidation would be to absorb county district into better-performing city district.

ZONING & PLANNING - NEBRASKA

Hochstein v. Cedar County Board of Adjustment

Supreme Court of Nebraska - March 20, 2020 - N.W.2d - 305 Neb. 321 - 2020 WL 1313824

Landowner, an operator of a livestock feeding operation (LFO), sought review of county board of adjustment's grant of zoning permit to neighbors to construct residence on their adjoining farm in agricultural intensive district.

The District Court affirmed. Landowner appealed.

The Supreme Court held that proposed residence was not a "non-farm residence" that would be subject to setback requirements from LFO.

Landowners' proposed residence on their farm adjoining neighbor's livestock feeding operation (LFO) in agricultural intensive district was necessary or incidental to the normal conduct of a farm, and thus was not a "non-farm residence" that would be subject to setback requirements from LFO under county zoning regulations, even if landowners cash leased the 240-acre tract on which residence was to be constructed to a corporate entity and residence was over three miles away from location on which landowners raised pheasants and livestock, where the permitted principal uses in district included an owner residence.

ZONING & PLANNING - OHIO

Columbus Bituminous Concrete Corporation v. Harrison Township Board of Zoning Appeals

Supreme Court of Ohio - March 11, 2020 - N.E.3d - 2020 WL 1160915 - 2020 -Ohio- 845

Landowner sought review of decision of township board of zoning appeals denying its application for a conditional use zoning certificate to conduct quarrying and mining of sand and gravel.

The Court of Common Pleas affirmed. Landowner appealed. The Court of Appeals affirmed. Landowner sought review, which was granted.

The Supreme Court held that board could not deny application based on zoning resolution's general standards that did not relate to public health or safety.

Township board of zoning appeals lacked authority to deny landowner's application for conditional use permit to engage in quarrying and mining of sand and gravel based on general standards contained in zoning resolution applicable to all conditional uses, irrespective of whether compliance with those general standards was in the interest of public health and safety, under statute providing that townships could adopt resolutions pertaining to mining activities "only in the interest of public health and safety," but rather board was required to apply general standards to conditional use application only to extent that doing so was in interest of public health and safety and, if health and safety concerns were raised, it could address those concerns only through conditions on approved application.

PUBLIC CONTRACTS - TEXAS

Edminster, Hinshaw, Russ and Associates, Incorporated v. Downe Township

United States Court of Appeals, Fifth Circuit - March 19, 2020 - F.3d - 2020 WL 1291637

Engineering firm brought action against township to recover fees it claimed it was owed under professional services agreement.

The United States District Court entered summary judgment in firm's favor, and township appealed.

The Court of Appeals held that choice-of-law provision in parties' agreement had no effect in determining township's liability.

Texas choice-of-law provision in professional services agreement between Texas engineering firm and New Jersey township's mayor had no effect in determining township's liability for fees under agreement, where mayor had no authority under New Jersey law to bind township unless township's governing body passed resolution awarding contract, and township's governing body never approved agreement.

ZONING & PLANNING - VERMONT

In re Snyder Group, Inc.

Supreme Court of Vermont - February 21, 2020 - A.3d - 2020 WL 857431 - 2020 VT 15

Objectors sought review of city's approval of subdivision application submitted by developer to construct a planned unit development (PUD) with units of transfer of development rights (TDR) from

a separate parcel.

The Superior Court, Environmental Division, entered summary judgment determining that city's zoning bylaw concerning TDR with respect to PUD applications was invalid. Developer appealed and objectors cross-appealed.

The Supreme Court held that:

- TDR bylaw satisfied statutory requirement of specifying sending and receiving areas for acquiring development rights;
- TDR bylaw satisfied statutory requirement of defining development rights and specifying minimum development rights that were required to be secured;
- TDR bylaw satisfied statutory requirement of defining amount of density increase allowable in receiving areas and quantity of development rights necessary to obtain those increases;
- TDR bylaw satisfied statutory requirement of defining density increase in terms of an allowable percentage decrease in lot size, increase in building bulk, or other specified means; and
- TDR bylaw was not unconstitutionally vague on its face.

EMINENT DOMAIN - CALIFORNIA

Locklin v. City of Lafayette

Supreme Court of California, In Bank - February 28, 1994 - 7 Cal.4th 327 - 867 P.2d 724 - 27 Cal.Rptr.2d 613

Owners brought inverse condemnation, negligence, and trespass claims against city, county, flood control district, and other public entities for damage to their creekside properties through storm water runoff.

The Superior Court granted defendants' motions for summary judgment on inverse condemnation cause of action, nonsuit on tort causes of action, and entered judgment for city on liability from maintenance of two structures within creek.

The Court of Appeal affirmed. Review was granted, superseding opinion of Court of Appeal. The Supreme Court held that: (1) defendants did act unreasonably in constructing improvements or altering discharge of surface water runoff; (2) damage to owners' property did not result from unreasonable conduct supporting liability in inverse condemnation; (3) creek did not become public work as required for liability in inverse condemnation; and (4) owners could be assessed costs for action maintained in good faith without evidentiary or legal support.

Owner in lower reaches of natural watercourse whose conduct has relatively minor impact on stream flow in comparison with combined effect of actions by owners in upper reaches of watercourse may not be held liable for any damage caused by stream flow beyond proportion attributable to such conduct.

Governmental entities were not liable in inverse condemnation for damage caused by discharge of surface water runoff from property which they had improved into natural watercourse, where improvements to property were not unreasonable.

Creek did not become public work or improvement, but remained privately owned natural watercourse, though city occasionally assisted residents by removing fallen trees from creek, and other public entities constructed culvert in creek to support roadbed, where no governmental entity

exerted control over watercourse to incur liability for damages caused by streamflow.

City was not liable to downstream property owners for damages from increased runoff, where city's improvements from paving streets and manner of collecting and discharging surface water runoff into creek were not unreasonable.

Governmental entity does not have to bear expense of all litigation by property owners who in good faith, but without sufficient evidentiary or legal support, claim damage to their property.

ZONING & PLANNING - GEORGIA

Riverdale Land Group, LLC v. Clayton County

Court of Appeals of Georgia - February 27, 2020 - S.E.2d - 2020 WL 947096

Real property owner brought a mandamus action against county, challenging the denial of owner's application for a conditional-use permit to construct a gas station.

The Superior Court granted county's motion to dismiss for lack of subject-matter jurisdiction. Owner appealed.

The Court of Appeals held that mandamus relief was precluded by ability of owner to seek writ of certiorari.

County's decision to deny conditional use permit to real property owner was quasi-judicial act, and thus owner was entitled to seek writ of certiorari to challenge decision, which precluded mandamus relief; even though zoning procedure law characterized a zoning board's decision as "legislative," zoning ordinance required owner to provide detailed information regarding specific property at issue and listed six decision criteria for county to consider, ordinance required public hearing within 60 days and notice to parties, and decision-making process required ascertainment of relevant facts from evidence presented by owner's request.

UTILITY FEES - MONTANA

Houser v. City of Billings

Supreme Court of Montana - March 3, 2020 - P.3d - 2020 WL 1024791 - 2020 MT 51

Ratepayers brought action against city, challenging franchise fees city imposed on water, wastewater, and solid waste disposal services.

The District Court certified class action. City appealed.

The Supreme Court held that:

- Inclusion of ratepayers in class definition whose claims were time-barred did not defeat commonality requirement for certification;
- Possibility that city was entitled to legislative immunity on ratepayers' claims did not defeat commonality requirement for certification;
- Certification of class for declaratory or injunctive relief was warranted; and
- Certification on the basis of predominance of common issues was also warranted.

Inclusion of ratepayers for water service in class definition, whose claims were time-barred, did not defeat commonality requirement for class certification, in action by ratepayers against city, challenging imposition of franchise fees with respect to water, wastewater, and solid waste disposal services; while four-year limitations period applicable to goods applied to claims by ratepayers with respect to water service, and class definition included ratepayers from a period more than four years prior to commencement of suit, district court maintained discretion to modify class definition at any time until final judgment.

Possibility that city was entitled to legislative immunity under statute on claims by ratepayers, challenging imposition of franchise fees on water, wastewater, and solid waste disposal services, did not preclude commonality of ratepayers claims for purposes of class certification on such claims; whether city was entitled to legislative immunity was a merits question, which would have stood or fallen equally for all members, as there was no distinction between members of proposed class that would have changed question, as common contention of each class member's claims was that city violated their rights by improperly charging a franchise fee.

Certification of class of ratepayers for declaratory or injunctive relief was warranted, in ratepayers' action against city, challenging imposition of franchise fees on water, wastewater, and solid waste disposal services; while city asserted that it could not have been enjoined from exercising its legislative rate-setting powers, this constituted a question on the merits, and ratepayers demonstrated that imposition of such fees was a common policy affecting class as a whole in the same fashion, and that any declaratory or injunctive relief would have been appropriate for all class members, or none of them.

Common questions of law predominated over any questions involving individual ratepayers, and thus certification of class was warranted on the basis of predominance, in ratepayers' action challenging city's imposition of franchise fees for water, wastewater, and solid waste disposal services; while city asserted that common issues did not predominate since ratepayers asserted claims based on both legislative and administrative acts, same legal question common to all class members, namely city's potential legislative immunity, predominated over any question affecting only individual ratepayers.

PUBLIC EMPLOYMENT - NORTH CAROLINA

Rouse v. Forsyth County Department of Social Services

Supreme Court of North Carolina - February 28, 2020 - S.E.2d - 2020 WL 967571

County department of social services appealed ALJ's decision, which ordered former employee to be reinstated to her position and awarded back pay and attorneys' fees.

The Court of Appeals affirmed in part and vacated in part. Employee's request for discretionary review was allowed, and department's request was denied.

The Supreme Court held that the ALJ had authority to award back pay and attorneys' fees, overruling Watlington v. Dep't of Soc. Servs. Rockingham Cty., 252 N.C. App. 512, 799 S.E.2d 396.

ALJ had authority under Human Resources Act to award former county employee back pay and attorneys' fees, after concluding that employee was unlawfully discharged; even though administrative code and different statutory section contained no provision authorizing award of back pay or attorneys' fees to wrongfully discharged local government employees, employee was protected employee for purposes of Human Resources Act, which gave ALJ explicit authority to

award back pay and attorneys' fees; overruling Watlington v. Dep't of Soc. Servs. Rockingham Cty., 252 N.C. App. 512, 799 S.E.2d 396.

EMINENT DOMAIN - NORTH DAKOTA

Northern States Power Company by Board of Directors v. Mikkelson

Supreme Court of North Dakota - March 3, 2020 - N.W.2d - 2020 WL 1024592 - 2020 ND 54

Electric utility filed eminent domain action, seeking to obtain electrical transmission line easement.

The District Court granted partial summary judgment on whether the taking was necessary for a public purpose, and thereafter granted summary judgment to utility on issue of just compensation. Landowners appealed.

The Supreme Court held that landowner's theory that acreage burdened had no value and that amount of diminution "taken across the whole of the Subject Property" yielded the fair market value after the taking was sufficient to create genuine issue of material fact as to the amount the easement devalued the property which precluded summary judgment.

EMINENT DOMAIN - TEXAS

Tucker v. City of Corpus Christi

Court of Appeals of Texas, Corpus Christi-Edinburg - February 27, 2020 - S.W.3d - 2020 WL 948364

Automobile owners brought action against city alleging it improperly seized their antique automobiles pursuant to city's junked vehicles ordinance, alleging causes of action for conversion, trespassing, invasion of privacy, due process violations, among other claims.

Following a non-evidentiary hearing granted the city's plea to the jurisdiction and dismissed automobile owners' claims. Automobile owners appealed.

As a matter of first impression, the Court of Appeals held that Compliance with limitations period for a takings claim based on personal property was jurisdictional requirement for suit against municipality.

Compliance with two-year limitations period for claims alleging injury, conversion, or taking the personal property of another was jurisdictional prerequisite for automobile owners' claim alleging a taking based on municipality's seizing antique automobiles pursuant to municipal junked vehicles ordinance, such that untimely filing of suit gave rise to jurisdictional bar and case was subject to dismissal through municipality's plea to jurisdiction.

IMMUNITY - WASHINGTON

Ogier v. City of Bellevue

Court of Appeals of Washington, Division 1 - March 2, 2020 - P.3d - 2020 WL 995136

Driver who was injured in accident after driving over an uncovered manhole in the middle of traffic

lanes on a dark evening brought personal injury action against city, alleging negligence.

The Superior Court granted city's summary judgment motion. Driver appealed.

The Court of Appeals held that whether city should have reasonably anticipated hazard of missing manhole cover was a material fact issue precluding summary judgment.

Genuine issue of material fact existed as to whether city should have reasonably anticipated that the hazard of a missing manhole cover would develop for manhole in the middle of traffic lanes precluding summary judgment in favor of city on issue of whether city breached its duty of care in personal injury action against city by driver who was injured in accident after driving over uncovered manhole.

EMINENT DOMAIN - WISCONSIN

DSG Evergreen Family Limited Partnership v. Town of Perry

Supreme Court of Wisconsin - February 27, 2020 - N.W.2d - 2020 WL 939260 - 2020 WI 23

Condemnee, following the right-to-take and just-compensation actions, brought action against condemnor, which was a town, in which it sought a judgment declaring that condemnor was obligated to improve and maintain a new road to certain standards, which were standards that the road allegedly failed to meet. Alternatively, condemnee sought $280,000 to improve the road to the alleged requisite standards.

After entering partial summary judgment for condemnor, the Circuit Court determined that claim preclusion barred condemnee's claim. Condemnee appealed. The Court of Appeals affirmed. Condemnee petitioned for review.

The Supreme Court held that:

- Condemnee did not concede that it should have litigated condemnor's road-building obligations in right-to-take case;
- Trial court hearing just-compensation case could not have entertained issue of whether condemnor could have built road as promised in condemnation petition;
- Condemnee did not yet have cognizable claim of right for declaration that condemnor had duty to improve road to town-road standards; and
- Statute on town-road standards does not create private cause of action.

Condemnee did not concede that it should have litigated condemnor's road-building obligations in right-to-take case, and thus such concession was not basis to find that claim preclusion barred condemnee's later action for declaration that condemnor, which was town, was required to improve and maintain road to certain standards imposed by condemnation petition or state statutes; condemnee only conceded that, if it were to have challenged validity of condemnor's promise to build road, which was promise made in jurisdictional offer, it could have done so in right-to-take case, which was not issue raised in later action.

Trial court hearing just-compensation case could not have entertained issue of whether condemnor could have built road as promised in condemnation petition, and thus just-compensation case was not basis for finding that claim preclusion barred condemnee's later action for declaration that condemnor, which was town, was required to improve and maintain road to certain standards imposed by condemnation petition or state statutes; essential issue tried in just-compensation case

assumed completion of project for which taking occurred, including construction of new road under terms of petition, and even if condemnee were convinced that condemnor would renege or inadequately perform road-building obligation, condemnee could not have litigated that issue in just-compensation case.

Condemnee did not yet have cognizable claim of right for declaration that condemnor, which was town, had duty to improve new road, whose construction was addressed in condemnation petition, to town-road standards; statute on town-road standards did not impose mandatory and non-discretionary obligation on condemnor to improve road to town-road standards, and condemnee could not have cognizable claim of right until, at earliest, condemnor's discretionary authority resolved to particular course of action.

LOCAL ACTS - ALABAMA

Talladega County Commission v. State ex rel. City of Lincoln

Supreme Court of Alabama - February 21, 2020 - So.3d - 2020 WL 858151

City, in the name of the State, petitioned for a writ of mandamus ordering county commission to disburse money from a fund created by a tax pursuant to a local act, as had been recommended by county economic development authority and delegation of state legislators representing the county.

Commission counterclaimed for a judgment declaring its authority to determine the proper composition of the county legislative delegation as that term was defined in the amended local act at issue, its authority to approve expenditures from the fund at issue, and the authority of the delegation to dictate to the commission expenditures from the fund. The Circuit Court determined which state legislators were required by the local act to approve expenditures from the fund, determined that the commission had no discretion to disapprove, veto, reject, or otherwise refuse to follow the authorization by the legislative delegation for the expenditure of funds, and, after the city agreed to dismiss the mandamus petition, dismissed the petition without prejudice while stating that the declaratory-judgment ruling would remain in effect. Commission appealed.

The Supreme Court held that legislative delegation's withdrawal of its approval of county economic development authority's resolution recommending the expenditure at issue rendered the counterclaim moot.

County legislative delegation's withdrawal of its approval of county economic development authority's resolution recommending that county commission authorize an expenditure to a city from a tax fund created by a local act rendered moot commission's counterclaim, made in response to city's mandamus petition against the commission to compel the expenditure, for a declaratory judgment as to the commission's authority to authorize the expenditure and the authority of the legislative delegation to dictate to the commission expenditures from the fund; once the legislators withdrew their approval, city was no longer entitled to the funds, and there ceased to be a controversy between the city and the commission.

EMINENT DOMAIN - CALIFORNIA

Pacific Shores Property Owners Assn. v. Department of Fish & Wildlife

Court of Appeal, Third District, California - January 20, 2016 - 244 Cal.App.4th 12 - 198 Cal.Rptr.3d 72 - 16 Cal. Daily Op. Serv. 830

Owners of undeveloped subdivision along lagoon's shore, whose properties suffered flooding damage when lagoon rose above certain level, filed inverse condemnation action against Department of Fish and Wildlife and Coastal Commission, alleging owners suffered a physical taking from Department's actions related to breaching lagoon's sandbar, and a regulatory taking by Commission retaining land use jurisdiction over subdivision instead of transferring it to county.

The Superior Court found Department and Commission liable for physical taking and awarded damages, but concluded owners' claim for regulatory taking was barred, awarded owners attorney fees, and denied owners any precondemnation damages. All parties appealed.

The Court of Appeal held that:

- Commission's approval of permit to breach sandbar triggered period in which owners were permitted to file writ petition challenging permit;
- Statute governing period in which aggrieved person was permitted to file writ petition applied to Commission's approval of permit and owners' inverse condemnation action;
- Inverse condemnation action against Department accrued when Department adopted management plan for lagoon;
- Department was liable for physical taking under theory of strict liability;
- Department actions related to breaching sandbar were unreasonable;
- Administrative jurisdiction exception to doctrine of exhaustion of remedies did not apply to regulatory taking claim asserted against Commission;
- Evidence supported determination that owners were not entitled to precondemnation damages; and
- Trial court properly limited attorney fees to amount owners agreed to pay under contingency agreement.

UBER - GEORGIA

Atlanta Metro Leasing, Inc. v. City of Atlanta

Court of Appeals of Georgia - February 20, 2020 - S.E.2d - 2020 WL 830062

Taxicab companies brought action against city for breach of franchise agreement and breach of contract allegedly arising out of city's issuance of taxicab permits and taxicab certificates of public necessity and convenience (CPNCs), alleging that city's failure to enforce taxicab ordinance against personal transportation network companies (TNCs) caused damages to CPNC and permit holders.

Trial court granted city's motion to dismiss. Taxicab companies appealed.

In a case of first impression, the Court of Appeals held that:

- City was performing governmental function in determining not to require personal transportation network companies (TNCs) to abide by taxicab regulations;
- Taxicab companies were not "urban transportation companies" that could enter into franchise agreements with city;
- Taxicab companies were not "public utilities and public services" that could enter into franchise agreements with city;
- Statute governing CPNCs did not require CPNCs to be classified as franchises rather than licenses;
- Statute and ordinance did not manifest clear expression of intent to bind city contractually to taxicab companies by issuing CPNCs; and
- Taxicab permits did not constitute franchise agreements.

EMINENT DOMAIN - HAWAII

Bridge Aina Le'a, LLC v. Land Use Commission

United States Court of Appeals, Ninth Circuit - February 19, 2020 - F.3d - 2020 WL 812918 - 20 Cal. Daily Op. Serv. 1330 - 2020 Daily Journal D.A.R. 1230

Property owner filed state court action against Hawai'i Land Use Commission, challenging reversion of 1,060 acres of land on island of Hawai'i from urban use classification to prior agricultural use classification, seeking declaratory, injunctive, and monetary relief, and raising federal and state constitutional due process, equal protection, and takings claims.

Following removal, the United States District Court partially granted Commission's motion to dismiss for lack of subject matter jurisdiction and for failure to state claim, subsequently entered judgment for owner on takings claim after jury trial and awarded $1 in nominal damages and denied Commission's renewed motion for judgment as matter of law. Parties cross-appealed.

The Court of Appeals held that:

- Reversion did not effect regulatory taking under Lucas, 112 S.Ct. 2886;
- Reversion did not effect Penn Central regulatory taking; and
- Prior state court judgment barred owner from re-litigating equal protection issue.

Hawai'i Land Use Commission's reversion of 1,060 acres of land from urban use classification to prior agricultural use classification resulted in owner's land retaining substantial economic value of $6.36 million in agricultural classification, and thus, reversion did not effect regulatory taking under Lucas, 112 S.Ct. 2886, even though value of land allegedly diminished by 83.4% from $40 million in urban classification, since retained value of land was neither de minimis nor attributable to noneconomic uses.

Hawai'i Land Use Commission's reversion of 1,060 acres of land from urban use classification to prior agricultural use classification, that allegedly resulted in 83.4% diminution in value from $40 million in urban classification to $6.36 million in agricultural classification, did not deprive owner of all economically viable uses of land, and thus, reversion did not effect regulatory taking under Lucas, 112 S.Ct. 2886, since reversion did not prohibit all development or require leaving land in idle state.

Hawai'i Land Use Commission's reversion of 1,060 acres of land from urban use classification to prior agricultural use classification resulted in economic impact on property owner of only 16.8% diminution in value of land even applying 20% rate of return owner hoped to receive on its total investment, thus weighing strongly against Penn Central regulatory taking; owner's claimed damages overstated diminution in value from reversion that lasted only one year from Commission's issuance of reversion order until Hawai'i state circuit court's judgment vacated order.

Hawai'i Land Use Commission's reversion of 1,060 acres of land from urban use classification to prior agricultural use classification did not cause contractual defaults in property owner's land sale agreements, as would have resulted in economic impact to owner to support Penn Central regulatory taking claim, where one contractual default occurred two years before Commission issued reversion order, and another default occurred several months before reversion order.

Hawai'i Land Use Commission's reversion of 1,060 acres of land from urban use classification to prior agricultural use classification did not meaningfully interfere with any reasonable investment-backed expectations of owner at time it acquired 1,060 acres, thus weighing strongly against finding

Penn Central regulatory taking; reversion had only one-year duration, and owner did not expect any profit from its purchase of land unless and until Commission amended order's affordable housing condition, did not expect amendment would translate into immediate profits, and failed to comply with order's conditions that ran with title to land.

Hawai'i Land Use Commission's reversion of 1,060 acres of land from urban use classification to prior agricultural use classification was not of governmental character that established Penn Central regulatory taking, although Hawai'i Supreme Court invalidated reversion order as matter of Hawai'i statutory procedural requirements, since concentrated effect of reversion was reflective of confines of generally applicable Hawai'i law land use reclassification procedure, and Hawai'i Supreme Court found reversion was not arbitrary or unreasonable given that for 22 years landowners made unfulfilled representations to Commission to obtain and maintain urban use classification.

Prior proceeding, in which Hawai'i Supreme Court decided that Hawai'i Land Use Commission did not lack rational basis for treating owner differently than other property developers in violation of owner's equal protection rights in issuing reversion order reclassifying 1,060 acres of owner's land from urban use to prior agricultural use, concerned identical issue to owner's subsequent equal protection challenge in federal district court, in support of determining that owner was barred from re-litigating equal protection issue by alleging in federal court that Commission lacked rational basis to treat owner differently than other developers.

REFERENDA - ILLINOIS

Burns v. Municipal Officers Electoral Board of Village of Elk Grove Village

Supreme Court of Illinois - February 26, 2020 - N.E.3d - 2020 IL 125714 - 2020 WL 934396

Proponent of referendum that would have imposed term limits on certain village offices sought judicial review of a decision of the village electoral board excluding the referendum from general primary ballot on the ground that it violated the Municipal Code.

The Circuit Court reversed. Voter who opposed the referendum appealed directly to the Supreme Court.

The Supreme Court held that Municipal Code provision requiring any term limits imposed by a home rule unit to operate prospectively only did not violate state constitutional provisions governing home rule units, either facially or as applied.

Municipal Code provision requiring any term limits imposed by a home rule unit to operate prospectively only, by allowing only terms served after passage of the term limit referendum to be considered in determining eligibility, did not violate state constitutional provisions governing home rule units, either facially or as applied to proposed referendum limiting village officers to two consecutive terms; constitution allowed General Assembly to limit the power of home rule units so long as it did so expressly, Municipal Code provision expressly demonstrated General Assembly's intent that any term limit referendum operate prospectively, and provision specifically stated that it was an exercise of General Assembly's authority under the constitutional framework

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IMMUNITY - MARYLAND

Neal v. Baltimore City Board of School Commissioners

Court of Appeals of Maryland - February 28, 2020 - A.3d - 2020 WL 967425

Students brought action against school board and school police officer, alleging, inter alia, that officer violated their due process rights under Maryland Declaration of Rights by verbally and physically assaulting them without provocation.

School board moved for summary judgment, asserting, among other things, statutory immunity. The Circuit Court granted motion and dismissed with prejudice all claims against school board. Following trial, jury found that officer violated each student's rights and awarded damages to each student. Students moved to enforce judgment against school board. The Circuit Court granted motion. School board appealed. The Court of Special Appeals reversed. Students petitioned for writ of certiorari and petition was granted.

The Court of Appeals held that:

- Under the statute governing tort claims against employees of county education boards, even if a board is entitled to substantive dismissal from a case, by summary judgment or otherwise, the plaintiffs are required to maintain the board as a party—or request that it be brought back into the case—to indemnify an employee, and
- Students waived right to force indemnification from board, under statute governing tort claims against employees of county education boards.

EMINENT DOMAIN - MISSISSIPPI

State v. United States

United States Court of Federal Claims - February 6, 2020 - Fed.Cl. - 2020 WL 580914

State of Mississippi, Secretary of State, Attorney General, several school districts, and trustee and beneficiaries of trust that owned land in state brought action against United States, alleging that they suffered taking of properties by flooding that resulted from Army Corps of Engineers' construction and operation of structure on river.

United States moved to dismiss claims.

The Court of Federal Claims held that:

- Trustee had standing to bring takings claim;
- Beneficiaries did not have standing;
- Mississippi, Secretary of State, Attorney General, and school districts had standing;
- Plaintiffs' complaints were sufficiently specific to satisfy pleading requirements;
- Plaintiffs' allegation that construction of structure caused flooding of plaintiffs' land of duration and severity that would not have occurred without structure was sufficient to state claim for relief; and
- Plaintiffs' allegations stated claim for a taking, not a tort.

Trustee of trust that owned land 20 miles upstream of structure built on river by Army Corps of Engineers had standing to bring action against United States, on behalf of trust and beneficiaries, alleging that trust suffered taking of land by flooding that resulted from such structure.

Beneficiaries of trust that owned land 20 miles upstream of structure built on river by Army Corps of

Engineers, which allegedly caused flooding of land, lacked standing to bring takings claim against United States; beneficiaries had only equitable interest in trust property, and no legal ownership.

State of Mississippi had standing to bring takings claim against United States after structure built on river by Army Corps of Engineers allegedly caused flooding of Mississippi land held in trust for public schools, to which state held absolute title.

Mississippi Secretary of State had standing to bring takings claim, in his official capacity, against United States after structure built on river by Army Corps of Engineers allegedly caused flooding of Mississippi land held in trust for public schools; Secretary of State was supervisory trustee of such land and was responsible for overseeing land's management.

Mississippi Attorney General had standing to bring takings claim against United States after structure built on river by Army Corps of Engineers allegedly caused flooding of Mississippi land held in trust for public schools, where Attorney General had authority under Mississippi Constitution to act on state's behalf as titleholder of such land.

County school districts in Mississippi had standing to bring takings claim against United States after structure built on river by Army Corps of Engineers allegedly caused flooding of Mississippi land held in trust for public schools; districts were trustees of such land, and had exclusive right to exclude, use, and benefit from land.

Complaints filed by State of Mississippi, as well as Mississippi Secretary of State, Attorney General, school districts, and trustee of land, were sufficiently specific to satisfy pleading requirements in action brought against United States after Army Corps of Engineers built structures on river, alleging that they suffered taking of properties as result of flooding exacerbated by such structures; although United States argued that complaints did not adequately pinpoint precise action that led to taking, plaintiffs contended that, over time, structure had obstructed natural water and sediment flow in river, which caused water to back up and increased flooding, and that such accumulation of sediment and impact on water levels was foreseeable consequence of building structure.

Allegation of State of Mississippi, as well as Mississippi Secretary of State, Attorney General, school districts, and trustee of land, that Army Corps of Engineers' construction and operation of structure on river caused flooding of plaintiffs' land of duration and severity that would not have occurred in absence of structure was sufficient to state claim for relief in takings action brought against United States.

Allegations of State of Mississippi, as well as Mississippi Secretary of State, Attorney General, school districts, and trustee of land, stated claim for a taking, as necessary for plaintiffs to prevail in takings action brought against United States after Army Corps of Engineers built structure on river that allegedly exacerbated flooding of plaintiffs' property; plaintiffs asserted that direct result of construction of structure was buildup of sediment that narrowed channel and raised water levels, and that if structure had not been built, land would not have experienced such long and severe flooding, and argued that United States appropriated benefit to itself at their expense and that structure pre-empted their rights to use land for significant periods of time.

SEWER FEES - NORTH CAROLINA

Boles v. Town of Oak Island

Supreme Court of North Carolina - February 28, 2020 - S.E.2d - 2020 WL 967428

Owners of undeveloped parcels of property challenged sewer service availability fees levied upon them by town.

The Superior Court granted town's motion for summary judgment. Owners appealed. The Court of Appeals reversed and remanded. Town appealed.

The Supreme Court held that:

- Town had statutory authority to assess sewer service availability fees on owners;
- Imposition of fees was not taking of private property for public use without just compensation in violation of North Carolina Constitution; and
- Imposition of fees was not tax.

Town had statutory authority to assess sewer service availability fees on owners of undeveloped parcels of property under local act authorizing town to impose fees upon "property that could or does benefit from availability of sewage treatment"; sewer service was present or ready for immediate use by all properties that were or could be served by town's sewage collection and treatment plant, including undeveloped parcels of property.

UTILITY FEES - ARKANSAS

Watson v. City of Blytheville

Supreme Court of Arkansas - February 6, 2020 - S.W.3d - 2020 Ark. 51 - 2020 WL 581491

Taxpayer, individually and as a representative of a class of persons similarly situated, brought class-action complaint against city challenging ordinance establishing a monthly fee to repair and upgrade city's sewer system to comply with Consent Administrative Order (COA) entered into with the Arkansas Department of Environmental Quality (ADEQ).

The Circuit Court granted city's motion for summary judgment. Taxpayer appealed.

The Supreme Court held that:

- Fee established by ordinance to raise funds necessary to repair and upgrade city's sewer system was not a tax and thus was not an illegal exaction, and
- Fee was not unnecessary.

Fee established by ordinance enacted by city in order to raise funds necessary to repair and upgrade city's sewer system to comply with Consent Administrative Order (CAO) entered into with the Arkansas Department of Environmental Quality (ADEQ) was not a tax and thus was not an illegal exaction; only those persons who directly benefited from city's sewer services were required to pay the fee, funds collected from the fee were accounted for separately and used only for their designated purpose, funds were designated for use for improvements to the sewer system required by COA and that revenue was only used to fund improvements to city's sewer system, and city's expert opined that fee was fair and equitable.

Fee established by ordinance enacted by city in order to raise funds necessary to repair and upgrade city's sewer system to comply with Consent Administrative Order (CAO) entered into with the Arkansas Department of Environmental Quality (ADEQ) was not unnecessary; city's expert opined that city's sewer department had been experiencing severe financial distress, and city had no choice but to implement some form of sewer-rate adjustment to provide the revenue required to fund the

repairs.

ZONING & PLANNING - CALIFORNIA

Citizens for South Bay Coastal Access v. City of San Diego

Court of Appeal, Fourth District, Division 1, California - February 18, 2020 - Cal.Rptr.3d - 2020 WL 772602 - 20 Cal. Daily Op. Serv. 1307

Interest group brought action to challenge city's issuance of conditional use permit allowing it to convert a motel that it recently purchased into a transitional housing facility for homeless misdemeanor offenders, alleging that city was required to obtain a coastal development permit for the project.

The Superior Court issued peremptory writ of mandate requiring coastal development permit, and city appealed.

The Court of Appeal held that city's certified local coastal plan, rather than California Coastal Act regulation, governed city's coastal development.

Existing-structure exemption in regulation promulgated under California Coastal Act of 1976 did not apply to city's plan to convert motel into a transitional housing facility for homeless misdemeanor offenders in light of California Coastal Commission's certification of city's local coastal plan, as plan, rather than regulation, governed city's coastal development.

ANNEXATION - GEORGIA

City of Atlanta v. Atlanta Independent School System

Supreme Court of Georgia - February 10, 2020 - S.E.2d - 2020 WL 609643

Independent school system filed declaratory judgment action challenging validity of city ordinance which annexed a city-owned parcel of land in county industrial district while expressly prohibiting co-expansion of school system's boundaries only with regard to the annexation.

The Superior Court denied city's motion to dismiss. City applied for interlocutory appeal, which was granted.

The Supreme Court held that matter did not amount to an actual, justiciable controversy.

Independent school system's declaratory judgment action challenging validity of city ordinance which annexed a city-owned parcel of land in county industrial district while expressly prohibiting co-expansion of school system's boundaries only with regard to the annexation amounted to a request for an improper advisory opinion and raised no actual, justiciable controversy, where school system did not articulate any future conduct upon which the court's resolution of the parties' dispute depended, and school system was in reality seeking a determination as to validity of local constitutional amendment addressing effect of city's annexation into county on ownership of school property, apparently in anticipation of future dust-ups between the parties concerning city's annexation authority.

EMINENT DOMAIN - MASSACHUSETTS

Gentili v. Town of Sturbridge

Supreme Judicial Court of Massachusetts - February 24, 2020 - N.E.3d - 2020 WL 880413

Property owner brought action against town to recover for taking of property by prescriptive easement to discharge storm water.

The Superior Court Department entered summary judgment in favor of town. Owner appealed, and appeal was transferred.

The Supreme Judicial Court held that prescriptive easement could not be a taking.

A prescriptive easement is not a means for the government to take private property without just compensation; rather, the prescriptive period requires a private landowner to bring a takings action within a specified period of time.

INVERSE CONDEMNATION - SOUTH CAROLINA

Bluestein v. Town of Sullivan's Island

Supreme Court of South Carolina - February 19, 2020 - S.E.2d - 2020 WL 810963

Coastal property owners brought action against town for breach of contract, breach of contract accompanied by a fraudulent act, a violation of the South Carolina Unfair Trade Practices Act (SCUTPA), nuisance, and inverse condemnation, based on town's failure to trim vegetation on accreting land along coast.

The Court of Common Pleas granted town's motion for summary judgment, and property owners appealed. The Court of Appeals affirmed. Property owners sought writ of certiorari, which the Supreme Court granted.

The Supreme Court held that genuine issues of material fact existed as to town's maintenance responsibilities, thus precluding summary judgment.

Genuine issues of material fact existed as to town's maintenance responsibilities towards accreting land along coast under deed transferring ownership of land to town with a number of deed restrictions, thus precluding summary judgment in action by abutting property owners, who were third party beneficiaries of the deed, for breach of contract and other claims arising from town's failure to trim vegetation on accreting land.

PUBLIC UTILITIES - WASHINGTON

Pioneer Square Hotel Company v. City of Seattle

Court of Appeals of Washington, Division 1 - February 18, 2020 - P.3d - 2020 WL 773062

Property developer brought action against city, seeking declaratory judgment that city's public utility decision requiring developer to construct 12-inch water main to supply water to property violated applicable law, and seeking an injunction requiring city to activate existing water main.

The Superior Court granted summary judgment to city, and denied developer's motion for reconsideration, finding the action untimely under Land Use Petition Act's (LUPA) statute of limitations. Developer appealed.

Decision by city public utilities regarding property developer's request to access city's water system was not a "land use decision" subject to judicial review under Land Use Petition Act (LUPA); city decision requiring developer to construct 12-inch water main to serve property was not "an interpretive or declaratory decision" regarding the law that applied to developer's request to access water system

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OPEN MEETINGS - CALIFORNIA

Fowler v. City of Lafayette

Court of Appeal, First District, Division 4, California - February 10, 2020 - Cal.Rptr.3d - 2020 WL 612870 - 20 Cal. Daily Op. Serv. 1074

Landowners' neighbors petitioned for writ of mandate seeking declaratory and injunctive relief against city for allegedly violating Ralph M. Brown Act on open meetings by discussing litigation threat in closed session.

The Superior Court denied petition. Neighbors appealed.

The Court of Appeal held that:

- Applicable statute permitted closed session in response to pending litigation based on statement threatening litigation made by a person outside an open and public meeting;
- City complied with obligation to make a contemporaneous or other record of the statement prior to meeting;
- Litigation threat against city to be discussed in closed session had to be included in agenda packet made available upon request before open meeting; but
- City's violation of Brown Act did not nullify city's approval of project.

EMINENT DOMAIN - GEORGIA

Rouse v. City of Atlanta

Court of Appeals of Georgia - February 10, 2020 - S.E.2d - 2020 WL 613740

Property owner brought action against city, alleging that sewage pipe discovered beneath property drastically reduced the value of property and subjected it to demolition, asserting claims including trespass, nuisance, and inverse condemnation, and seeking attorney fees.

The trial court granted city's motion for summary judgment and denied property owner's motion for summary judgment. Property owner appealed.

The Court of Appeals held that:

- Whether method of adding cementitious lining to sewage pipes was used solely by city to rehabilitate sewage pipes was material fact issue precluding summary judgment on city's dedication claim;
- Whether property had been dedicated to city for its use was material fact issue precluding

summary judgment on property owner's trespass claim;
- Whether city ever exercised dominion and control over sewage pipe was material fact issue precluding summary judgment in favor of property owner on nuisance claim;
- Whether property traversed by underground sewage pipe had been dedicated to city was material fact issue precluding summary judgment in favor of property owner on inverse condemnation claim; and
- Genuine issues of fact on all of property owner's substantive claims precluded property owner's entitlement to award of attorney fees.

CHARTER AMENDMENT - MINNESOTA

Jennissen v. City of Bloomington

Supreme Court of Minnesota - February 12, 2020 - N.W.2d - 2020 WL 699742

Group of city residents opposed to city's efforts to implement organized collection of solid waste brought action against city, seeking to compel city to place proposed charter amendment, requiring city to seek voter approval before establishing system of organized collection of solid waste, on next general-election ballot.

The District Court granted summary judgment in favor of city. Residents appealed, and the Court of Appeals affirmed. The Supreme Court reversed and remanded. On remand, the Court of Appeals held that the proposed charter amendment was not manifestly unconstitutional, but determined that amendment was impermissible because its second sentence stated an intent to repeal an ordinance by charter amendment. Both parties appealed.

The Supreme Court held that:

- Proposed charter amendment to require prior approval from a majority of voters before the City Council could establish an organized waste-collection system was a lawful exercise of the charter amendment power;
- Sentence in proposed charter amendment stating an intent to supersede existing ordinances and charter provisions adopted under conflicting procedures did not impermissibly convert amendment to a referendum; and
- Proposed amendment to city charter did not violate the Contract Clauses of the United States and Minnesota Constitutions.

Proposed charter amendment to require prior approval from a majority of voters before the City Council could establish an organized waste-collection system was consistent with the constitution, state law, and state public policy, and thus was a lawful exercise of the charter amendment power; procedural change was not one that could have been accomplished by referendum as a referendum to suspend and possibly repeal ordinance may have provided short-term relief to residents and may have been an obvious means of exercising powers granted to city residents under the charter, but would not have provided the structural change to government that residents sought to achieve by amending the charter itself and establishing a new procedure for operating city government.

Sentence in proposed charter amendment stating an intent to supersede existing ordinances and charter provisions adopted under conflicting procedures did not impermissibly convert amendment to a referendum; Minnesota statute granted home-rule city residents power to amend city charter so that they could establish new procedures for their city's operations, and contemplated broad authority to amend city charters, if charter amendment were adopted, and city council would need to obtain voter approval before exercising its legislative authority in certain circumstances.

City did not demonstrate that a substantial impairment of its contractual obligation with trash haulers would occur with a vote should proposed charter amendment pass requiring city to seek voter approval before establishing system of organized collection of solid waste, and thus proposed amendment to city charter did not violate the Contract Clauses of the United States and Minnesota Constitutions; amendment only impaired city's performance under contract.

IMMUNITY - MISSISSIPPI

Mark v. City of Hattiesburg

Supreme Court of Mississippi - February 6, 2020 - So.3d - 2020 WL 581910

City municipal court clerk, who was terminated and reassigned after being accused of hiding paperwork, shredding documents, accepting bribes in exchange for dismissing tickets, fines, and warrants, and engaging in inappropriate contact with judges brought action against city, mayor, and city council members alleging slander, invasion of privacy, breach of implied contract, negligence, and intentional or negligent infliction of emotional distress.

The Circuit Court granted city's motion for summary judgment and, following trial, granted members' and mayor's motion for directed verdict. Clerk appealed. The Court of Appeals affirmed. Clerks petition for writ of certiorari was granted, and he appealed.

The Supreme Court held that:

- Mayor and city council members had immunity under the Tort Claims Act from clerk's claim seeking to hold them individually liable for invasion of privacy, and
- Councilman who disclosed clerk's breast cancer diagnosis and surgery through disclosure of her medical leave form to news media did not act maliciously, and, thus, councilman had immunity under the Tort Claims Act.

Mayor and city council members did not conspire with councilman who disclosed city municipal court clerk's breast cancer diagnosis and surgery through disclosure of her medical leave form to news media, and, thus, mayor and city council members had immunity under the Tort Claims Act from clerk's claim seeking to hold them individually liable for invasion of privacy, even if councilman's conduct was malicious, and thus not within course and scope of his employment.

Councilman who disclosed city municipal court clerk's breast cancer diagnosis and surgery through disclosure of her medical leave form to news media did not act maliciously, and, thus, councilman had immunity under the Tort Claims Act from clerk's claim seeking to hold him individually liable for invasion of privacy, where councilman did not act with any ill will toward clerk or disclose her medical leave form in wanton disregard of her privacy rights; rather, he acted negligently at worst.

BONDS - NEW JERSEY

Bondholder Committee On Behalf of Owners of Quad Cities Regional Economic Development Authority First Mortgage Revenue Bonds Series 2013A v. Sauk Valley Student Housing, LLC

United States District Court, D. New Jersey - January 29, 2020 - Slip Copy - 2020 WL 473636

Bondholder Committee on behalf of the Owners of Quad Cities Regional Economic Development Authority First Mortgage Revenue Bonds Series 2013A ("Plaintiff") brought action against BMOC and BOKF ("Defendants") arising out of the allegedly fraudulent sale and improper management of Series A bonds used to fund a student housing project in Illinois. Defendants BMOC was alleged to have participated in the creation of a fraudulent offering statement and defendant BOKF was alleged to have violated the terms of a Trust Indenture and Continuing Disclosure Agreement while carrying out its duties as trustee.

Defendants moved to dismiss, contending that Plaintiff lacked standing.

Plaintiff alleged associational standing as a representative of its individual members where the individual members themselves had standing to bring the same claims.

The District Court dismissed the complaint, holding that the nature of the claims brought, as well as the relief sought, would require Plaintiff's members to provide provide individualized evidence regarding their damages.

PUBLIC UTILITIES - OHIO

Cleveland Electric Illuminating Co. v. City of Cleveland

Court of Appeals of Ohio, Eighth District, Cuyahoga County - January 9, 2020 - N.E.3d - 2020 WL 105098 - 2020 -Ohio- 33

Public utility brought action for injunctive and declaratory relief against municipality challenging its purchase and resale of electricity to inhabitants located outside of its limits.

The Court of Common Pleas granted the municipality's motion for summary judgment and denied public utility's motion for summary judgment. Public utility appealed.

The Court of Appeals held that genuine issue of material fact with respect to purpose for which municipality had purchased surplus electricity precluded summary judgment.

Genuine issue of material fact with respect to purpose for which municipality had purchased surplus electricity precluded summary judgment in public utility's action against municipality challenging its purchase and resale of electricity to inhabitants located outside of its limits; utility presented evidence from which a reasonable factfinder could have concluded that municipality had purchased at least some of its electricity supply solely for the purpose of reselling electricity to others outside its municipal boundaries, and it was undisputed that municipality entered into a ten-year agreement to serve as another city's exclusive electricity supplier.

Provisions of State Constitution defining a municipality's rights to purchase electricity and to sell "surplus" electricity to an entity outside its geographic boundaries preclude a municipality from purchasing electricity solely for the purpose of reselling the entire amount to an entity outside the municipality's geographic limits regardless of whether (1) the municipality's extraterritorial sales exceed the fifty percent limitation or (2) the municipality purchased excess electricity in order to resell "the entire amount" of the purchased electricity outside its municipal boundaries.

Consistent with provisions of State Constitution defining a municipality's rights to purchase electricity and to sell "surplus" electricity to an entity outside its geographic boundaries, a municipality may acquire a surplus of electricity for reasons other than "solely for the purpose of reselling" surplus electricity outside its municipal boundaries and, if it does so, the municipality may

then resell the surplus to others outside its municipal boundaries subject to the 50 percent limitation.

ANNEXATION - WISCONSIN

Town of Wilson v. City of Sheboygan

Supreme Court of Wisconsin - February 14, 2020 - N.W.2d - 2020 WL 739695 - 2020 WI 16

Town brought action for a declaratory judgment that city's annexation of land, which was annexation done pursuant to petition prepared by private party, was improper.

After entering partial summary judgment for city and then holding a bench trial, the Circuit Court determined that the annexation complied with statutory requirements and dismissed the action. Town petitioned to bypass the court of appeals.

The Supreme Court held that:

- Annexed territory satisfied statutory contiguity requirement;
- Sufficient evidence supported finding that city did not act as controlling influence that orchestrated annexation;
- Annexation was not one of exceptional shape;
- Sufficient evidence supported finding existence of reasonable present or demonstrable future need for annexed territory;
- Town failed to show that city abused its discretion in annexing property;
- Annexation petition had requisite amount of signatures of property owners as required by statute; and
- Annexation petition properly certified population count of territory in question, as required by statute.

City's annexation of land to be used for annexation petitioner's golf-course development satisfied statutory contiguity requirement; annexed territory shared common boundary with city of 650 feet, and there was significant degree of physical contact between city and annexed properties.

Sufficient evidence supported finding that city did not act as controlling influence that orchestrated annexation, as was relevant to determining whether boundary lines drawn by private party petitioner for annexation were impermissibly arbitrary and violated rule of reason, which was judicially created doctrine designed to determine whether power delegated to cities and villages under statutes on municipalities had been abused; private party alone selected territory to be included in petition, prepared annexation map, and drew boundary lines, and circuit court found that city had no input or involvement whatsoever in determining boundaries for annexation.

Annexation was not one of exceptional shape, as was relevant to determining whether boundary lines drawn by private party petitioner for annexation were impermissibly arbitrary and violated rule of reason, which was judicially created doctrine designed to determine whether power delegated to cities and villages under statutes on municipalities had been abused; territory was 1,450 feet wide at certain points, and overall shape and appearance of annexation was not so arbitrary or unreasonable that it could or should be invalidated.

Sufficient evidence supported finding existence of reasonable present or demonstrable future need for territory annexed pursuant to petition by private party, as was relevant to determining if annexation satisfied rule of reason, which was judicially created doctrine designed to determine

whether power delegated to cities and villages under statutes on municipalities had been abused; annexation provided city with ability to expand residential housing, and petitioner wanted its property to be annexed to overcome town board's opposition to petitioner's intended golf-course development and to assure that golf course would receive a sufficient source of water.

Town objecting to city's annexation of property, which was annexation done pursuant to petition prepared by private party, failed to show that city abused its discretion in annexing property, as was relevant to determining if annexation satisfied rule of reason, which was judicially created doctrine designed to determine whether power delegated to cities and villages under statutes on municipalities had been abused; despite argument that city rubber stamped annexation and agreed to support golf course development on annexed property simply to get more money, record included evidence of lengthy deliberations by city officials regarding annexation, and city's actions were consistent with petitioner's express desire to develop its land into world championship golf course.

Annexation petition prepared by private party had requisite amount of signatures of property owners as required by statute; despite argument that annexed territory included large amount of state and city-owned land with no assessed value, petition included signatures of owners of 91% of territory as measured by assessed value.

Annexation petition prepared by private party properly certified population count of territory in question, as required by statute; Department of Administration (DOA) employee reviewed petition and averred that DOA certified or confirmed that petition satisfied population-count requirement.

ANNEXATION - ILLINIOS

Coldwater v. Village of Elwood

Appellate Court of Illinois, Third District - January 9, 2020 - N.E.3d - 2020 IL App (3d) 190247 - 2020 WL 97524

Village approved and recorded annexation ordinance that contained incorrect legal description of property to be annexed, which resulted in larger annexation of property that was agreed to by village and owners.

Owners filed lawsuit to nullify annexation of property due to village's error in reciting legal description of the property. Village filed motion to dismiss. The Circuit Court dismissed owners' complaint as time-barred. Owners filed petition to review certified question.

The Appellate Court held that statute setting forth one-year period for contesting annexation of territory to municipality bars parties from correcting errors in legal description after one-year statutory period has passed.

Statute setting forth one-year period for contesting annexation of territory to a municipality bars parties to an annexation from correcting errors in legal description of annexed property after the one-year statutory period has passed; under unambiguous language of the statute, the one-year limitation shall apply "irrespective of whether such annexation may otherwise be defective or void," once an annexation is final, "defective" or not, the limitations period takes effect

Interpreting statute setting forth one-year period for contesting annexation of territory to a municipality as a bar to correcting errors in the legal description of the annexed property after one year does not render statute pertaining to the effect, enforcement, and limitations of annexation agreements inoperative; statute pertaining to the effect, enforcement, and limitations of annexation

agreements is available to compel performance of and enforce issues arising from annexation agreements not involving contests to final annexations under the one-year limitations statute.

SCHOOLS - MISSISSIPPI

Pearl River County Board of Supervisors v. Mississippi State Board of Education

Supreme Court of Mississippi - February 6, 2020 - So.3d - 2020 WL 581924

County brought action for declaratory and injunctive relief, seeking to undo the consolidation of a school district in its entirety into a second school district instead of its partial consolidation into a third school district within county.

The County Court granted summary judgment against county. County appealed.

The Supreme Court held that:

- Statute allowing aggrieved persons to seek review of school district consolidation orders provided the exclusive remedy;
- County board of supervisors was a "person aggrieved" with ten days to appeal consolidation orders;
- Publication of consolidations orders was not required to trigger the ten-day appeal deadline; and
- Chancery judge was not required to recuse herself based on her prior recusal in a separate civil action in which county was a party.

Statute allowing aggrieved persons to seek review of a school board order concerning the abolition, alteration, and creation of a school district provided the exclusive remedy for county to challenge the consolidation of a school district in its entirety into a second school district instead of its partial consolidation into a third school district within county, even though county's complaint sought injunctive and declaratory relief; county was attempting to obtain judicial review of school boards' consolidation orders.

County board of supervisors was a "person aggrieved" under statute allowing aggrieved persons to seek review of a school board order concerning the abolition, alteration, and creation of a school district, and thus county had ten days to appeal school board orders consolidating school districts, where county stated multiple times during proceedings that government property was at issue in the case and that the property it was addressing in the case was the property of residents who would be assessed ad valorem taxes.

Statutory requirement of publication, in newspapers, of the consolidation of school districts to allow the public to protest the school board's decision by petition did not apply to the ten-day appeal deadline for county to seek judicial review of school board orders consolidating a school district in its entirety into a second school district instead of its partial consolidation into a third school district within county; statute allowing the public to protest a school board's decision by petition was completely separate from statute allowing for judicial intervention of a consolidation order.

EASEMENTS - MONTANA

Barrett, Inc. v. City of Red Lodge

Supreme Court of Montana - February 4, 2020 - P.3d - 2020 WL 549053 - 2020 MT 26

Landowner brought action against city and school district, alleging inverse condemnation, negligence, and state constitutional violations, arising out of their use of his property for an secondary access route to high school.

City filed third party complaint that brought architecture firm into the litigation, alleging that firm was negligent in the design and building of access road across landowner's property. The District Court entered summary judgment in favor of architecture firm. Landowner appealed.

The Supreme Court held that city and school district obtained prescriptive easement over landowner's property.

City's and school district's use of landowner's property for secondary access route to high school was open and notorious, such that city and school district obtained prescriptive easement on the property, where access road was, by its nature, obviously visible and not undetectable to the untrained observer.

IMMUNITY - NEVADA

Paulos v. FCH1, LLC

Supreme Court of Nevada - January 30, 2020 - P.3d - 2020 WL 497362 - 136 Nev. Adv. Op. 2

Arrestee brought action against police department, officer, casino owner, and casino security guard, asserting claims negligence, false imprisonment, and negligent hiring, training, and supervision. Defendants moved to dismiss, or in the alternative, for summary judgment.

The District Court granted summary judgment to defendants. Arrestee appealed.

The Supreme Court held that:

- As a matter of first impression, federal court decision, addressing only one of the qualified immunity prongs, did not have preclusive effect;
- Police department was entitled to discretionary-act immunity; and
- Casino owner and security guard were not entitled to summary judgment simply based on their joinder to officer's and police department's motion for summary judgment.

Federal court's decision in arrestee's removed action asserting claims for excessive force under § 1983 and negligence against police officer, concluding that police officer was entitled to qualified immunity because he did not violate a clearly established constitutional right by leaving arrestee on hot asphalt for over two minutes while attempting to arrest her, did not have issue preclusive effect for arrestee's state negligence claim alleging that officer acted unreasonably, since federal court only resolved the clearly established prong of qualified immunity and did not resolve whether officer's conduct was unreasonable, such that it amounted to excessive force, for first prong of qualified immunity test.

City police department was entitled to discretionary-act immunity from arrestee's negligent hiring, training, and supervision claims arising from officer's alleged actions in leaving her on hot asphalt for over two minutes while attempting to arrest her, which resulted in her suffering second- and third-degree burns, as police department's decision to hire and train the officer involved an element

of choice, and decision on whether to train officers to suspects off hot asphalt during summer months when reasonably safe to do was subject to policy analysis.

Casino owner and casino security guard were not entitled to summary judgment on arrestee's claims of negligence and false imprisonment, arising from security guard's assistance in her arrest, which resulted in arrestee suffering from second- and third-degree burns from being left on hot asphalt for over two minutes during the summer, simply based on their joinder to officer's and police department's motion for summary judgment on § 1983 and negligence claims, since summary judgment for officer and police department was grounded in qualified immunity and governmental immunity, and casino owner and security guard were non-state actors, and further, grant of summary judgment was silent as to any findings of fact or conclusions of law on negligence and false imprisonment issues

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SCHOOL DISTRICTS - OHIO

State ex rel. Dunn v. Plain Local School District Board of Education

Supreme Court of Ohio - February 3, 2020 - N.E.3d - 2020 WL 525160 - 2020 -Ohio- 339

Village residents filed a mandamus action seeking to compel the placement of transfer proposal, which sought to transfer the territory of two villages from first local school district to second local school district, on March primary-election ballot.

The Supreme Court held that:

- The doctrine of laches did not bar village residents from filing mandamus action seeking to compel election board to place transfer proposal on March primary-election ballot;
- Village residents were not entitled to an order compelling school board to recertify transfer proposal to the elections board and specify that the proposal should be placed on the March ballot, rather than the November ballot; and
- Village residents' claim seeking to compel elections board to review transfer proposal for placement on March primary-election ballot presented a controversy that was ripe for review.

The doctrine of laches did not bar village residents from filing mandamus action seeking to compel election board to place transfer proposal seeking to transfer village's territory to a different school district on March primary-election ballot, even if residents unreasonably delayed between the date the transfer petition was filed with school board and the date residents filed their first mandamus action; the claim against elections board did not arise until the board verified the petition signatures and the school board certified the proposal back to the board, and school board certified the petition one day before residents filed their mandamus action.

Village residents were not entitled to an order compelling local school board to recertify transfer proposal to the elections board and specify that the proposal should be placed on the March ballot, rather than the November ballot, as indicated in the board's certification of the proposal; statute required a school board only to specify the date of the election in its certification if the proposal was to be placed on a ballot at a special election, the proposal at issue was not being placed on a special election ballot, and thus the certification's reference to the November election was inconsequential and had no binding effect.

Village residents' claim seeking to compel elections board to review transfer proposal for placement on March primary-election ballot presented a controversy that was ripe for review by the Supreme

Court, in mandamus action that sought to transfer the territory of villages from first local school district to second school district.

HOME RULE - RHODE ISLAND

K&W Automotive, LLC v. Town of Barrington

Supreme Court of Rhode Island - January 31, 2020 - A.3d - 2020 WL 501698

Owners of business licensed to sell tobacco and electronic cigarettes brought action seeking declaratory and injunctive relief to prevent town from enforcing tobacco ordinance that banned sale of flavored tobacco products and prohibiting the providing of any tobacco products to persons under age of 21 years.

The Superior Court granted plaintiffs' request for declaratory and injunctive relief after concluding that ordinance was null and void. Town appealed.

The Supreme Court held that town lacked authority under its home rule charter to enact the tobacco ordinance.

Town's tobacco ordinance, banning sale of flavored tobacco products and prohibiting the providing of any tobacco products to persons under age of 21 years, exceeded its authority under its home rule charter; matter was of statewide concern for which uniform regulation throughout the state was necessary or desirable, tobacco regulation had traditionally fallen within the purview of the state, and ordinance seemed to benefit businesses outside town.

IMMUNITY - TEXAS

Texas Department of Criminal Justice v. Rangel

Supreme Court of Texas - February 7, 2020 - S.W.3d - 2020 WL 596876

Inmate brought suit against prison guard and Texas Department of Criminal Justice for injuries he sustained when prison guard used tear gas to disburse inmates who were threatening to fight and refused to return to bunks.

Department filed plea to the jurisdiction based on sovereign immunity under Texas Tort Claims Act (TTCA). The District Court denied plea, and Department took interlocutory appeal. The Court of Appeals affirmed. Department's petition for review was granted.

The Supreme Court held that:

- Department "used" tangible personal property within meaning of TTCA's immunity waiver by authorizing and instructing prison guard to use tear-gas gun and skat shell in prison dormitory to address inmates' refusal to "rack up";
- "Riot" within meaning of riot exception to sovereign immunity waiver under TTCA was disturbance of peace by assemblage of seven or more persons acting with common purpose in tumultuous manner that immediately threatened or terrorized public or institution;
- Riot exception applied to TTCA's immunity waiver.

PUBLIC EMPLOYMENT - CALIFORNIA

People ex rel. Lacey v. Robles

Court of Appeal, Second District, Division 5, California - January 29, 2020 - Cal.Rptr.3d - 2020 WL 467582 - 20 Cal. Daily Op. Serv. 757

County district attorney brought action in quo warranto against mayor, who also served as member of board of directors for Water Replenishment District, alleging that he was violating code provision that made it unlawful to simultaneously hold incompatible public offices.

The Superior Court removed mayor as director of District. Mayor appealed.

The Court of Appeal held that:

- Attorney General properly deputized county district attorney under quo warranto statute;
- Possibility of conflict in duties or loyalties when serving as mayor and as member rendered two offices incompatible;
- Exception for simultaneous holding of multiple public offices if compelled or expressly authorized by law did not apply;
- District attorney was not required to re-apply for leave to bring action in quo warranto after mayor began serving new terms upon his election to both offices; and
- Mayor was not entitled to depose county district attorney.

REFERENDA - FLORIDA

Dinerstein v. Bucher

District Court of Appeal of Florida, Fourth District - January 15, 2020 - So.3d - 2020 WL 218328

Taxpayer filed verified emergency petition for declaratory and injunctive relief against city alleging misuse of public funds for unlawful government advocacy and injunctive relief against a political action committee concerning dissemination of deceptive advertisements.

The Circuit Court entered final judgment in favor of city. Taxpayer appealed.

The District Court of Appeal held that:

- City's expenditure for payment to local political consulting company for execution of voter education campaign was not a political advertisement, and
- Ballot title and summary seeking to amend provisions of city charter were not misleading.

City's payment of $43,200 to local political consulting company for planning, management, and execution of voter education campaign before city election was not a political advertisement constituting the functional equivalent of express advocacy for passage of ballot measure, and, thus, did not violate statute barring the expenditure of public funds for a political advertisement or constitutional provision reserving political power in the people, where city provided literature indicating what citizens should know about ballot initiatives, created website where citizens could learn more information, disseminated a voter's guide, and generated robocalls providing website address and hotline number, none of which expressly advocated a position on ballot measure.

Ballot title and summary in city election, seeking to amend and modify provisions of city charter,

were not misleading, as would have required ballot measure to be removed from ballot, where summary asked "to remove provisions that are outdated, unnecessary, or conflict with state law," listed various topics which were generally understandable, ended with reference to a separate document, and separate document contained a track-changes version of the charter indicating precise proposed additions and deletions.

EMINENT DOMAIN - FLORIDA

TLC Properties, Inc. v. Department of Transportation

District Court of Appeal of Florida, First District- January 21, 2020 - So.3d - 2020 WL 284031

Billboard owner brought an inverse condemnation action against Department of Transportation, claiming highway flyover project violated its rights under easement for an unobstructed view of and access to billboard.

The Circuit Court granted summary judgment in favor of Department. Billboard owner appealed.

The District Court of Appeal held that:

- Unobstructed view of billboard on private property was not a compensable property interest, and
- Flyover highway project would not deny billboard owner access from highway to property on which its billboard was located, such that no compensation was warranted for loss of access.

Unobstructed view of an advertising billboard on private property from public highway was not a compensable property interest, and thus loss of visibility of billboard to passers-by on highway due to highway flyover project was not compensable in inverse condemnation action, although restrictive covenant in easement deed that was provided to billboard owner prohibited property owner from restricting view of billboard from public highway; landowners could not contract to control or limit the government's ability to acquire lands for public purposes, and billboard owner had an appropriate remedy in breach of contract claim against landowner for highway construction's effect on easement.

Flyover highway project would not deny billboard owner access from highway to property on which its billboard was located, and thus billboard owner was not entitled to compensation for loss of access in inverse condemnation action against Department of Transportation, although flyover would result in diversion of traffic, where contractual easement for access to billboard did not specify where it was to be accomplished on landowner's property, neither billboard owner nor landowner ever applied for a curb cut or other permissible entry from highway, and flyover construction plans included construction of a service road running parallel to flyover with a curb cut on highway permitting access to landowner's property.

PUBLIC RECORDS - ILLINOIS

Rushton v. Department of Corrections

Supreme Court of Illinois - December 19, 2019 - N.E.3d - 2019 IL 124552 - 2019 WL 6907324

Journalist and newspaper brought action against Department of Corrections seeking unredacted

copy of settlement agreement between contracted medical care provider for inmates at correctional center and estate of former inmate who died of cancer under Freedom of Information Act (FOIA).

The Circuit Court allowed provider to intervene in lawsuit, denied summary judgment for journalist and newspaper, and granted summary judgment for provider. Journalist and newspaper appealed. The Appellate Court reversed and remanded. Provider filed petition for leave to appeal, which was allowed.

The Supreme Court held that settlement agreement was directly related to governmental function that provider performed for Department and, thus, was public record under FOIA.

Settlement agreement between contracted medical care provider for inmates at correctional center and estate of former inmate who died of cancer was directly related to governmental function that provider performed for Department of Corrections and, thus, was public record under Freedom of Information Act (FOIA); governmental function that provider contracted to perform for Department was provision of medical care to inmates, settlement agreement directly related to performance of governmental function, as it was settlement of claim that provider's inadequate medical care, i.e., its alleged inadequate performance of its governmental function, led to death of inmate, and connection between settlement and governmental function was not indirect or tangential but was direct and obvious.

PARKS & REC - MINNESOTA

Hayden v. City of Minneapolis

Court of Appeals of Minnesota - January 21, 2020 - N.W.2d - 2020 WL 284102

City residents brought action for declaratory and injunctive relief against city, park board, and other parties responsible for developing a public park, seeking permanent injunction barring use of city funds for operation of park and declarations that use agreement and memorandum of understanding related to park were invalid.

The District Court granted city's motion for judgment on the pleadings on the declarations and residents' motion for summary judgment on the injunction. Both parties appealed.

The Court of Appeals held that:

- City charter prohibited city council from maintaining park;
- Charter provision delegating maintenance of parks to park board and prohibiting council from maintaining parks was not in conflict with state law;
- Partnerships between council and park board under previous city charter could not guide interpretation of new city charter; and
- Residents did not have standing to bring public interest action challenging use agreement.

City charter did not permit city council to accept delegation of authority to maintain parks from park board, and thus city charter prohibited council from maintaining park leased to city by park board; city charter unambiguously provided that council could act "except where" charter reserved action for "different board, commission, or committee," and charter expressly reserved authority to maintain parks to park board.

State law allowing city to expend funds on land and recreational facilities was permissive, stating that city "may" expend funds to maintain "land and recreational facilities," and thus city charter

provision delegating maintenance of parks to park board and prohibiting council from maintaining parks did not forbid what state law expressly permitted, as would render charter provision in conflict with state law.

Any examples of partnerships between city council and park board under previous city charter could not guide interpretation of new city charter under new charter provision permitting use of "settled interpretation" of previous charter as guide in interpreting new charter, and thus examples of such partnerships did not affect interpretation of new charter prohibiting city council from maintaining parks; section of new charter prohibiting council from maintaining parks contained new language not present in previous charter.

Nothing in use agreement between developer and designer of public park required city to spend any public funds or required any public official to act illegally, and thus city taxpayers did not have standing to bring public interest action challenging agreement.

LICENSES - NEW HAMPSHIRE

Boyle v. City of Portsmouth

Supreme Court of New Hampshire - January 24, 2020 - A.3d - 2020 WL 407807

Landowner brought action against city, alleging trespass and nuisance arising from city's sewer line on property.

The Superior Court entered judgment in favor of landowner and awarded damages. Landowner appealed as to damages, and city cross-appealed.

The Supreme Court held that:

- Landowner's attorney's letter to city's attorney constituted a revocation of city's license to keep sewer line on landowner's property, and
- Landowner's claim of inability to develop additional automobile dealership on property was too speculative to support award of lost profit damages.

Landowner's attorney's letter to city's attorney constituted a revocation of city's license to keep sewer line on landowner's property, even though letter did not expressly use word "revoke," where letter expressed attorney's belief that there was "no justification for continued presence" of line and that city had no permission from current owner as it had in the past.

Landowner's claim of inability to develop additional automobile dealership on property which contained one dealership was too speculative to support award of lost profit damages, in landowner's action against city for trespass and nuisance arising out of city's use of sewer line on property after revocation of license to do so; landowner's expert offered no assessment of probability that landowner would obtain necessary regulatory approvals, and landowner's own testimony highlighted uncertainty of obtaining a dealer franchise and securing financing to build a second building.

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States District Court, D. Puerto Rico - January 7, 2020 - F.Supp.3d - 2020 WL 114518

Bondholders moved for appointment of trustee pursuant to provision of Chapter 9 incorporated in the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA).

The District Court held that decision on part of the Financial Oversight and Management Board for Puerto Rico not to pursue cause of action to avoid transfers was neither unjustified nor unreasonable, and did not warrant appointment of trustee.

Decision on part of the Financial Oversight and Management Board for Puerto Rico not to pursue cause of action to avoid transfers effected pursuant to certain public pension-related legislation enacted by the Commonwealth of Puerto Rico was neither unjustified nor unreasonable, and did not warrant appointment of trustee pursuant to a provision of Chapter 9 incorporated in the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA); while pursuing returns for creditors was an important element of the Board's judgments, it is not the exclusive end point of the Board's task, which included consideration of needs, concerns and future of political entity that was home of millions of American citizens, as well as needs, concerns and rights of broad range of parties in interest.

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States District Court, D. Puerto Rico - February 5, 2019 - 361 F.Supp.3d 203

Financial Oversight and Management Board for Puerto Rico filed debt adjustment plan for Puerto Rico Sales Tax Financing Corporation (COFINA) as part of restructuring of debts of Commonwealth of Puerto Rico and its instrumentalities pursuant to Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA).

The District Court held that:

- COFINA's debt adjustment plan complied with applicable provisions of bankruptcy code and procedural rules;
- COFINA's debt adjustment plan was proposed in good faith with legitimate and honest purpose to provide method for Puerto Rico to achieve fiscal responsibility and access to capital markets;
- COFINA's debt adjustment plan sufficiently met requirement for acceptance by each class of claim holders;
- COFINA's debt adjustment plan did not contain any provisions which would require it to violate Puerto Rico or federal constitution or laws;
- COFINA's debt adjustment plan obtained all necessary legislative, regulatory, and electoral approvals;
- COFINA's debt adjustment plan was in best interests of its bondholders; and
- COFINA's debt adjustment plan was feasible.

TAX - VIRGINIA

Portsmouth 2175 Elmhurst, LLC v. City of Portsmouth

Supreme Court of Virginia - January 23, 2020 - S.E.2d - 2020 WL 370544

Taxpayer brought action against city, challenging real estate tax assessments for a former meat packing plant in city, and alleging that attorney fees charged to taxpayer to collect assessments were not reasonable.

The Circuit Court upheld assessments. Taxpayer appealed.

The Supreme Court held that:

- Taxpayer presented a prima facie case that real property was valued in excess of fair market value;
- Taxpayer failed to prove that mass appraisal or subsequent revised assessment failed to conform to professional standards;
- Taxpayer failed to prove that under applicable Virginia law the distinctive characteristics of property rendered a falsified result under mass appraisal that deviated significantly from fair market value;
- Trial court was well within its discretion in concluding that attorney fees were reasonable.

Taxpayer presented a prima facie case that real property, a former meat packing facility, was valued in excess of fair market value in determining whether mass appraisal for real estate tax assessment conformed to generally accepted appraisal practices, procedures, rules, and standards or applicable Virginia law relating to valuation of property; taxpayer offered testimony of highly qualified expert to that effect, an exhaustive report, and evidence that property had sold recently on two occasions, each time well below city's assessed value, and taxpayer showed that the most recent purchaser demolished building on property providing compelling evidence that building had outlived its useful life and was, consequently, overvalued in city's assessment.

Taxpayer failed to prove that mass appraisal or subsequent revised assessment failed to conform to professional standards in taxpayer's action challenging city's tax assessments on real property, a former meat packing facility, absent specific testimony explaining how standards were, in fact, violated by mass appraisal and lowered subsequent assessment; taxpayer's expert's written report faulted assessment for failing to comply with professional standards, whereas city's expert testified that his assessment did comply with mass appraisal standards, and trial court carefully weighed this contrasting testimony and found in favor of city.

Taxpayer failed to prove that under applicable Virginia law the distinctive characteristics of real property, a former meat packing facility, rendered a falsified result under mass appraisal that deviated significantly from fair market value, as would support finding that in challenging city's real estate tax assessment taxpayer failed to establish that mass appraisal and subsequently lowered assessment did not conform to generally accepted appraisal practices, procedures, rules, and standards or applicable Virginia law relating to valuation of property.

Trial court was well within its discretion in concluding that contingency fee based attorney fees of $24,000 were reasonable for recovery of delinquent real estate taxes, even though counsel did not meticulously document expenditure of time to the same extent as under an hourly fee arrangement; contingency fee was standard for recovery of delinquent taxes, fees did not exceed statutory cap of 20 percent, court reduced fees to well below cap, and trial court carefully considered the evidence.

MUNICIPAL CORPORATIONS - CALIFORNIA

City of Huntington Beach v. Becerra

Court of Appeal, Fourth District, Division 3, California - January 10, 2020 - Cal.Rptr.3d - 2020 WL 113677 - 20 Cal. Daily Op. Serv. 290 - 2020 Daily Journal D.A.R. 190

Charter city brought petition for writ of mandamus and declaratory relief, challenging provision of California Values Act (CVA) which restricted ability of local law enforcement agencies to inquire into immigration status, place individuals on an immigration hold, and use personnel or resources to participate in certain immigration enforcement activities.

The Superior Court granted petition. Attorney General appealed.

The Court of Appeal held that:

- Home rule provision of state constitution, setting out list of core areas that are municipal affairs, is properly read as an identification of areas that are at least presumptively deemed to be municipal affairs for purposes of preceding provision setting out general rule of municipal self-governance;
- No actual conflict existed between charter city's municipal code provision, making it the duty of police department members to impartially enforce all federal and state laws and local ordinances, and CVA, and thus enforcement of CVA against city did not infringe city's home rule authority;
- Conflict existed between provision of city charter, granting city its full constitutional power to make and enforce laws regarding municipal affairs, and CVA;
- CVA addressed matters of statewide concern; and
- CVA was narrowly tailored to addressing those matters.

IMMUNITY - CALIFORNIA

Hedayatzadeh v. City of Del Mar

Court of Appeal, Fourth District, Division 1, California - January 22, 2020 - Cal.Rptr.3d - 2020 WL 370443 - 20 Cal. Daily Op. Serv. 557 - 2020 Daily Journal D.A.R. 528

Deceased pedestrian's father brought action against city, railroad, and train operator after pedestrian was struck and killed by train near ocean bluff.

City filed motion for summary judgment on claim for dangerous condition of public property. The Superior Court granted city's motion, and father appealed.

The Court of Appeal held that lack of barrier to prevent pedestrians from going around guardrail toward railroad tracks did not constitute a dangerous condition of public property.

Lack of barrier at end of street, which terminated at ocean bluff, to prevent pedestrians from going around guardrail and entering hazardous area on railroad's right of way on bluff was not a dangerous condition of public property; persons who traveled to the end of the street were not required to walk toward the train tracks and encounter any hazard on the right-of-way, but rather had to decide to walk around the guardrail, down an embankment and toward the train tracks before encountering any hazard, and nothing about the city's property enticed or encouraged members of the public to put themselves in danger by entering a hazardous area on adjacent property.

ZONING & PLANNING - MAINE

Town of Gorham v. Duchaine

Supreme Judicial Court of Maine - January 21, 2020 - A.3d - 2020 WL 284098 - 2020 ME 7

Town brought land-use-enforcement action against landowner, alleging multiple violations of town's land use and development code. Parties settled dispute by agreeing to terms set forth in consent decree, which included compliance plan, and the Portland District Court entered consent decree as judgment.

Town thereafter moved to enforce consent decree, alleging that landowner had failed to comply with plan and was liable for full $10,000 suspended penalty, $45,000 in per-day penalties, and town's costs of enforcement. The District Court, Jed J. French, J., granted motion. Landowner appealed.

The Supreme Judicial Court held that trial court's conclusion that landowner was noncompliant with consent decree, thereby triggering imposition of prospective penalties described in decree, was not supported by competent evidence.

Trial court's conclusion that landowner was noncompliant with consent decree between landowner and town concerning land-use violations, thereby triggering imposition of prospective penalties described in decree, was not supported by competent evidence, although town attached affidavits of its engineer and code enforcement officer to its motion to enforce decree, and rule concerning taking of testimony allowed trial court to hear matter on affidavits, where trial court did not hold hearing, did not inform parties it would decide motion on affidavits, and did not give landowner opportunity to submit affidavits in opposition to town's affidavits, and, further, simply attaching documents to motion was not equivalent of properly introducing or admitting them as evidence.

PREEMPTION - MINNESOTA

Graco, Inc. v. City of Minneapolis

Supreme Court of Minnesota - January 22, 2020 - N.W.2d - 2020 WL 356249

Employer brought action against city for declaratory and injunctive relief, alleging that Minnesota Fair Labor Standards Act (MFLSA) preempted city's minimum wage ordinance.

The District Court entered judgment in favor of city. Employer appealed. The Court of Appeal affirmed. Employer petitioned for review, which was granted.

The Supreme Court held that:

- Ordinance did not conflict with MFLSA, and
- MFLSA did not occupy field of minimum wage rates and thus did not preempt municipal regulation in that field.

Municipal ordinance setting minimum wages rates did not conflict with Minnesota Fair Labor Standards Act (MFLSA), supporting finding that ordinance was not preempted, even though ordinance's rates were higher than those set forth in MFLSA; MFLSA only required that employers pay "at least" the statutory rate, which clearly contemplated possibility of higher hourly rates.

Minnesota Fair Labor Standards Act (MFLSA), providing minimum wage rates which varied depending on size of employer, did not occupy field of minimum wage rates and thus did not preempt municipal regulation in that field; statute merely set a minimum-wage floor, leaving room for municipalities to regulate above, nothing in text of statute indicated that preemption was

Legislature's intent, and varied local regulation of wages would not have unreasonably adverse effect on state.

MUNICIPAL ORDINANCE - MISSOURI (entirely different state than Kansas)

City of Bellefontaine Neighbors v. Carroll

Missouri Court of Appeals, Eastern District, Division Two - January 14, 2020 - S.W.3d - 2020 WL 202097

After a bench trial, landowner was found guilty in the Circuit Court of violating two municipal property and zoning ordinances by allowing bare dirt in his rear yard and by having enclosure for chickens closer than 150 feet from his property's lot line. Landowner appealed.

The Court of Appeals held that:

- Judgment finding landowner guilty of charge city had abandoned during trial was reversed and amended;
- Landowner failed to show prejudice based on defects in information and violation notice that charged him with violating zoning ordinances;
- Information charging landowner with municipal zoning ordinance violation set forth the elements of the offense and adequately apprised landowner of the charge against him;
- City building inspector had authority under city zoning ordinance to enforce landowner's alleged violation of ordinance; and
- City legitimately exercised its police power and did not act outside the scope of authority delegated to it in enacting zoning ordinance.

TRANSPORTATION - MONTANA

Montana Independent Living Project v. Department of Transportation

Supreme Court of Montana - December 31, 2019 - 454 P.3d 1216 - 2019 MT 298

Nonprofit provider of transportation services to elderly and disabled residents appealed the decision of the Department of Transportation (DOT) to award state and federal transportation funds to city that served as the lead agency in provider's geographic area, which had distributed the entire amount to the city council instead of allocating a portion of the funds to provider as recommended by area's transportation advisory committee.

The District Court to DOT. Provider appealed.

The Supreme Court held that:

- Statute governing DOT's award of funds was a proper delegation of legislative authority;
- DOT did not engage in unauthorized rulemaking by adopting State Management Plan and applying it to its awards;
- Adoption of State Management Plan did not violate provision of Montana constitution entitling citizens to a reasonable opportunity to participate; and
- DOT did not violate provision of Montana constitution requiring legislature to "insure strict accountability of all revenue received and money spent" by state and local government by making its awards to lead agencies.

PUBLIC UTILITIES - OHIO

In re Ohio Power Company

Supreme Court of Ohio - January 22, 2020 - N.E.3d - 2020 WL 354954 - 2020 -Ohio- 143

Office of Ohio Consumers' Counsel sought judicial review of a decision of the Public Utilities Commission approving and modifying a previously approved electric-security plan.

The Supreme Court held that:

- Commission had subject matter jurisdiction to approve a cost-recovery rider to the plan;
- Commission did not act unlawfully in approving rider that allowed for recovery of costs associated with technology-demonstration projects; and
- No prejudice to ratepayers resulted from approval of rider, on placeholder basis, allowing recovery of costs from future renewable-generation projects.

Public Utilities Commission had subject matter jurisdiction to approve a cost-recovery rider to an electric utility's electric-security plan, and thus the failure of the Office of Ohio Consumers' Counsel to raise before the Commission its contention that the rider intruded on the Federal Regulatory Commission's (FERC) exclusive jurisdiction under the Federal Power Act over wholesale sales of electricity in the interstate market deprived the Ohio Supreme Court of jurisdiction to consider the issue; the Act did not deprive state tribunals of the power to adjudicate claims that the Act preempted state law, and utility's application for extension of the rider did not depend on federal law.

Public Utilities Commission did not act unreasonably or unlawfully in approving a rider to electric utility's electric-security plan allowing for recovery of costs associated with technology-demonstration projects to encourage construction of electric-vehicle charging stations and development of microgrids; no evidence showed that the projects had no relation to distribution service, infrastructure, or modernization, within meaning of statute governing electric-security plans, no authority held that statute governing standard service offers limited provisions in an electric-security plan to those necessary to maintain essential electric service, and statute governing electric-security plans authorized certain plan provisions even if another public utilities statute prohibited them.

Office of Ohio Consumers' Counsel failed to show harm or prejudice to ratepayers, as required for reversal of a decision of the Public Utilities Commission authorizing electric utility's implementation on a placeholder basis, i.e., with a zero rate, of a rider to an electric-security plan permitting utility to recover costs from future renewable-generation projects to be approved by Commission at a later date; costs and inefficiencies associated with Office's strategy to litigate an issue prematurely were not harm or prejudice caused by or resulting from the Commission's order.

SCHOOL - PENNSYLVANIA

Ambler v. Board of School Directors of the Hatboro-Horsham School District

Commonwealth Court of Pennsylvania - December 12, 2019 - A.3d - 2019 WL 6754781

Property owners brought action against board of school directors objecting to sale of property under provisions of Donated or Dedicated Property Act (DDPA).

The Court of Common Pleas granted that part of owners' complaint requiring that any sale of district property proceed in accordance with DDPA and precluded proposed sale. Board appealed.

The Commonwealth Court held that as matter of first impression, Code, not DDPA provided substantive authority for school district to dispose of donated property and how to use sale proceeds.

Public School Code, not Donated or Dedicated Property Act (DDPA) provided substantive authority for school district to dispose of donated property and how to use sale proceeds, although neither statute provided that it was the exclusive law governing the disposal of school lands, since differences between statutes processes, notice provisions, rights to object, options for disposing of land and buildings, and disposition of proceeds were irreconcilable, and there was no indication that it was the manifest intention of General Assembly that later enacted DDPA prevail over Code.

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States Court of Appeals, First Circuit - January 30, 2020 - F.3d - 2020 WL 486163

In the debt adjustment cases of the Commonwealth of Puerto Rico and related governmental entities, including the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (ERS), under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the Financial Oversight and Management Board for Puerto Rico (FOMB), as representative of ERS, filed adversary complaint against entities that held bonds issued by ERS prior to PROMESA's enactment, seeking declaratory relief on the "validity, priority, extent and enforceability" of bondholders' asserted security interests in postpetition assets, including employer contributions that were made postpetition.

Parties cross-moved for summary judgment. The United States District Court for the District of Puerto Rico granted FOMB's motion and denied bondholders' cross-motion. Bondholders appealed.

The Court of Appeals held that:

- The section of the Bankruptcy Code governing the postpetition effect of security interests, as incorporated by PROMESA, prevented bondholders' security interest from attaching to postpetition employers' contributions;
- Bondholders did not have "special revenue" bonds; and
- The section of the Code governing the postpetition effect of security interests applied retroactively to the parties' security agreement.

With respect to entities holding bonds issued by the Puerto Rico Employees Retirement System (ERS) prior to enactment of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the section of the Bankruptcy Code governing the postpetition effect of security interests, as incorporated by PROMESA, prevented bondholders' security interest in "pledged property" from attaching to employer contributions that were made postpetition; under applicable Bond Resolution, ERS did not have a prepetition property right, and bondholders did not have a security interest, but a mere expectancy, in any right to receive postpetition employer contributions, such that those contributions were not "proceeds" of any prepetition property right, bondholders did not have liens on "obligations" of employers to solve deficiency in pension system, and amendment to Article 9 of Puerto Rico Uniform Commercial Code (UCC) did not render employer contributions

as secured “proceeds.”

Entities holding bonds issued by the Puerto Rico Employees Retirement System (ERS) prior to enactment of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) did not have “special revenue” bonds as would have remained subject to any prepetition lien held by bondholders; the Bankruptcy Code, as incorporated by PROMESA, defined “special revenues” as any receipts derived from the ownership, operation, or disposition of systems primarily used or intended to be used primarily to provide transportation, utility, or other services, and, under the plain language of the statute, the postpetition employer contributions in which bondholders allegedly held a security interest originated in neither ERS’ “particular functions” nor its “ownership, operation, or disposition of” a system of “other services,” but in the work of employees that generated the contributions and the statutory obligation of employers to contribute, via annual appropriations of the Commonwealth.

In enacting the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) to address Puerto Rico’s financial crises, Congress plainly intended to apply the section of the Bankruptcy Code governing the postpetition effect of security interests, as incorporated by PROMESA, retroactively, to security interests agreements created before the enactment of PROMESA; Congress provided an explicit command within PROMESA to apply the provision retroactively.

PUBLIC UTILITIES - CALIFORNIA

In re PG&E Corporation

United States Bankruptcy Court, N.D. California - November 27, 2019 - B.R. - 2019 WL 6492472 - 68 Bankr.Ct.Dec. 19

In proceedings for estimation of unliquidated claims arising from California wildfires admittedly caused by the equipment of Chapter 11 debtors, a private gas and electric utility and its holding company, the debtors, joined by unsecured creditors committee and certain shareholders of company, challenged application of the doctrine of inverse condemnation in connection with the wildfires.

Tort claimants committee, ad hoc group of subrogation claim holders, and other parties supported continued application of the doctrine.

The Bankruptcy Court held that, under California law, as predicted, the doctrine of inverse condemnation applied to debtors, as privately-owned utilities.

ZONING & PLANNING - ILLINOIS

Ryan v. City of Chicago

Appellate Court of Illinois, First District, Third Division - December 11, 2019 - N.E.3d - 2019 IL App (1st) 181777 - 2019 WL 6769619

Landowner brought action seeking writ of mandamus against city and commissioner of city department of buildings directing that neighboring house comply with two-foot minimum side setback of local zoning ordinance and seeking mandatory injunction directing neighboring homeowner and homebuilder to move wall of house to comply with setback.

The Circuit Court granted city and commissioner's motion to dismiss mandamus claim. Landowner filed interlocutory appeal.

The Appellate Court held that:

- Statute allowing private landowners to institute an action to prevent violation of a zoning ordinance or regulation did not provide landowner a private right of action against city, and
- City and commissioner had no clear duty to enforce ordinance.

City and commissioner of city department of buildings had no clear duty to revoke building permit for house allegedly built in violation of side setback local ordinance, to direct builder and owners of house to submit new building plans that complied with ordinance, or to direct the house be built in compliance with setback, and thus mandamus was not appropriate remedy for adjoining landowner challenging house's compliance with ordinance, even though ordinance mandated compliance for builders; city and commissioner had discretion in their enforcement of the ordinance.

ZONING & PLANNING - MAINE

Portland Pipe Line Corporation v. City of South Portland

United States Court of Appeals, First Circuit - January 10, 2020 - F.3d - 2020 WL 113390

Pipeline operator and trade association brought action against city and city's code enforcement officer, challenging validity of city zoning ordinance that prohibited bulk loading of crude oil onto tankers in city harbor and building new structures for that purpose.

The United States District Court for the District of Maine granted in part and denied in part defendants' motion for summary judgment and denied plaintiffs' cross-motion for summary judgment, and, after bench trial, dismissed plaintiffs' sole remaining claim. Plaintiffs appealed.

The Court of Appeals held that:

- Certification of question whether renewal of operator's existing oil terminal facility license by Maine's Department of Environmental Protection (MDEP) was an order with preemptive effect was warranted, and
- Certification of question whether Maine's Coastal Conveyance Act (CCA) expressly or by implication preempted ordinance twas warranted.

Certification of question whether renewal of pipeline operator's existing oil terminal facility license by Maine's Department of Environmental Protection (MDEP) was an order with preemptive effect was warranted, since operator's action alleging that city zoning ordinance that prohibited bulk loading of crude oil onto tankers in city harbor was preempted by Maine's Coastal Conveyance Act (CCA) lacked controlling precedent and presented close and difficult legal issue of state law.

Certification of question whether Maine's Coastal Conveyance Act (CCA) expressly or by implication preempted city zoning ordinance that prohibited bulk loading of crude oil onto tankers in city harbor was warranted, in pipeline operator's action challenging validity of ordinance, since there was no controlling precedent that resolved the state law preemption issue.

MUNICIPAL ORDINANCE - MISSOURI

Wilson v. City of St. Louis

Supreme Court of Missouri, en banc - January 14, 2020 - S.W.3d - 2020 WL 203137

Recipients of parking citations brought action against city, state, and various state and city officials, challenging the constitutionality of parking statutes and city parking fine ordinances, and seeking injunctive relief.

City filed cross-claim against state. The Circuit Court granted partial summary judgment in favor of plaintiffs and in favor of the city on its cross-claim. State and officials appealed.

On transfer from the Court of Appeals, the Supreme Court held that:

- Order granting declaratory relief in favor of recipients did not qualify as "judgment" eligible for immediate appeal, and
- Orders granting injunctive relief from parking statutes and granting summary judgment on city's cross-claim were not eligible for certification to allow immediate appeal.

Circuit Court order granting declaratory relief in favor of recipients of parking citations did not fully resolve any claim, and thus, did not qualify as a "judgment," as required to be eligible for certification as final judgment to allow for immediate appeal, in action against city, state, and various state and city officials, challenging the constitutionality of parking statutes and city parking fine ordinances, where order did not address portion of claim seeking injunctive relief.

Circuit Court orders granting injunctive relief from parking statutes and granting summary judgment in favor of city on its cross-claim were not eligible for certification to allow immediate appeal, in action against city, state, and various state and city officials, challenging the constitutionality of parking statutes and city parking fine ordinances; many additional claims remained pending in the Circuit Court, and neither order disposed of a judicial unit that would qualify it for certification for immediate appeal, as the orders did not resolve all claims by or against one party, or one or more claims that were sufficiently distinct from those claims that remained pending.

MUNICIPAL CONTRACTS - NEW JERSEY

Pisack v. B & C Towing, Inc.

Supreme Court of New Jersey - January 16, 2020 - A.3d - 2020 WL 237201

In separate cases, motorists brought putative class actions against towing companies which had municipal contracts to provide towing services, challenging fees charged in connection with non-consensual towing of vehicles.

The Superior Court granted summary judgment to companies. Owners appealed, and cases were consolidated. The Superior Court, Appellate Division, reversed and remanded. Companies appealed.

The Supreme Court held that:

- Legislation amending Towing Act with regard to permissible fees for non-consensual towing of vehicles was not intended to be curative, and thus retroactive application was not indicated on that basis;
- Towing companies were not sellers, lessors, creditors, or lenders when they towed motorists' vehicles, supporting finding that motorists could not assert claim under Truth-in-Consumer

Contract, Warranty and Notice Act (TCCWNA) against companies based on such towing;
- Towing companies were not bailees when they towed vehicles, also supporting finding that motorists could not assert claim under TCCWNA; and
- Bills issued by towing companies after towing were not consumer contracts or notices and thus did not satisfy writing requirement for a claim under TCCWNA.

REFERENDA - OHIO

State ex rel. Dunn v. Plain Local School District Board of Education

Supreme Court of Ohio - January 9, 2020 - N.E.3d - 2020 WL 104387 - 2020 -Ohio- 40

Village residents sought writ of mandamus to compel school board to forward residents' petition proposing transfer of village's territory to a different school district to county board of elections for it to review sufficiency of signatures on petition.

The Supreme Court held that:

- Residents' claim was not barred by laches;
- Residents lacked adequate remedy in ordinary course of the law, as required for mandamus relief;
- School board had clear legal duty to forward petition to board of elections for review of signatures;
- School board's substantive challenges to petition could not extinguish residents' clear right to relief;
- School board was not entitled to indefinitely "table" petition; and
- School board's claim that residents were not entitled to relief because proposal would ultimately have to be kept off primary ballot was unripe.

EMINENT DOMAIN - TEXAS

In re Upstream Addicks and Barker (Texas) Flood-Control Reservoirs

United States Court of Federal Claims - December 17, 2019 - Fed.Cl. - 2019 WL 6873696

Property owners sued federal government, claiming Fifth Amendment taking of flowage easement from dams constructed, modified, maintained, and operated by Army Corps of Engineers after properties within flood-pool reservoirs were inundated with impounded flood waters during Tropical Storm Harvey.

Following consolidation of actions within master docket and then splitting of actions into two sub-master dockets based on whether property was upstream or downstream from dams, government moved to dismiss 13 upstream bellwether test cases for lack of subject matter jurisdiction and for failure to state claim. Resolution of motion was deferred until trial.

After bench trial, the Court of Federal Claims held that:

- Upstream owners had valid property interests;
- Taking of permanent flowage easement was effected on all bellwether properties;
- Police powers defense did not apply; and
- Necessity doctrine did not apply.

Under federal and Texas law, upstream landowners had valid property interests in their private properties that were not subject to flowage easements, in support of owners' claim for just

compensation for Fifth Amendment taking of flowage easements due to inundation of upstream properties within flood-pool reservoirs by impounded flood waters during Tropical Storm Harvey as result of flood-control dams constructed and operated by Army Corps of Engineers.

Army Corps of Engineers' construction, maintenance, and operation of flood-control dams in past, present, and future had taken permanent, rather than temporary, flowage easement of upstream owners' private properties within flood pool reservoirs that resulted in inundation of properties by floodwaters during tropical storm, in support of owners' Fifth Amendment takings claims, although flood waters were only on properties for matter of days, since government had permanent right to inundate property with impounded flood waters.

Severity of invasion of landowners' upstream properties within flood pool reservoirs, by inundation of properties with impounded floodwaters during tropical storm from flood-control dams constructed by Army Corps of Engineers, favored finding of compensable taking, where owners incurred extensive damage to their real and personal property, their ability to exercise right to exclude floodwaters, and their right to use and enjoy property, and they were subject to high likelihood of recurring floods and significant diminution of property values.

Federal government appropriated benefit at direct expense of inflicting significant injury to landowners' upstream property within flood pool reservoirs, by inundation of properties with impounded floodwaters during tropical storm from dams constructed, modified, and operated by Army Corps of Engineers, in support of owners' taking claims; consistent with dams' purpose, government protected downstream properties while concurrently causing upstream properties to suffer from severe flooding that was not merely consequential result.

Federal government's invasion of landowners' upstream properties within flood pool reservoirs, by inundation of properties with impounded floodwaters during tropical storm from dams constructed, modified, maintained, and operated by Army Corps of Engineers, was foreseeable, in support of owners' taking claims; flooding of properties was predictable result of government action, not merely contributing factor, as Corps should have objectively foreseen from initial construction of dams and at every point onward that reservoir flood pools could and would exceed government-owned land and inundate private properties.

Inundation of all 13 owners' bellwether test upstream properties within flood pool reservoirs, by impounded floodwaters released during tropical storm from dams constructed, modified, and operated by Army Corps of Engineers, would not have occurred but for government's actions, in support of owners' taking claims; inundation of floodwaters onto upstream properties was direct, natural, or probable result of government's activity, not result of local drainage systems, riverine flooding, or outgrants built to reduce flood risk.

Federal government's inundation of owners' upstream properties within flood pool reservoirs, by impounded floodwaters during Tropical Storm Harvey from dams constructed, modified, and maintained by Army Corps of Engineers, severely interfered with owners' reasonable investment-backed expectations, thus effecting compensable permanent taking of flowage easement on all 13 upstream bellwether test properties; owners neither knew, nor reasonably should have known, properties were located in reservoirs and subject to government-induced flooding that rendered them uninhabitable for significant time, required substantial outlays for repairs, and resulted in steep diminution in resale value.

Police powers defense did not apply to absolve federal government from liability for taking of flowage easement on owners' upstream properties that were within flood pool reservoirs and were inundated by impounded floodwaters during tropical storm from dams designed, constructed, and

maintained by Army Corps of Engineers, since flooding was not unavoidable harm, but rather, Corps' design and maintenance of dams contemplated flooding beyond government-owned land onto upstream private properties.

Doctrine of necessity did not apply to immunize federal government from liability for taking of flowage easement on owners' upstream properties that were within flood pool reservoirs and were inundated by impounded floodwaters during tropical storm from dams designed, constructed, and maintained by Army Corps of Engineers; although storm was record-breaking, government was responsible for creating emergency in that flooding was not unexpected as Corps knew flooding beyond government-owned land upstream would result from severe storm in light of design of dams and operational plans.

BALLOT INITIATIVES - FLORIDA

Advisory Opinion to the Attorney General re Raising Florida's Minimum Wage

Supreme Court of Florida - December 19, 2019 - So.3d - 2019 WL 6906963 - 44 Fla. L. Weekly S302

Attorney General of Florida petitioned for advisory opinion on validity of proposed citizen initiative amendment to Florida Constitution to raise the minimum wage, and corresponding financial impact statement prepared by Financial Impact Estimating Conference (FIEC).

The Justices of the Supreme Court were of the opinion that:

- Proposed amendment complied with Florida Constitution's single-subject requirement for citizen initiative petitions;
- Ballot title and summary for proposed amendment complied with statutory requirement that they be printed in clear and unambiguous language; and
- The Court lacked original jurisdiction to review financial impact statement, receding from *Advisory Opinion to the Attorney General re Referenda Required for Adoption*, 963 So.2d 210.

Proposed amendment to the Florida Constitution, which addressed raising Florida's minimum wage, complied with Florida Constitution's single-subject requirement for citizen initiative petitions; amendment clearly addressed one subject, raising minimum wage, and although it could affect contracts entered into and wages paid by each branch of government, the effects were incidental to amendment's chief purpose, which was not to alter or perform any governmental function.

Ballot title and summary for proposed amendment to the Florida Constitution, which addressed raising Florida's minimum wage, complied with statutory requirement that they be printed in clear and unambiguous language; title clearly and accurately identified subject matter and complied with word-count requirement, and summary was clear and unambiguous and complied with word-count requirement.

Supreme Court lacked original jurisdiction to review financial impact statement prepared by Financial Impact Estimating Conference (FIEC), as it was not considered part of an initiative petition to amend state Constitution, receding from Advisory Opinion to the Attorney General re Referenda Required for Adoption, 963 So.2d 210.

EMINENT DOMAIN - INDIANA

City of Kokomo v. Estate of Newton

Court of Appeals of Indiana - December 18, 2019 - N.E.3d - 2019 WL 6885081

Company owner's estate, which owned two contiguous parcels of land, filed exceptions to appraisers' assessment of $143,000 in damages for city's taking of one of the parcels. Estate sought $305,600 in damages, both for the taking and for resulting damages to the adjacent parcel.

City moved for a directed verdict. The Superior Court denied the motion. Following a jury trial on the issue of damages, the Superior Court entered judgment in favor of estate for $305,600 in damages plus interest, as well as $25,000 in litigation expenses. City appealed.

The Court of Appeals held that:

- Estate was entitled to damages only for city's condemnation of one parcel, not for damages to adjacent parcel, and
- Estate was not entitled to litigation damages.

Company owner's estate, which owned two contiguous parcels of property on which company operated, was entitled to damages only for city's condemnation of one parcel, not for damages to adjacent parcel, which was not condemned, although company incurred relocation expenses and suffered lost profits after it was forced to relocate following city's taking of other parcel; estate, which owned both parcels, was a separate entity from company, neither company nor owner's son, who served as estate's personal representative and company's sole shareholder, were ever joined as parties to estate's action challenging appraisers' assessment of damages for city's taking of parcel, and it was company, not estate, which sustained damages as a result of being forced to relocate.

Estate was not entitled to litigation expenses in its action challenging appraisers' assessment of damages for city's taking of a parcel of land it owned, where damages award was less than settlement amount city had offered one year prior to trial.

IMMUNITY - MISSOURI

Thompson v. City of St. Joseph

Missouri Court of Appeals, Western District - December 17, 2019 - S.W.3d - 2019 WL 6843499

Passengers of stolen vehicle brought suit against city to recover damages for injuries sustained in automobile accident, alleging that road maintained by city was in dangerous and defective condition.

The Circuit Court granted city's motion for summary judgment. Passengers appealed.

The Court of Appeals held that:

- Genuine issue of material fact precluded summary judgment;
- Passengers introduced sufficient evidence in summary judgment record to put issue before jury; and
- Passengers sufficiently alleged waiver of city's sovereign immunity.

Genuine issue of material fact as to whether lack of edge lines and signage together with edge-drop in road maintained by city was or was not proximate cause of automobile passengers' injuries precluded summary judgment for city in suit brought by passengers to recover damages.

Automobile passengers introduced sufficient evidence in summary judgment record to put issue before jury of whether city should have foreseen that lack of edge line markings and excessive drop off on edge of roadway could cause driver leaving roadway to overcorrect upon reentry and crash vehicle resulting in similar injuries as passengers, where passenger-side wheels of automobile carrying passengers leaving of roadway was only slight deviation from road.

Allegation that lack of edge line markings and excessive drop off on edge of roadway maintained by city caused or contributed to cause driver to leave roadway, overcorrect upon reentry, and crash vehicle, sufficiently alleged that city's conduct in failing to maintain road was proximate cause of passengers' injuries, as necessary to allege waiver of city's sovereign immunity.

COMMUNITY IMPROVEMENT DISTRICTS - MISSOURI

Henderson v. Business Loop Community Improvement District

Missouri Court of Appeals, Western District - November 26, 2019 - S.W.3d - 2019 WL 6314755

Voter brought action against community improvement district, district's president, and its executive director, challenging validity of election conducted by district that approved half-cent sales tax within district.

The Circuit Court granted district's motion to dismiss for lack of subject matter jurisdiction on ground that court had no statutory authority to hear the challenge. The Supreme Court granted voter's petition for a writ of mandamus directing the Circuit Court to issue a signed judgment, denominated as such, disposing of her claims, so she could appeal their dismissal. Voter appealed.

The Court of Appeals held that:

- Voter's challenge was not moot, even though tax was approved and collection had started;
- Voter's challenge was not moot, even though voter had moved outside district;
- Voter's challenge was a civil case over which circuit court had subject matter jurisdiction;
- Voter had statutory right to challenge validity of election, even though statute authorizing election did not provide for election contests;
- Election contest provisions contained in general election laws applied to sales tax elections; and
- Fact that election was a special election did not preclude registered voter's statutory right to challenge its validity.

Voter's challenge to validity of election approving half-cent sales tax in community improvement district was not moot, even though tax was approved and collection of the tax had started; voter was undisputedly eligible to vote in challenged election, and the trial court could invalidate the challenged election and prohibit collection of the tax, if voter prevailed.

Voter's challenge to validity of election approving half-cent sales tax in community improvement district was not moot, even though voter had moved outside the district's boundaries and might not be eligible to vote in a new election; voter's relocation did not make it unnecessary or impossible for trial court to rule on her allegations of irregularity directed at a previously held election in which she had participated, notwithstanding any effect of voter's relocation on her eligibility to vote in a

potential future election.

Voter's challenge to validity of sales tax election in community improvement district was a civil case over which circuit court had subject matter jurisdiction pursuant to provision of State Constitution granting trial courts original jurisdiction over all cases and matters, civil and criminal.

Voter had statutory right under general election laws to challenge validity of election approving sales tax in community improvement district, even though statute authorizing community improvement district to hold sales tax election did not provide for election contests; State's election laws generally applied to all public elections in the state not requiring ownership of real property to vote, and the election was public and did not require voters to own property, as it was open to all qualified registered voters in the district.

Although statute governing sales tax elections conducted by community improvement districts stated the statute applied "notwithstanding" the provisions of the State's general election laws, the election contest provisions contained in the general election laws applied to sales tax elections conducted by community improvement districts; statute governing sales tax elections was silent on the issue of election contests and so did not conflict with general election law provisions governing such contests, and the "notwithstanding" clause only purported to avoid applying general election laws to manner in which district sales tax elections were conducted.

That community improvement district's sales tax election was a special election did not preclude registered voter's statutory right to challenge its validity; statute allowed voter to contest the result of any election, special or general, on any question, occurring in a geographic area where she was a registered voter.

PUBLIC RECORDS - MONTANA

Unidentified Police Officers 1 v. City of Billings

Supreme Court of Montana - December 31, 2019 - P.3d - 2019 WL 7374361 - 2019 MT 299

Following issuance of temporary restraining orders (TROs) and order of protection in favor of police officers who had been investigated and disciplined for having sexual relations with a city employee, which prohibited media companies from releasing officers' identities, media companies moved to intervene in officers' TRO actions and filed counterclaim and cross-claim against the city, seeking declaration that public's right to know clearly outweighed officers' alleged privacy interests and an order making documents available for inspection to media companies and requesting attorney fees and costs for enforcing the public's right to know.

Following show-cause hearing, the District Court ordered release of officers' identities and subsequently granted media companies' request for fees and costs in the amount of $10,052.70. City appealed.

The Supreme Court held that:

- District court did not abuse its discretion in making statutory award of fees to media companies as prevailing parties, but
- Award of attorney fees for time spent by media companies recovering fees was not authorized on appeal.

District court did not abuse its discretion in making statutory award of attorney fees to media

companies as prevailing parties in action against city seeking declaration that public's right to know identities of police officers who had been investigated and disciplined for having sexual relations with a city employee clearly outweighed officers' alleged privacy interests and an order making documents about investigation available for inspection; city's actions in stipulating to officers' requests for temporary restraining orders (TROs) to protect their identities led to additional litigation that could have been avoided, and media companies prevailed in securing release of public information.

Award of attorney fees for time spent by media companies recovering fees incurred in action against city seeking declaration that public's right to know identities of police officers who had been investigated and disciplined for having sexual relations with a city employee clearly outweighed officers' alleged privacy interests and an order making documents about investigation available for inspection was not authorized on appeal, where district court held that media companies were not entitled to fees for time spent recovering their fees, and companies did not appeal that ruling.

ANNEXATION - NEW MEXICO

Board of County Commissioners of County of Rio Arriba v. Board of County Commissioners of County of Santa Fe

Court of Appeals of New Mexico - December 12, 2019 - P.3d - 2019 WL 6795709

Residents who lived in city that lied within boundaries of two different counties filed motion for peremptory writ of mandamus in the District Court, Santa Fe County, to compel board of county commissioners of county in which residents lived to publish notice of residents' petition for annexation of their portion of city into new county.

The District Court issued peremptory writ of mandamus in favor of residents. Board appealed.

The Court of Appeals held that city residents failed comply with statutory condition for annexation petitions.

City resident's petition to annex into a new county that portion of their city that laid in another county, which contained maps depicting distances and travel times from city to satellite offices of new county, failed to comply with one of two conditions of annexation statute requiring residents to show that it was more convenient for them to travel to county seat of new county; interpretation of condition, that Legislature's purpose was to gauge convenience of accessing governmental services, would replace word "county seat" with "county services," which Legislature included in second condition but omitted from first condition, and Legislature enacted statute in conjunction with other laws requiring governmental services be provided at the county seat.

PUBLIC UTILITIES - OHIO

Mauldin v. Youngstown Water, Department

Court of Appeals of Ohio, Seventh District, Mahoning County - December 5, 2019 - N.E.3d - 2019 WL 6713412 - 2019 -Ohio- 5065

Homeowner brought action against city water department, mayor, and water commissioner in their respective capacities, alleging that department negligently or recklessly performed function of turning off water to homeowner's house which caused flooding.

City filed motion for summary judgment, arguing that homeowner's action was barred by the statute of limitations, which the Court of Common Pleas granted. Homeowner appealed.

The Court of Appeals held that:

- Two-year special statute of limitations applied to homeowner's action against city water department, mayor, and water commissioner, and
- Issue of negligence and political subdivision immunity did not create a genuine issue of material fact.

Two-year special statute of limitations for actions against political subdivisions for injuries to property, rather than residual provision of four-year general statute of limitations for injuries not enumerated in statute, applied to homeowner's action against city water department, mayor, and water commissioner for flooding caused to her house after department's allegedly negligent failure to properly turn off water to homeowner's house; special statute explicitly required actions against political subdivisions be brought within two years or any applicable shorter period, additional statute required all civil actions be commenced within periods prescribed in special and general statutes, and amendments to special statute did not manifest an intent that the residual provision would prevail over special statute.

Issue of whether city water department, mayor, and water commissioner were entitled to political subdivision immunity for department's allegedly negligent performance of allegedly proprietary function of turning water off at homeowner's house was rendered moot by two-year special statute of limitations for actions against political subdivisions, and, thus, did not create a genuine issue of material fact as to preclude summary judgment against homeowner in her action seeking damages for flooding caused to her house after department's allegedly negligent action.

INVERSE CONDEMNATION - WYOMING

Byrnes v. Johnson County Commissioners

Supreme Court of Wyoming - January 13, 2020 - P.3d - 2020 WL 132198 - 2020 WY 6

Property owner filed inverse condemnation action against county, Department of Transportation, and other defendants.

The District Court granted State's motion for judgment as a matter of law (JMOL). Property owner appealed.

The Supreme Court held that:

- Owner failed to demonstrate direct taking of her property;
- Owner failed to demonstrate indirect taking of her property;
- There was no evidence of preconstruction value of property, and thus owner failed to establish before and after measure of damages for a partial taking;
- Evidence regarding estimated costs related to amending driveway was insufficient to establish value of property allegedly taken, as measure of damages for a partial taking; and
- Owner was not entitled to default judgment against Department.

ENVIRONMENTAL - ALABAMA

Ex parte Aladdin Manufacturing Corporation

Supreme Court of Alabama - December 20, 2019 - So.3d - 2019 WL 6974629

Municipalities' water works and sewer boards brought action against out-of-state carpet and chemical companies in which boards sought injunctive relief and damages based on claims of negligence, wantonness, nuisance, and trespass, which were claims that arose from allegations that companies discharged toxic chemicals into industrial wastewater from their out-of-state plants, which subsequently contaminated municipalities' downstream water sources in Alabama.

The Circuit Court denied companies' motion to dismiss for lack of personal jurisdiction. Companies sought writs of mandamus.

The Supreme Court held that:

- Boards failed to rebut certain defendants' prima facie showings that trial court lacked personal jurisdiction;
- Alleged tort took place in Alabama for purposes of Alabama's long-arm statute;
- Boards sufficiently alleged that remaining defendants had sufficient minimum contacts with Alabama to support trial court's exercise of personal jurisdiction; and
- Trial court's exercise of personal jurisdiction over those remaining defendants comported with traditional notions of fair play and substantial justice.

Municipality's water works and sewer board failed to rebut out-of-state company's prima facie showing that trial court lacked specific personal jurisdiction over company, and thus company was entitled to dismissal of board's action against it based on claims of negligence, wantonness, nuisance, and trespass related to allegation that manufacturer discharged toxic chemicals that ended up in municipality's water source in Alabama, where company's global vice president of manufacturing stated that company had never manufactured, produced, supplied, or sold chemicals in question and that company had never discharged industrial wastewater at out-of-state wastewater-treatment center in question, and board's response was only to point to literature regarding chemicals in question.

Out-of-state carpet and chemical manufacturers' alleged tort of discharging toxic chemicals into industrial wastewater from their out-of-state plants, which subsequently contaminated municipalities' downstream water sources in Alabama, took place in Alabama for purposes of Alabama's long-arm statute, as was relevant to determining if trial court had personal jurisdiction over manufacturers in action against manufacturers by municipalities' water works and sewer boards based on claims of negligence, wantonness, nuisance, and trespass due to manufacturers' alleged discharge of toxic chemicals that subsequently contaminated municipalities' downstream water sources in Alabama.

Municipalities' water works and sewer boards sufficiently alleged that out-of-state carpet and chemical companies had sufficient minimum contacts with Alabama to support trial court's exercise of personal jurisdiction over them in boards' action based on claims of negligence, wantonness, nuisance, and trespass due to companies' alleged discharges of toxic chemicals into industrial wastewater that subsequently contaminated municipalities' downstream water sources in Alabama; taking boards' jurisdictional allegations as true, since manufacturers insufficiently controverted them, manufacturers knowingly discharged chemicals in question into their industrial wastewater, which went to a treatment center that manufacturers knew ineffectively treated the water, which then entered a river system.

Trial court's exercise of personal jurisdiction over out-of-state carpet and chemical companies in

action by municipalities' water works and sewer boards based on claims of negligence, wantonness, nuisance, and trespass due to companies' alleged discharges of toxic chemicals into industrial wastewater that subsequently contaminated municipalities' downstream water sources in Alabama comported with traditional notions of fair play and substantial justice; manufacturers were located between 70 and 90 miles from municipalities, and allegations pertained to an alleged injury occurring in Alabama.

REFERENDA - COLORADO

Matter of Title

Supreme Court of Colorado - December 23, 2019 - P.3d - 2019 WL 7043179 - 2019 CO 107

Voters who objected to ballot title and proponents of proposed constitutional ballot initiative to repeal the Taxpayer's Bill of Rights (TABOR) petitioned for review of Ballot Title Setting Board's denial of voters' motions for rehearing and partial grant of proponents' motion for rehearing of Board's decision to set title, ballot title, submission clause, and adopt abstract for the initiative.

The Supreme Court held that:

- Ballot title satisfied state constitution's clear title requirements;
- Phrase "Taxpayer's Bill of Rights" used in title was not an impermissible catch phrase; and
- Abstract was not misleading.

Title for proposed ballot initiative, which read in part, "An amendment to the Colorado constitution concerning the repeal of the Taxpayer's Bill of Rights (TABOR)," satisfied state constitution's clear title requirements; title was clear, neutral, and fairly and accurately indicated the proposed initiative's intent and meaning, such that title allowed voters, familiar or not with subject matter of the proposal, to determine intelligently whether to support the proposal.

Phrase "Taxpayer's Bill of Rights," as used in title of proposed initiative that would repeal in its entirety the section of state constitution known as the Taxpayer's Bill of Rights (TABOR), was not an impermissible catch phrase; phrase was descriptive and informative based on common understanding of the words used, and use of the name of the provision that initiative would repeal contributed to a voter's rational comprehension of the proposed initiative, and did not trigger a favorable response or bias voters.

Abstract for a proposed constitutional ballot initiative to repeal state constitution's Taxpayer's Bill of Rights (TABOR), which provided that measure was expected to increase revenue and spending for state and local governments, shifting a portion of state's economy from private sector to the public sector, complied with statutory directive for such abstracts and was not misleading; abstract properly set out the proposed initiative's expected impact on government revenue and spending, as well as the economic impact expected to result, and moreover, it was not deficient, despite argument that it contained no evidence, testimony, or information.

EMINENT DOMAIN - FLORIDA

Florida Department of Agriculture and Consumer Services v. Dolliver

District Court of Appeal of Florida, Second District - November 13, 2019 - 283 So.3d 953 - 44 Fla. L. Weekly D2738

Homeowners sought enforcement of judgments previously obtained against Department of Agriculture and Consumer Services for taking of their property and challenged constitutionality of statutes requiring legislature to appropriate funds before paying judgments.

Following an evidentiary hearing, the Circuit Court found statutes unconstitutional as applied and issued writ of mandamus directing Department to pay the judgments. Department appealed.

The District Court of Appeal held that:

- Department did not demonstrate inability to pay judgments so as to preclude issuance of writ of mandamus;
- Homeowners were not required to pursue a claim bill in the legislature in order to render their constitutional challenge ripe;
- Statutes, as applied, violated takings clauses of state and federal constitutions;
- Statutes, as applied, violated separation of powers and power of judiciary provisions of state constitution;
- Circuit court's issuance of writ of mandamus did not violate separation of powers; and
- Portions of circuit court's order regarding potential writ of execution against Department's property did not violate statute generally prohibiting execution against property of state or its agencies or Department's protection as a sovereign.

Department of Agriculture and Consumer Services did not demonstrate inability to pay judgments obtained by homeowners for taking of their property so as to preclude issuance of writ of mandamus directing it to pay judgments, despite argument that legislature had not appropriated funds for that purpose as required by statute, where Department made no efforts to pay or secure payment and failed to request an appropriation in order to make payment.

Homeowners who sought enforcement of judgments previously obtained against Department of Agriculture and Consumer Services for taking of their property and challenged constitutionality of statutes requiring legislature to appropriate funds before paying judgments were not required to pursue a claim bill in the legislature in order to render their constitutional challenge ripe, where nothing in the statutes referred to a claim bill, an appropriation had been made but had been vetoed by governor, and Department had not previously raised statutes as an impediment to paying other judgments.

Statutes requiring legislature to appropriate funds before state or any of its agencies could pay any judgments rendered against them, as applied to homeowners who sought enforcement of judgments obtained against Department of Agriculture and Consumer Services for taking of their property, violated takings clauses of state and federal constitutions, where statutes, as applied, were not merely regulating payment but allowing department to completely avoid payment of required compensation.

Statutes requiring legislature to appropriate funds before state or any of its agencies could pay any judgments rendered against them, as applied to homeowners who sought enforcement of judgments obtained against Department of Agriculture and Consumer Services for taking of their property, violated separation of powers and power of judiciary provisions of state constitution, where statutes, as applied, thwarted payment of full compensation for takings, determined through court proceedings.

Circuit court's order and writ of mandamus requiring Department of Agriculture and Consumer Services to pay judgments previously obtained by homeowners for taking of their property did not violate separation of powers doctrine under state constitution, despite argument that it encroached

on legislative prerogative to appropriate funds and Department's prerogative to control its own budget; judicial branch had authority to issue writ of mandamus compelling state agency to pay a valid judgment against it.

Portions of circuit court's order providing that, if Department of Agriculture and Consumer Services failed to comply with court's writ of mandamus requiring it to pay judgments previously obtained by homeowners for taking of their property, court would consider issuing writ of execution against Department's property, and allowing homeowners to conduct deposition in aid of execution and to submit a list of executable property to court did not violate Department's protection as a sovereign or statute generally prohibiting execution against property of state or its agencies; Department's interests yielded to homeowners' constitutional rights to be compensated for the governmental taking.

TELECOM - MISSOURI

City of Aurora v. Spectra Communications Group, LLC

Supreme Court of Missouri, en banc - December 24, 2019 - S.W.3d - 2019 WL 7161281

Cities brought declaratory judgment action against telecommunications company for failure to pay license taxes and linear foot fees and to enter right-of-way agreements.

The Circuit Court entered partial summary judgment in favor of cities, entered judgment in favor of cities after bench trial on damages for unpaid taxes, and awarded pre- and post-judgment interest and attorney fees. Company appealed, and cities filed cross-appeal.

The Supreme Court held that:

- Grandfather provision allowing political subdivisions to recover payments from public utility right-of-way users satisfied rational basis test and thus was not special law prohibited by state constitution, abrogating *City of Normandy v. Greitens*, 518 S.W.3d 183, *City of DeSoto v. Nixon*, 476 S.W.3d 282, *City of St. Louis v. State*, 382 S.W.3d 905, *City of Springfield v. Sprint Spectrum, L.P.*, 203 S.W.3d 177, *Treadway v. State*, 988 S.W.2d 508, *Harris v. Mo. Gaming Comm'n*, 869 S.W.2d 58, *O'Reilly v. City of Hazelwood*, 850 S.W.2d 96;
- Prejudgment interest at rate of nine percent under general prejudgment interest statute applied to unpaid license taxes only until effective date of more specific statutes;
- Ordinance allowing for interest rate of two percent per month, not to exceed 18% per year, was void as conflicting with statutes imposing lower rates on unpaid license taxes;
- Cities were not entitled to attorney fees; and
- Statute imposing penalty on unpaid tax, unless failure to pay was due to reasonable cause and not the result of willful neglect, evasion, or fraudulent intent, could be applied retroactively to void conflicting city ordinances.

If line drawn by the legislature is supported by a rational basis, the law is not local or special, and the analysis ends; but if the classification is not supported by a rational basis, the threshold requirement for a special law is met, and the party challenging the statute must then proceed to show either that the law offends a specific subject matter prohibition or that the law is one where a general law can be made applicable; abrogating *City of Normandy v. Greitens*, 518 S.W.3d 183, *City of DeSoto v. Nixon*, 476 S.W.3d 282, *City of St. Louis v. State*, 382 S.W.3d 905, *City of Springfield v. Sprint Spectrum, L.P.*, 203 S.W.3d 177, *Treadway v. State*, 988 S.W.2d 508, *Harris v. Mo. Gaming Comm'n*, 869 S.W.2d 58, *O'Reilly v. City of Hazelwood*, 850 S.W.2d 96.

Grandfather provision allowing political subdivisions to recover payments from public utility right-o--way users in excess of subdivision's management costs, if the subdivision had imposed linear foot fees on public right-of-way users prior to May 1, 2001, satisfied rational basis test and thus was not a special law prohibited by state constitution; the provision balanced reasonable reliance of political subdivisions on method of raising revenue with the legislature's desire to implement a policy against imposing such fees as a revenue generating device, and it was rational effort by the legislature to impose new policy without disrupting reasonable reliance of those that had acted lawfully before the policy change.

SCHOOLS - OHIO

State ex rel. Hills and Dales v. Plain Local School District Board of Education

Supreme Court of Ohio - December 13, 2019 - N.E.3d - 2019 WL 6799724 - 2019 -Ohio-5160

Village sought writ of mandamus to compel school board to forward to county board of elections a petition proposing transfer of some of school district's territory to different school district.

The Supreme Court held that village lacked standing to seek mandamus relief.

Village lacked standing to seek mandamus relief compelling school board to forward to county board of elections a petition proposing transfer of portion of school district's territory located within village to different school district; statute governing petitions for transfer of school district territory authorized only qualified electors to submit transfer petition and did not refer to, much less confer rights on, municipal corporations, and while village might have indirect interest in transfer proposal because its boundary defined the territory that would be transferred, it had not shown that it had a direct interest in the transfer petition as a municipal corporation.

IMMUNITY - TEXAS

City of El Paso v. Lopez

Court of Appeals of Texas, El Paso - December 16, 2019 - S.W.3d - 2019 WL 6838005

Estate of motorcyclist brought wrongful death action against the City alleging lack of signs and illumination on road that ended abruptly caused motorcyclist's death.

The County Court at Law denied the City's plea to the jurisdiction. The City filed an interlocutory appeal.

The Court of Appeals held that:

- The City had "actual notice" of motorcyclist's claim under the Tort Claims Act, and thus a "notice of claim" was not required, and
- Public road that ended at a canal and concrete barrier constituted special defect for which the City was not immune under Tort Claims Act.

PUBLIC RECORDS - WASHINGTON

Associated Press v. Washington State Legislature

Supreme Court of Washington - December 19, 2019 - P.3d - 2019 WL 6905840

News media organizations brought action under Public Records Act (PRA) against Washington State's Senate, its House of Representatives, four legislative leaders in their official capacities, the legislature as a whole, and state agencies, relating to response to organizations' requests for records of Senate, House, legislature as a whole, and individual legislators.

The Superior Court granted in part and denied in part organizations' motion for summary judgment and defendants' cross-motion for summary judgment, and granted parties' joint motion to certify questions of law to the Supreme Court. Cross-petitions for discretionary review were granted.

The Supreme Court held that:

- Individual legislators are "agencies" and therefore are subject in full to the PRA's general public records disclosure mandate for agencies, but
- Institutional legislative bodies are not "agencies," and thus, they are subject to the PRA's narrower public records disclosure mandate by and through each chambers' respective administrative officer.

Individual legislators are "agencies" and therefore are subject in full to the Public Records Act's (PRA) general public records disclosure mandate for agencies, because individual legislators are expressly included in the definitional chain of "agency" in a closely related statute, i.e., the campaign disclosure and contribution law, which was enacted with the PRA, by initiative, as a single law, with the PRA later separated into its own chapter.

Institutional legislative bodies are not "agencies" and therefore are not subject in full to the Public Records Act's (PRA) general public records disclosure mandate for agencies, and instead, institutional legislative bodies are subject to the PRA's narrower public records disclosure mandate by and through each chambers' respective administrative officer.

EMINENT DOMAIN - ALABAMA

City of Daphne v. Fannon

Supreme Court of Alabama - December 6, 2019 - So.3d - 2019 WL 6649355

Owners of property damaged from trees that fell due to erosion during a rainfall, which was erosion allegedly linked to city's installation, approximately nine years prior, of a 48-inch-diameter pipe on city-owned right-of-way adjacent to their property, brought action against city based on claim of inverse condemnation.

City filed counterclaims based on allegations of negligence and trespass, which were claims related to landowners' installation, following the storm, of a 30-inch-diameter pipe on the right-of-way. The Circuit Court entered judgment as a matter of law for landowners on city's counterclaims and later entered a jury verdict for landowners on their inverse-condemnation claim. City appealed.

The Supreme Court held that:

- Damage from the fallen trees was not ascertainable at the time the 48-inch-diameter pipe was installed;
- City could not maintain trespass claim; and

- City could not maintain negligence claim.

Property damage from trees that fell due to erosion during a rainfall, which was erosion allegedly linked to city's installation, approximately nine years prior, of a 48-inch-diameter pipe on city-owned right-of-way adjacent to the property, was not ascertainable at the time the pipe was installed, and thus property owners could not maintain an inverse-condemnation claim against city; rainfall was an unprecedented rain event, property owners installed a swale on the right-of-way shortly after the pipe installation, and property owners presented no evidence to establish that it was ascertainable, or foreseeable, during the pipe installation that erosion would occur and cause trees to fall on their house.

City could not maintain claim against property owners for trespass based on owners' installation of a 30-inch-diameter pipe on city-owned right-of-way adjacent to the property, absent evidence to dispute that city's environmental-programs manager, during a conversation with property owners following a rainfall that resulted in erosion that caused trees to fall on property owners' house, told property owners to do what they had to do to protect their property, or evidence that the city otherwise limited that permission to cutting trees or restricted property owners from doing work in the right-of-way to protect their property.

City could not maintain claim against property owners for negligence based on owners' installation of a 30-inch-diameter pipe on city-owned right-of-way adjacent to the property, which property owners installed after a rainfall that resulted in erosion that caused trees to fall on their house; at the time of the installation, property owners believed that another big rain event was coming, city was in the process of determining where the boundary lines were and was not doing anything to alleviate the drainage and erosion problems, and owners installed the pipe as an emergency measure to alleviate the drainage and erosion problems in the short term pursuant to the permission from city's environmental-programs manager to do what they had to do to protect their property.

PUBLIC RECORDS - CALIFORNIA

SF Urban Forest Coalition v. City and County of San Francisco

Court of Appeal, First District, Division 1, California - December 19, 2019 - Cal.Rptr.3d - 2019 WL 6907453 - 19 Cal. Daily Op. Serv. 12, 114

Petitioner, city's urban forest coalition, filed petition for writ of mandamus against county transportation authority and city and county seeking disclosure of certain records and a declaration that transportation authority was subject to the city's Sunshine Ordinance.

After parties resolved records request issue, the Superior Court entered judgment declaring that transportation authority was not subject to Sunshine Ordinance. Petitioner appealed.

The Court of Appeal held that:

- Transportation authority was not an agency of city, and
- Sunshine Ordinance did not apply to transportation authority.

County transportation authority, a "local agency," which was created by voters in city, following

enactment of Bay Area Transportation Act, and which had members who were elected members of city's board of supervisors, was not an agency of city; phrase "local agency" included other entities apart from cities and counties, mere fact that elected members of city's board of supervisors were members of transportation authority did not mean that the two entities were one and the same, fact that transportation authority was created by voters in city and limited to operating within city's geographic area was common to local agencies created by state, and Bay Area Transportation Act indicated transportation authorities created thereunder were distinct from cities and counties they served.

City's Sunshine Ordinance, which provided rules and procedures for access to city meetings and records to further right of people to know what their government and those acting on behalf of their government were doing, did not apply to county transportation authority, which was a "local agency," despite ordinance's broad definition of "policy body," and broad scope, encompassing "every person having custody of any public record or public information," where the ordinance, by including a provision which encouraged open meetings with local agencies, such as county transportation authority, indicated that such agencies were not subject to the ordinance, and provisions setting forth administrative appeal process further indicated that the ordinance was limited to city agencies.

BONDS - CALIFORNIA

San Diegans for Open Government v. Public Facilities Financing Authority of the City of San Diego

Supreme Court of California - December 26, 2019 - P.3d - 2019 WL 7176900

Nonprofit taxpayer organization filed complaint seeking declaratory judgment that municipal ordinance authorizing issuance of bonds to refund and refinance remaining amount owed by city on bonds issued for construction of professional baseball stadium violated conflict-of-interest statute.

The Superior Court granted city's motion to dismiss based on lack of standing. Organization appealed. The Fourth District Court of Appeal reversed. Review was granted.

The Supreme Court held that plaintiff lacked standing avoid government contract under conflict-o--interest statute; disapproving *Holloway v. Showcase Realty Agents, Inc.* (2018) 22 Cal.App.5th 758, 231 Cal.Rptr.3d 872.

As nonparty to refinancing contract for remaining debt on bonds to finance construction of stadium, nonprofit taxpayer organization did not have private right of action under statute prohibiting public officials from having financial interests in public contracts, and thus, organization lacked standing to sue under the statute to avoid the contract on conflict-of-interest grounds; statute used term "party," as opposed to a more general term like "person," it was fact that non-parties to a contract could not affirm or disaffirm a contract, and legislature provided comprehensive scheme under a different statute for taxpayers to challenge violations of the conflict-of-interest statute; disapproving *Holloway v. Showcase Realty Agents, Inc.* (2018) 22 Cal.App.5th 758, 231 Cal.Rptr.3d 872.

PRIVATE ACTIVITY BONDS - FLORIDA

Indian River County, Florida v. United States Department of Transportation

United States Court of Appeals, District of Columbia Circuit - December 20, 2019 - F.3d - 2019 WL 6972874

County sued Department of Transportation (DOT), raising causes of action under Administrative Procedure Act (APA), including claim that DOT exceeded its statutory authority in allocating $1.15 billion in tax-exempt qualified private activity bonds (PABs) to finance second phase of intercity express passenger railway project and claim challenging adequacy of environmental impact statement (EIS) prepared by Federal Railway Administration (FRA) pursuant to requirements of National Environmental Policy Act (NEPA).

Following intervention by project's sponsor, as defendant-intervenor, the United States District Court for the District of Columbia granted defendants summary judgment. Appeal was taken.

The Court of Appeals held that:

- County's interests fell within zone of interests of PAB statute;
- DOT permissibly allocated PABs to railway project; and
- EIS for project complied with NEPA's requirements.

County's environmental and safety interests fell within zone of interests protected by statute governing tax-exempt private activity bonds (PABs) to finance qualified highway or surface freight transfer facilities, and thus, county stated cause of action for judicial review under Administrative Procedure Act (APA) for claim that Department of Transportation (DOT) exceeded statutory authority in allocating PABs to fund second phase of intercity passenger railway project; DOT's allocation of PABs implicated county's interests in effects of project cutting through county and in removing hazards posed by railway-highway crossings.

Second phase of intercity passenger railway project constituted "surface transportation project which receives Federal assistance," within meaning of statute governing authorizing Department of Transportation (DOT) to allocate tax-exempt private activity bonds (PABs) to finance qualified highway or surface freight transfer facilities, and thus, DOT permissibly determined that project qualified for allocation of PABs; DOT reasonably interpreted statute to mean that project received federal assistance if project benefited from such assistance in whole or in part, and railway project had used substantial federal funds to improve grade crossings all along rail corridor.

Federal Railway Administration's (FRA) environmental impact statement (EIS) took hard look at reasonably foreseeable impacts of second phase of intercity passenger railway project, as required to satisfy NEPA, where EIS examined project's impacts on land use, transportation, navigation, air quality, noise and vibration, farmland soils, hazardous material disposal, coastal zone management, climate change, water resources, wild and scenic rivers, wetlands, floodplains, wildlife habitat, threatened and endangered species, social and economic effects, public health and pedestrian safety, parks, and historic properties, as well as cumulative impacts, and set forth mitigation measures to ameliorate negative impacts.

IMMUNITY - ILLINOIS

Andrews v. Metropolitan Water Reclamation District of Greater Chicago

Supreme Court of Illinois - December 19, 2019 - N.E.3d - 2019 IL 124283 - 2019 WL 6907197

Wife of contractor's employee, individually and as his plenary guardian, brought action against water reclamation district which owned construction project at which employee suffered an accident, alleging willful and wanton construction negligence and loss of consortium for willful and wanton construction negligence.

The Circuit Court dismissed willful and wanton supervision claims and entered summary judgment for district on remaining claims based on immunity under Local Governmental and Governmental Employees Tort Immunity Act. Wife appealed. The Appellate Court reversed and remanded. Water reclamation district's petition for leave to appeal summary judgment was granted.

The Supreme Court held that:

- Water reclamation district was not entitled to discretionary immunity, and
- A municipal defendant asserting discretionary immunity must present evidence of a conscious decision by its employee pertaining to the conduct alleged to have caused the plaintiff's injuries, overruling *Cabrera v. ESI Consultants, Ltd.*, 397 Ill.Dec. 306, 41 N.E.3d 957.

Water reclamation district was not entitled to immunity, under section of Local Governmental and Governmental Employees Tort Immunity Act shielding public employees from liability for discretionary acts or omissions in determining policy, from liability for injuries suffered by contractor's employee when he fell while transferring from one ladder to another to reach bottom of settling tank at water reclamation plant, absent showing that any water reclamation district employee made conscious exercise of discretion with respect to safety of using two-ladder configuration.

A municipal defendant asserting immunity under the Local Governmental and Governmental Employees Tort Immunity Act for the discretionary acts or omissions of its employees in determining policy must present evidence of a conscious decision by its employee pertaining to the conduct alleged to have caused the plaintiff's injuries; overruling *Cabrera v. ESI Consultants, Ltd.*, 397 Ill.Dec. 306, 41 N.E.3d 957.

ZONING & PLANNING - MAINE

Blanchard v. Town of Bar Harbor

Supreme Judicial Court of Maine - December 19, 2019 - A.3d - 2019 WL 6904133 - 2019 ME 168

Shorefront property owners brought action challenging town's zoning ordinance amendment, creating new shoreland maritime activities district that allowed cruise ships to use and construction of businesses at ferry terminal property adjacent to their properties.

The Business and Consumer Court entered judgment in town's favor. Owners appealed.

The Supreme Judicial Court held that:

- Plaintiffs lacked standing, and
- Action was not ripe for review.

Property owners whose properties had views overlooking the waters adjacent to the town's ferry terminal property failed to demonstrate a particularized injury for standing to seek remedial relief for town's enactment of amendment to land use ordinance creating new shoreland maritime

activities district, which, among other things, allowed substantially larger cruise ships to use the ferry terminal property, where owners alleged that they owned and used residentially improved properties with direct views over the waters adjacent to the ferry terminal property, but the record contained no evidence demonstrating any tangible effect on property owners' views.

Property owners' action seeking declaratory judgment that town's zoning ordinance amendment, creating new shoreland maritime activities district, which among other things, allowed construction of a hotel, bank, restaurant, and multi-family dwelling at ferry terminal property over which owners' properties had shorefront views, was not ripe for review, where record was devoid of any suggestion that town had addressed or approved any application for a permit for construction or development at the ferry terminal property, and because no building or development permits had been sought, owners' injury was purely speculative.

PUBLIC RECORDS - MISSOURI

Roland v. St. Louis City Board of Election Commissioners

Supreme Court of Missouri, en banc - December 24, 2019 - S.W.3d - 2019 WL 7161284

Candidate's attorney brought action against city board of election commissioners for denying his sunshine law request for absentee ballot applications and absentee ballot envelopes.

The Circuit Court entered judgment in favor of attorney, but awarded costs to board, and denied attorney's claim for attorney fees and costs. Board appealed and attorney cross-appealed.

On transfer from the Court of Appeals, the Supreme Court held that:

- Absentee ballot applications and ballot envelopes after removal of the voted ballots are "open public records" subject to disclosure under the sunshine law, and
- Board was not entitled to award of costs.

City board of election commissioners was not entitled to award of costs incurred in successfully defending against candidate's attorney's assertion that board's violation of sunshine law, in denying his request for absentee ballot applications and ballot envelopes, was knowing or purposeful; only plaintiffs who prevailed in establishing violation of sunshine law, not governmental entities, could receive award of costs.

EMINENT DOMAIN - NORTH DAKOTA

City of Fargo v. Wieland

Supreme Court of North Dakota - December 12, 2019 - 936 N.W.2d 55 - 2019 ND 286

City brought eminent domain action, seeking to acquire landowner's property for flood protection purposes.

The District Court granted partial summary judgment, concluding that permanent flood protection was public use authorized by law and that the taking of landowner's property was necessary to the use, and following a trial, jury awarded landowner $850,000 as just compensation for the taking. Landowner appealed.

The Supreme Court held that:

- City's flood protection project was for "public use" for purposes of eminent domain action;
- Information presented by engineers to city was sufficient to satisfy requirements of statute, governing plans and specifications for public improvement contract;
- City's proposed taking of landowner's property for flood protection was necessary for the public use;
- Permanent flood protection was a more necessary public use than any existing easements or drain dedication on landowner's property; and
- City's failure to provide landowner a pamphlet outlining her rights had no affect on validity of the eminent domain action.

City's flood protection project was for "public use" for purposes of eminent domain action brought by city, seeking to acquire landowner's property for flood protection purposes; legislature declared flood control projects to be a "public use" by giving municipalities the power to control such projects.

Although statute required that complete plans and specifications for dike had to be presented first to the state engineer, this statute pertained to operations of water resource districts, not municipalities, and thus, city's resolution of necessity for taking landowner's property for flood protection was not invalid in eminent domain action because plans were not submitted to state engineer.

Information presented by engineers to city was sufficient to satisfy the requirements of statute, governing plans and specifications for public improvement contract, for purposes of eminent domain action brought by city, seeking to acquire landowner's property for flood protection purposes; city worked with its own engineers for years to address city's flooding problems, engineers presented various plans and proposals, and city was provided detailed site plans and maps of the proposed project.

In eminent domain action, city's proposed taking of landowner's property for flood protection was necessary for the public use; after years of extensive professional studies on permanent flood protection for the area, landowner's home could not remain at its location, and because of the setback distance from drain and the necessary maintenance area, levee was required to be constructed on landowner's property.

In eminent domain action, permanent flood protection was a more necessary public use than any existing easements or drain dedication on landowner's property; existence of easements on landowner's property were not in conflict with the intended use of the property by city, easements and the earthen levee, when constructed, could co-exist, levee was necessary to protect waters rising from the drain and to protect people and property in area, and drain dedication, drain easement, and utility easement would not be repealed or extinguished by the levee.

City's failure to provide landowner a pamphlet outlining her rights had no affect on validity of the eminent domain action; receipt of pamphlet, describing eminent domain laws, was not a condition precedent to eminent domain action, pamphlet requirement in statute, requiring attorney general to publish eminent domain information, was not mentioned in eminent domain statute, statute, requiring publishing of eminent domain information, did not provide remedy for condemning authority's failure to provide pamphlet, and landowner was not prejudiced because she was represented by attorney during her negotiations with city before the city made offer.

IMMUNITY - VIRGINIA

Massenburg v. City of Petersburg

Supreme Court of Virginia - December 12, 2019 - S.E.2d - 2019 WL 6765891

Estate of homeowner, who died from smoke inhalation and thermal injuries before firefighters could establish a sufficient water supply and remove him from the burning residence, brought wrongful death action against city, alleging that the closest fire hydrant was effectively inoperable because it was not receiving an adequate or sufficient sustained flow of water.

The Petersburg Circuit Court granted city's demurrer and plea in bar and dismissed the complaint with prejudice, and homeowner's estate appealed.

The Supreme Court held that:

- Trial court did not err in deciding case on the pleadings, despite jury demand by estate of homeowner; and
- City's provision and maintenance of fire hydrants was governmental function, so as to be protected by sovereign immunity.

In wrongful death action brought against city by homeowner's estate, city's decision not to contest allegations in complaint, for purposes of city's plea in bar, meant that the facts were not disputed, and thus, trial court did not err in deciding case on the pleadings, despite jury demand by estate of homeowner, who died from smoke inhalation and thermal injuries before firefighters could establish sufficient water supply and remove him from the burning residence.

City's provision and maintenance of fire hydrants was governmental function, so as to be protected by sovereign immunity, and to extent that this governmental function coincided with city's proprietary functions, the governmental function was the overriding factor, and thus, sovereign immunity barred wrongful death action brought against city by estate of homeowner, who died from smoke inhalation and thermal injuries before firefighters could establish sufficient water supply and remove him from the burning residence; fire hydrant existed to facilitate the firefighting function of municipality that installed it, and city installed fire hydrants to provide for general safety and welfare of the citizenry.

IMMUNITY - ALABAMA

Ex parte Tucker

Supreme Court of Alabama - December 6, 2019 - So.3d - 2019 WL 6649372

Pedestrian allegedly injured when she tripped and fell on a residential street brought action against city's public-works director based on allegations of negligence and wantonness.

The Circuit Court denied director's motion for summary judgment. Director petitioned for a writ of mandamus.

The Supreme Court held that the director had State-agent immunity from the action.

A State agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent's discharging duties imposed on a department or agency by statute, rule, or regulation, insofar as the statute, rule, or regulation prescribes the manner for performing the duties and the State agent performs the duties in that manner.

City's public-works director had State-agent immunity from negligence and wantonness claims asserted against him by pedestrian who allegedly tripped and fell on residential street two years after street had been repaved; although pedestrian contended that there was substantial evidence that the purported dangerous pavement edge drop off at issue existed at the time of the repavement project, pedestrian's allegations appeared to concern the maintenance and/or repair of the street's shoulder, and director exercised judgment in determining how and where to use the limited resources available to the city to repair and maintain streets, which were decisions protected by State-agent immunity.

ZONING & PLANNING - CALIFORNIA

Beames v. City of Visalia

Court of Appeal, Fifth District, California - December 19, 2019 - Cal.Rptr.3d - 2019 WL 69075 - 2019 Cal. Daily Op. Serv. 12, 171

Owner of property that, like other properties on same block, was engaged in nonconforming use under zoning code filed petition for writ of mandate against city, asserting § 1983 claim for zoning dispute hearing officer's alleged violation of his due process rights as well as claim that hearing officer violated municipal code.

After granting property owner's motion for stay of zoning violation fines, trial court issued writ requiring city to vacate hearing officer's ruling and allowing new hearing. Subsequently, the Superior Court denied property owner's motion for attorney fees. Property owner appealed.

The Court of Appeal held that:

- Prevailing on state law due process claim qualified property owner for § 1988 attorney fees;
- Property owner's action resulted in concrete recovery of benefiting public, warranting § 1988 attorney fees; and
- Hearing officer's authority to make zoning decision exposed city to § 1983 liability.

Property owner prevailed on his state law claim for violations of due process in zoning code enforcement proceedings, as necessary for him to be entitled to attorney fees under § 1988 based on his pleading of related § 1983 claim; property owner succeeded on significant common issue of what due process violations occurred and achieved benefits sought under both claims, including reversal of zoning violation fees.

Property owner pleaded substantial § 1983 claim that city violated his procedural due process rights during zoning code enforcement proceedings, as necessary for property owner to recover attorney fees under § 1988 following favorable ruling on closely-related state law claim; property owner pleaded that administrative hearing was unconstitutionally unfair because hearing officer did not make findings of fact, consider whether order was in the interests of justice, or consider other relevant factors such as pending change to zoning code that would resolve dispute in property

owner's favor, resulting in harm to property interests, namely, eviction of property owner's tenant, limitation of use of property, and imposition of substantial fines.

Property owner's action against city, in which he prevailed on his arguments that he was not afforded procedural due process in zoning dispute, resulted in property owner's concrete recovery of benefiting public by promoting due process in zoning proceedings and deterring city from employing unfair, costly, and unwarranted litigation tactics, and, thus, property owner was entitled to § 1988 attorney fees; city failed to inform hearing officer that zoning changes would render current use of property legal, which would constitute grounds to deny city's request for daily penalties for nonconforming use, and took unnecessarily aggressive stances without any articulable reason for pursuing enforcement or penalties, and litigation established unlawfulness of proceeding before hearing officer.

Decision by hearing officer in zoning dispute to uphold code enforcement order and impose daily penalties for nonconforming use of property was choice among alternatives made by official with authority to make such choice, and, thus, hearing officer's failure to abide by due process requirements was basis for § 1983 liability, even in the absence of a preexisting municipal policy to decide dispute in such manner; hearing officer was vested with final administrative authority to decide whether to uphold, modify, or vacate code enforcement order, whether to impose penalties, and what amount of penalty would be appropriate, such that his decision effectively constituted city policy for § 1983 purposes.

ZONING & PLANNING - HAWAII

Unite Here! Local 5 v. Department of Planning and Permitting

Supreme Court of Hawai'i - December 13, 2019 - P.3d - 2019 WL 6798425

Union representing hotel and restaurant employees brought action against city and county department of planning and permitting and its director, challenging zoning board of appeals' (ZBA) decision, in appeal in which developer intervened, finding that it did not have jurisdiction to address director's modification of special district permit for condo-hotel development project that removed conditions advocated for by union and that director's decision to approve a second-phase permit that depended on removal of those conditions was not abuse of discretion.

On appeal, the Circuit Court affirmed. Union appealed to the Intermediate Court of Appeals (ICA).

After accepting transfer of the case, the Supreme Court held that:

- Union's due process rights were violated by director's removal of conditions without notice to union, and
- Director acted arbitrarily and capriciously, and abused his discretion when he did not include permit conditions for condo-hotel development project in permit for tower being attached to the condo-hotel.

Due process rights of union representing hotel and restaurant employees were violated when city and county permitting and planning director removed conditions from permit for condo-hotel development project that required condo-hotel to provide sufficient number of parking stalls, comply with park dedication provisions, and meet other land use ordinance requirements without providing notice to union such that union was unable to later challenge the decision, where union advocated for those conditions in permit, permit was approved with those conditions, and director knew the

importance of the conditions to the union.

City and county planning and permitting director acted arbitrarily and capriciously, and abused his discretion when he did not include permit conditions for special district permit for a condo-hotel development project into a permit for a 39-story tower to be connected to the condo-hotel, since tower and condo-hotel were operated jointly as a single business, director recognized the integrated nature of the projects when he approved the tower's permit, and decision to approve the tower's permit rested in part on removal of restrictive covenant conditions from condo-hotel permit, which was a permit modification requiring notice and opportunity to be heard for interested party that advocated for those conditions in condo-hotel permit's approval.

IMMUNITY - IDAHO

Lamont Bair Enterprises, Inc. v. City of Idaho Falls

Supreme Court of Idaho, Pocatello, September 2019 Term - December 6, 2019 - P.3d - 2019 WL 6646503

Landowner brought negligence action against city after broken water main cracked property's cement floor and flooded basement.

The District Court granted summary judgment to city. Owner appealed.

The Supreme Court held that:

- City's decision to adopt water facility plan was discretionary, as could support application of discretionary function exception to governmental liability under Idaho Tort Claims Act (ITCA), and
- Finding such decision to be discretionary comported with policies underlying discretionary function exception to liability.

City's decision to adopt water facility plan, which included plans for pipeline replacement and prioritization, was a discretionary rather than operational decision, as could support finding that discretionary function exception to governmental liability under Idaho Tort Claims Act (ITCA) applied in landowner's negligence action against city after broken water main damaged landowner's property; city sought to create and adopt plan based on existing infrastructure of city and its current resources, and plan was based on budgetary constraints and social and public policy considerations.

Finding city's decision to adopt water facility plan, including plans for pipeline replacement, to be discretionary comported with policies underlying discretionary function exception to governmental liability under Idaho Tort Claims Act (ITCA), and therefore city had immunity from landowner's negligence action arising out of broken water main damaging landowner's property; identifying, analyzing, and adopting solutions to meet a city's aging infrastructure needs were exactly the kind of decisions the legislature intended to be free of judicial second guessing, and it allowed local government to feel uninhibited by threat of tort liability when creating and maintaining plans for future infrastructure needs.

EMINENT DOMAIN - KANSAS

GFTLenexa, LLC v. City of Lenexa

Supreme Court of Kansas - December 6, 2019 - 453 P.3d 304

Sublessor of commercial premises brought inverse condemnation against city, alleging damage to its intangible property rights resulting from city's partial condemnation of the premises based on reduced rental income from sublessee.

The District Court granted summary judgment in favor of city. Sublessor appealed.

The Supreme Court held that:

- Court of Appeals properly exercises jurisdiction over appeals from district court orders finally disposing of inverse condemnation claims, and
- Sublessor was not entitled to recover from city in inverse condemnation action.

The Court of Appeals properly exercises jurisdiction over appeals from district court orders finally disposing of inverse condemnation claims, whether those appeals are brought by the plaintiff possessing a property interest or by a defendant government entity.

The Supreme Court exercises concurrent jurisdiction with the Court of Appeals over all appeals over which the Court of Appeals has jurisdiction, as well as exclusive jurisdiction over certain appeals, such as eminent domain appeals, as designated by statute.

Sublessor of commercial premises was not entitled to recover for damage to its intangible property rights resulting from city's partial condemnation of the premises based on reduced rental income from sublessee following condemnation; city paid full appraised value of condemned portion of premises as just compensation to owner and lessor in prior eminent domain proceeding, sublessor failed to intervene in prior eminent domain proceeding and made no effort to nullify that proceeding, and reduced rent paid to sublessor was result of sublease agreement with sublessee, which contemplated a reduction in rent if condemnation occurred, to which city was not a party.

ZONING & PLANNING - MAINE

Grant v. Town of Belgrade

Supreme Judicial Court of Maine - December 5, 2019 - A.3d - 2019 WL 6598354 - 2019 ME 160

Landowner appealed decision of town zoning board of appeals (BOA) denying landowner's applications to operate seasonal dock and boat rental business on shoreland property, which was located in limited commercial district and that had been used for residential purposes.

The Superior Court affirmed BOA's decision. Landowner appealed.

The Supreme Judicial Court held that:

- BOA's determination that it had authority to classify landowner's use of shoreland property as commercial was reasonable;
- Shoreland zoning ordinance and minimum lot size ordinance applied concurrently to landowner's shoreland property; and
- Shoreland zoning ordinance's section excepting nonconforming lots from area, shore frontage, and lot width requirements did not exempt landowner's nonconforming lots from any area and shore frontage requirements for uses allowed in limited commercial zoning district.

BALLOT INITIATIVES - MINNESOTA

Butler v. City of Saint Paul

Supreme Court of Minnesota - December 18, 2019 - N.W.2d - 2019 WL 6884527

Citizen filed petition claiming that city election officials erred in refusing to put his petition to amend the city's charter before voters.

The District Court granted summary judgment for election officials. Citizen appealed. The Court of Appeals affirmed. Citizen appealed.

The Supreme Court held that:

- Election officials did not err in looking to statewide voter registration system to determine whether citizen collected signatures from the required number of voters and in rejecting signatures of those who were registered to vote at an address outside of city, and
- Citizen failed to carry his burden of demonstrating that city election officials committed an error, omission, or wrongful act in refusing to put his petition on ballot.

City election officials did not err in looking to statewide voter registration system (SVRS) to determine whether citizen collected signatures from the required number of voters to put petition to amend the city's charter on ballot, and in rejecting signatures of those who were registered to vote at an address outside of city; state law provided that only registered voters were eligible to sign a charter-amendment petition, SVRS was the official record of registered voters in the state, and a voter's registration to vote was tied to voter's current residence.

Citizen failed to carry his burden of demonstrating that city election officials committed an error, omission, or wrongful act in refusing to put his petition to amend city's charter on ballot because he failed to obtain a sufficient number of signatures from registered voters in city on his petition, where city diligently compared each signature on petition to state's official record of registered voters, city reviewed petition four more times to re-examine rejected signatures and still found that it fell 74 signatures short of the minimum statutory requirement, and citizen produced no evidence to demonstrate that any of those 74 signatures were wrongly rejected by the city because those individuals were residents of city.

IMMUNITY - NEBRASKA

Rutledge v. City of Kimball

Supreme Court of Nebraska - December 6, 2019 - 304 Neb. 593 - 935 N.W.2d 746

Victim, who was allegedly assaulted by city employee in city building, brought assault and battery claim against employee and brought action against city, alleging that city was negligent for failing to supervise employee and for failing to protect the general public and victim from employee.

The District Court granted city's motion to dismiss, and victim appealed.

The Supreme Court held that victim's claim fell within intentional torts exception to Political Subdivisions Tort Claims Act (PSTCA).

Negligence claim brought against city by victim, arising out of battery allegedly committed by city

employee in city building, fell within intentional torts exception to Political Subdivisions Tort Claims Act (PSTCA), and thus, city did not waive its sovereign immunity; victim could not allege any potential source of duty other than employee's employment status, and there was no special relationship between employee and city, other than employment relationship, that could give rise to affirmative duty to protect victim from employee.

IMMUNITY - TEXAS

Town of Shady Shores v. Swanson

Supreme Court of Texas - December 13, 2019 - S.W.3d - 2019 WL 6794327 - 2019 IER Cases 477, 495 - 63 Tex. Sup. Ct. J. 180

Former town employee brought action against town for statutory and common law wrongful discharge, for a free speech rights violation, and for declaratory relief.

The District Court granted town's plea to the jurisdiction and denied town's summary judgment motions. Town filed an interlocutory appeal. The Court of Appeals affirmed in part and reversed in part. Town petitioned for interlocutory review, which was granted.

The Supreme Court held that:

- It possessed jurisdiction over town's petition seeking interlocutory review of Court of Appeals' determinations;
- A no-evidence summary judgment motion could be used to defeat jurisdiction on the basis of governmental immunity;
- Texas Open Meetings Act's (TOMA) clear and unambiguous waiver of immunity did not extend to suits for declaratory relief; and
- Employee adequately pled claims against town under TOMA arising from her termination.

IMMUNITY - FLORIDA

Alvarez-Mena v. Miami-Dade County

District Court of Appeal of Florida, Third District - November 27, 2019 - So.3d - 2019 WL 6333853

Motorist and his wife who were arrested outside their son's preschool brought claims against two plainclothes detectives for malicious prosecution and against the county for false arrest, battery, and negligent reporting of a crime.

The Circuit Court granted summary judgment in favor of the detectives and the county. Motorist and wife appealed.

The District Court of Appeal held that:

- Probable cause existed to arrest motorist;
- Genuine issues of material fact as to whether probable cause existed to arrest motorist's wife precluded summary judgment on false arrest and malicious prosecution claims;
- No cause of action for negligent reporting of a crime existed for alleged false reporting by law enforcement officers;

- Genuine issues of material fact as to whether detectives used excessive force while arresting motorist precluded summary judgment on battery claim; and
- Genuine issues of material fact as to whether probable cause existed to arrest motorist's wife precluded summary judgment on battery claim.

MONUMENTS - ALABAMA

State v. City of Birmingham

Supreme Court of Alabama - November 27, 2019 - So.3d - 2019 WL 6337424

State brought action against city and its mayor, in his official capacity, for a judgment declaring that the city and its mayor, in his official capacity, violated the Memorial Preservation Act by having a plywood screen placed around a Civil War monument in a city park.

The Circuit Court entered summary judgment for city and mayor. State appealed.

The Supreme Court held that:

- Screen altered or disturbed the monument in violation of the Act;
- City lacked rights to free speech, due process of law, and equal protection pursuant to the United States Constitution so as to defeat State's claim;
- City lacked a right to free speech under the Alabama Constitution so as to defeat State's claim; and
- City and mayor, in his official capacity, were subject to a single $25,000 fine for altering and disturbing the monument.

Plywood screen that city put up around Civil War monument in a public park altered or disturbed the monument, even though it did not touch the monument, and thus erecting the screen violated the Memorial Preservation Act, which prohibited altering or disturbing monuments that had been situated on public property for 40 years or more; the screen completely blocked the view of all inscriptions on the monument, and members of the public passing through the park had no way of knowing what the marble shaft rising from behind the plywood screen was intended to memorialize.

City lacked rights to free speech, due process of law, and equal protection pursuant to the United States Constitution, and thus such rights could not be a basis for city to defeat State's claim that city's erection of a plywood screen around a Civil War monument violated the Memorial Preservation Act, which prohibited altering or disturbing monuments that had been situated on public property for 40 years or more.

City lacked a right to free speech under the Alabama Constitution, and thus such a right could not be a basis for city to defeat State's claim that city's erection of a plywood screen around a Civil War monument violated the Memorial Preservation Act, which prohibited altering or disturbing monuments that had been situated on public property for 40 years or more; city was merely a political subdivision of the State, city could exercise such power as was conferred on it by law, and legislature had not conferred on city any right to have city's "government speech" fall within the Alabama Constitution's protections.

City lacked an "inherent right" to free speech, and thus such a right could not be a basis for city to defeat State's claim that city's erection of a plywood screen around a Civil War monument violated the Memorial Preservation Act, which prohibited altering or disturbing monuments that had been

situated on public property for 40 years or more; argument asserting that city had "inherent rights" equated city with an individual citizen rather than a subdivision of the State, i.e., a governmental entity.

City and mayor, in his official capacity, were subject to the penalty provision of the Memorial Preservation Act for altering and disturbing a Civil War monument in violation of the Act, despite argument that Act did not allow them to obtain a waiver since the monument in question had been situated on public property for 40 years or more; Act's penalty provision was intended to punish any entity that violated the generally applicable limitations set forth in the Act without first obtaining a waiver to do so.

City and mayor, in his official capacity, were subject to a single $25,000 fine for altering and disturbing a Civil War monument in violation of the Memorial Preservation Act, which provided for a $25,000 fine for each violation; city and mayor had improperly erected a plywood screen around the monument.

LAND USE - CALIFORNIA

Anderson v. City of San Jose

Court of Appeal, Sixth District, California - November 26, 2019 - Cal.Rptr.3d - 2019 WL 6317875 - 19 Cal. Daily Op. Serv. 11, 372

Low-income renters and housing advocacy groups filed verified petition for writ of mandate and complaint for declaratory and injunctive relief against charter city, asserting that city policy for sale of surplus municipal property violated Surplus Land Act.

The Superior Court sustained city's demurrer, and denied renters' and advocacy groups' motion for reconsideration. Renters and advocacy groups appealed.

The Court of Appeal held that:

- Actual conflict existed between Act and charter city's surplus land policy;
- State-wide shortage of sites for low- and moderate-income housing was issue of statewide concern;
- State could subject charter city to restrictions in the manner of disposal of surplus land for affordable housing development, and
- Act's affordable housing measures were narrowly tailored to avoid unnecessary interference in the affected local governance, and were reasonably related to statewide concern.

Actual conflict existed between Surplus Land Act and charter city's surplus land policy, where city policy required a certain percentage of units constructed on surplus land be affordable to lower-income renters and moderate-income purchasers while Act required both rental and for-sale units to be affordable to lower income households, city policy on surplus land sold or leased on open market required units be affordable to households earning up to 120 percent of area median income while Act required units to be affordable to lower-income households, and city policy exempted certain projects from any affordability restrictions.

State-wide shortage of sites for low- and moderate-income housing and the regional spillover effect of insufficient housing was issue of statewide concern and demonstrated "extramunicipal concerns" justifying statewide application of Surplus Land Act's affordable housing priorities.

State had more substantial interest in issue of shortage of sites available for affordable housing

development than charter city, and thus state could require charter city to prioritize surplus city-owned land for affordable housing development and subject charter city to restrictions in the manner of disposal of that land.

Surplus Land Act's affordable housing measures requiring notice, prioritization, and minimum set-asides at specified affordability levels were narrowly tailored to avoid unnecessary interference in the affected local governance of a charter city, and were reasonably related to state interest in reducing shortage of sites available for affordable housing development; measures applied only when surplus land owned by local government agency was offered for purpose of developing affordable housing and did not interfere with agency's discretion over pricing or sale or lease of surplus land for some other purpose.

ZONING & PLANNING - LOUISIANA

Minvielle v. Iberia Parish Government

Court of Appeal of Louisiana, Third Circuit - November 20, 2019 - So.3d - 2019 WL 6168008 - 2019-269 (La.App. 3 Cir. 11/20/19)

Landowners brought action against parish challenging whether it validly adopted changes made to the Federal Emergency Management Agency's (FEMA) flood designations affecting their properties.

The District Court granted parish's exceptions of no cause of action and dismissed action. Landowners appealed.

The Court of Appeal held that:

- Parish legislatively adopted changes to flood designations;
- Parish complied with notice and appeal requirements, federal law, and its charter in adopting changes; and
- Landowners failed to demonstrate that parish was not entitled to discretionary immunity.

Parish legislatively adopted changes to Federal Emergency Management Agency's (FEMA) flood designations affecting landowners' properties, where it previously adopted ordinance which adopted by reference all future flood map revisions.

Parish complied with notice and appeal requirements, federal law, and its charter in adopting changes to Federal Emergency Management Agency's (FEMA) flood designations affecting landowners' properties, even though it did not adopt changes by legislative act but by previous adoption of ordinance which adopted by reference all future flood map revisions, where parish was not required to use a specific manner of adoption, and parish published notice of flood map revisions and submitted appeal to FEMA based on landowners' request.

Landowners failed to demonstrate that parish was not entitled to discretionary immunity as to their cause of action for taking/inverse condemnation based on its adoption of changes made to the Federal Emergency Management Agency's (FEMA) flood designations affecting landowners' properties; all alleged acts and omissions were related to legitimate government objectives for which policymaking and discretionary power existed and were within the course and scope of parish's lawful powers and duties.

PUBLIC PENSIONS - MASSACHUSETTS

Plymouth Retirement Board v. Contributory Retirement Appeals Board

Supreme Judicial Court of Massachusetts, Plymouth - December 3, 2019 - N.E.3d - 2019 WL 6486802

Retirement board brought action seeking judicial review of decision by Contributory Retirement Appeal Board (CRAB) requiring plaintiff to collect remittance payments from members of municipal retirement system to obtain creditable service for prior work conducted as permanent-intermittent police officer (PIPO).

The Superior Court Department allowed for up to five years of creditable service without remittance payments to member police officers even if they were being paid and not making contributions to the retirement system, and granted judgment for plaintiff. CRAB appealed, and the case was transferred to the Supreme Judicial Court on its own motion.

The Supreme Judicial Court held that provision expressly discussing PIPO creditable service, considered in context of whole statute, mandated remittance payments by member police officers for past intermittent work to obtain creditable service for prior work conducted as PIPO.

PREEMPTION - TEXAS

City of Austin v. Paxton

United States Court of Appeals, Fifth Circuit - December 4, 2019 - F.3d - 2019 WL 6520769

City brought action against Texas Attorney General and Texas Workforce Commission, seeking to enjoin enforcement of Texas statute barring municipalities and counties from adopting or enforcing an ordinance or regulation prohibiting a landlord from refusing to rent to a potential tenant who would pay rent with federal housing vouchers.

The United States District Court denied defendants' motion to dismiss for lack of subject matter jurisdiction. Defendants filed interlocutory appeal.

The Court of Appeals held that:

- Texas Attorney General lacked a sufficient connection, arising from compulsion or constraint, to enforcement of the challenged statute, as would be required for *Ex parte Young* exception to Eleventh Amendment sovereign immunity from suit in federal court, and
- Texas Workforce Commission, as a state agency, had Eleventh Amendment sovereign immunity from suit in federal court.

Texas city, by alleging that the challenged Texas statute was preempted by federal law, sufficiently alleged an ongoing violation of federal law, as element for *Ex parte Young* exception to Eleventh Amendment sovereign immunity from suit in federal court, in city's action against Texas Attorney General, seeking to enjoin enforcement of Texas statute barring municipalities and counties from adopting or enforcing an ordinance or regulation prohibiting a landlord from refusing to rent to a potential tenant who would pay rent with federal housing vouchers.

Texas Attorney General lacked a sufficient connection, arising from compulsion or constraint, to enforcement of Texas statute for which a Texas city sought to enjoin enforcement, as would be

required for Ex parte Young exception to Eleventh Amendment sovereign immunity from suit in federal court, in city's action to enjoin enforcement of Texas statute barring municipalities and counties from adopting or enforcing an ordinance or regulation prohibiting a landlord from refusing to rent to a potential tenant who would pay rent with federal housing vouchers; Attorney General's enforcement authority was odd, in that enforcement apparently would be pursued as a defense in a private suit by city against a landlord who refused to abide by city's ordinance, with Attorney General intervening in such a suit to enforce the supremacy of state law, and other cases involving municipal ordinances, in which Attorney General had intervened to enforce the supremacy of state law, lacked any overlapping facts with the case at bar and were not even remotely related to city's ordinance.

Texas Workforce Commission, as a state agency, had Eleventh Amendment sovereign immunity from suit in federal court, with respect to Texas city's action to enjoin enforcement of Texas statute barring municipalities and counties from adopting or enforcing an ordinance or regulation prohibiting a landlord from refusing to rent to a potential tenant who would pay rent with federal housing vouchers.

PUBLIC UTILITIES - WASHINGTON

King County v. King County Water Districts Nos. 20, 45, 49, 90, 111, 119, 125

Supreme Court of Washington - December 5, 2019 - P.3d - 2019 WL 6605260

County brought declaratory judgment action against water-sewer districts, seeking to validate its authority to enact ordinance requiring electric, gas, water, and sewer utilities to pay franchise compensation in exchange for the right to use the county's rights-of-way. Consumer-owned private utilities intervened.

The Superior Court, King County, Samuel Chung, J., granted summary judgment in favor of water-sewer districts and utilities. County sought direct review, which the Supreme Court granted.

The Supreme Court held that:

- Franchise compensation was not a "tax";
- State law did not bar county from charging franchise compensation;
- County did not need authorization, express or implied, from the State to charge franchise compensation; and
- Statute, granting water-sewer districts the power to acquire necessary property rights, to carry water along roads, and to lay sewer pipe along roads, did not permit water-sewer districts to use county's rights-of-way without franchise.

Franchise compensation that county charged electric, gas, water, and sewer utilities in exchange for the right to use county's rights-of-way was not a "tax," although county sought to generate revenue and deposited money into general fund, where county based the charge on the value of the franchise to be granted to the utilities, charge was for valuable property right, and price was determined through negotiations.

State law did not bar county from charging electric, gas, water, and sewer utilities franchise compensation in exchange for the right to use county's rights-of-way; legislature intentionally excluded counties from statute barring cities and towns from imposing franchise fees, statute gave

counties discretion to grant franchises to utilities, and county lawfully exercised its discretion in determining that it was in the best interests of the public to require utility to provide reasonable compensation in return for its use of rights-of-way.

Home rule county did not need authorization, express or implied, from the State to charge electric, gas, water, and sewer utilities franchise compensation in exchange for the right to use county's rights-of-way; State delegated to counties the ability to grant franchises, any interest retained by the State was not such a magnitude to bar county from taking local action, and county's concern over roads within its jurisdiction outweighed any interest in those roads retained by the State.

State statute, granting water-sewer districts the power to acquire necessary property rights, to carry water along roads, and to lay sewer pipe along roads, did not permit water-sewer districts to use county's rights-of-way without franchise; statute's silence on the issue was telling, given that other statutes were explicit, statute implied that water-sewer districts had to acquire the necessary property rights to use county's rights-of-way, and statutory franchise was not essential to water-sewer district's objects and purposes.

PUBLIC RECORDS - WASHINGTON

Shavlik v. Dawson Place

Court of Appeals of Washington, Division 1 - November 25, 2019 - P.3d - 2019 WL 6270990

Records requester brought action against children's advocacy center that was leasing space to private organizations working for victims of child abuse alleging that center violated the Public Records Act (PRA).

The Superior Court denied requester's motion to continue, and granted center's motion to strike and motion for summary judgment. Requester appealed and center filed motion for sanctions.

The Court of Appeals held that:

- Center's functions were not nondelegable governmental functions, and thus inherently governmental factor weighed against finding that center was equivalent of government agency subject to PRA;
- Less than 50 percent of center's routine funds came from government, and thus the government funding factor weighed against finding that center was functional equivalent of government agency subject to PRA;
- Government did not have day-to-day control over center, and thus extent of government control factor weighed against finding that center was functional equivalent of government agency subject to PRA;
- Government action did not create center, and thus the government origin factor weighed against finding that center was functional equivalent of government agency subject to PRA;
- Center was not a private organization acting as the functional equivalent of a public agency, and thus was not subject to the disclosure requirements of the PRA;
- Invited error doctrine precluded requester from assigning error to trial court's denial of his motion to continue; and
  Requester's documents labeled "tables of evidence" failed to comply with rules requiring evidence to be authenticated, and thus were inadmissible to oppose center's summary judgment motion.

EMINENT DOMAIN - WEST VIRGINIA

West Virginia Department of Transportation, Division of Highways v. Pifer

Supreme Court of Appeals of West Virginia - November 19, 2019 - S.E.2d - 2019 WL 6258109

Department of Transportation, Division of Highways (DOH), filed petition to condemn portion of landowners' property for public use in connection with highway-interchange public improvement project.

Following jury verdict awarding landowners $2,000 for the taking, $1,800 for the temporary construction easements, and $175,165 in condemnation blight damages, the Circuit Court entered judgment and denied DOH's motion for new trial and to alter or amend judgment. DOH appealed.

The Supreme Court of Appeals held that:

- Date of taking, for purpose of determining fair market value of subject property, was date DOH filed condemnation petition;
- As a matter of first impression, a landowner may seek damages for condemnation blight as an element of just compensation;
- Condemnation blight damages in amount of $175,165 was not speculative; and
- Landowners were only entitled to prejudgment interest on their total award of just compensation from date condemnation petition was filed.

Date of taking, for purpose of determining fair market value of subject property, was date condemnation petition was filed by Department of Transportation, Division of Highways (DOH), seeking to condemn portion of landowners' property for public use in connection with highway-interchange public improvement project, even though jury verdict form did not specifically state date of take, where trial court asked jury if landowners suffered condemnation blight prior to date condemnation petition was filed, jury answered question in affirmative, and such damages, by their very definition, were suffered in anticipation of the take.

In a condemnation proceeding, a landowner may seek damages for condemnation blight as an element of just compensation for the taking of private property for public use.

Condemnation blight damages, as element of just compensation, in amount of $175,165 was not speculative, in condemnation proceeding by Department of Transportation, Division of Highways (DOH), seeking to condemn portion of landowners' property for public use in connection with highway-interchange public improvement project, even though final scope of project required only partial taking of small amount of landowners' property, as opposed to original plan which severely impacted property; DOH announced project more than decade before it commenced condemnation proceeding, landowners operated independent gasoline service station on property, and threat of condemnation brought to halt any negotiations with larger gasoline distributors to rent property.

In condemnation proceeding by Department of Transportation, Division of Highways (DOH), seeking to condemn portion of landowners' property for public use in connection with highway-interchange public improvement project, landowners were only entitled to prejudgment interest on their total award of just compensation from date condemnation petition was filed, even though landowners' just compensation award included damages for condemnation blight suffered prior to filing of petition, since statute governing condemnation proceedings clearly provided that interest was to be paid on award from date of filing of petition.

PUBLIC UTILITIES - ALABAMA

City of Wetumpka v. Alabama Power Company

Supreme Court of Alabama - November 27, 2019 - So.3d - 2019 WL 6337290

City brought action against power company for a judgment declaring that power company was responsible for the costs of relocating electric facilities in accordance with a new city ordinance.

The Circuit Court dismissed action. City appealed.

The Supreme Court held that the Public Service Commission (PSC) had exclusive jurisdiction over the dispute.

The Public Service Commission (PSC) had exclusive jurisdiction over dispute in which city sought to have power company bear the costs of relocating overhead electrical facilities in accordance with a new city ordinance, and thus the circuit court lacked subject-matter jurisdiction over city's action for a declaratory judgment that power company had to bear such costs; city's claim was in effect a challenge to a service regulation.

PUBLIC PENSIONS - CALIFORNIA

City of Anaheim v. Bosler

Court of Appeal, Third District, California - November 25, 2019 - Cal.Rptr.3d - 2019 WL 6270841 - 19 Cal. Daily Op. Serv. 11, 269

City brought petition for writ of mandate against Department of Finance regarding Department's determinations of city obligations to pay retirement costs of employees who worked as joint employees for city and redevelopment agency (RDA).

The Superior Court entered judgment in favor of Department, and city appealed.

The Court of Appeal held that:

- City disavowed reliance on sponsor agreement for payment of retirement costs;
- Determinative qualification for enforceable obligations of successor city to RDA under statute governing dissolution of
- RDAs was that payments on behalf of employees were legally enforceable;
- RDA's alleged contractual relationship with retirement system was irrelevant to successor city's obligations;
- Dissolution law did not purport to create legally enforceable substantive duties beyond duties that already contractually existed between RDA and city;
- Retirement costs were not legally enforceable obligation for RDA in absence of contract;
- City's suggested reading of dissolution statute that Legislature intended to reduce liability of local entities for retirement costs as part of eliminating abusive diversion of tax increment was not warranted.

TELECOM . - ILLINOIS

Village of Campton Hills v. Comcast of Illinois V, Inc.

Appellate Court of Illinois, Second District - November 18, 2019 - N.E.3d - 2019 IL App (2d) 190055 - 2019 WL 6112055

Municipality filed suit against cable company to recover cable franchise fees.

Cable company filed declaratory judgment against municipality and county to determine which government unit was entitled to fees. County filed counterclaim against cable company for recovery of unpaid fees and for indemnification. On cross-motions for summary judgment, the Circuit Court determined municipality was entitled to fees, ordered county to reimburse cable company for fees it had paid to county, and denied county's claim for indemnification. County appealed, and municipality cross-appealed.

The Appellate Court held that:

- Trial court's determination was not improper modification of franchise agreement between cable company and county;
- Franchise fees were not included in definition of damages in indemnification provision of county ordinance; and
- Municipality was not entitled to appeal trial court's determination.

Trial court's determination granting county municipality franchise fees from cable company was not improper modification of franchise agreement between cable company and county, where county ordinance provided payments would continue to extent allowed by law, and counties code limited county's ability to license, tax, or franchise cable company to systems within county but outside of municipalities.

Franchise fees were not included in definition of damages in indemnification provision of county ordinance which precluded county's liability for damages sustained in relation to franchise agreement with cable company, and thus, county was required to reimburse franchise fees cable company had paid to county upon trial court's determination that municipality, and not county, was entitled to fees, even though ordinance did not provide definition of damages.

Municipality was not entitled to appeal trial court's determination that incorporation of municipality and annexation had same meaning under counties code, in action brought by municipality, seeking to recover franchise fees cable company had paid to county instead of municipality, where trial court had ruled in favor of municipality, and municipality had been granted all relief it had requested.

COUNTIES - IOWA

Marcus News, Inc. v. O'Brien County Board of Supervisors

Supreme Court of Iowa - November 15, 2019 - N.W.2d - 2019 WL 6040805

Owner of disappointed applicants for designation as official county newspaper, which were under common ownership and published in the same city, contested entitlement for designation as official county newspaper.

The District Court affirmed county Board of Supervisors' decision to consider disappointed applicants as separate newspapers, and designation of two newspapers owned by intervenor as the official county newspapers for publication of official proceedings.

Following District Court's denial of motion for reconsideration, owner of disappointed applicants appealed.

The Supreme Court held that:

- Subscriber lists demonstrated that disappointed applicants served different geographic areas, and thus were precluded from being combined for purposes of determining circulation;
- Board was not required to combine and consider two successful applicants as one publication in the same geographic area; and
- Owner of disappointed applicants was not entitled to relief based upon claim that successful applicants' subscribers were not bona fide yearly subscribers.

Subscriber lists for disappointed applicants for designation as official county newspapers demonstrated that applicants served different geographic areas, and thus were precluded from being combined to be considered as one publication for purposes of determining circulation; newspapers were not equally distributed throughout county, and legislature chose to impose a same-geographic-area requirement for combining publications, rather than a county-wide requirement.

County Board of Supervisors was not required to combine, and consider as one publication in the same geographic area, two successful applicants for designation as official county newspapers, where 87 percent of subscribers of one newspaper were located within city, while 58 percent of second newspaper were located outside of city.

Owner of disappointed applicants for designation as official county newspapers was not entitled to relief from district court's designation of successful applicants as county's official newspapers based upon claim that successful applicants' subscribers were not bona fide yearly subscribers; short renewal terms did not mean that listed subscribers were not subscribers who received publications for at least six consecutive months, and largest disappointed applicant still had fewer subscribers than smallest successful applicant.

OPEN MEETINGS - LOUISIANA

Landry v. Duplechain

Court of Appeal of Louisiana, Third Circuit - November 6, 2019 - So.3d - 2019 WL 5782584 - 2019-457 (La.App. 3 Cir. 11/6/19)

Attorney general filed petition seeking to enforce Open Meetings Law against school board, superintendent, and other individual school board members.

The petition sought declaratory judgment finding that defendants violated Open Meetings Law, injunctive relief requiring defendants to abide by Open Meetings Law, as well as civil penalties, attorney fees, and costs. Superintendent filed exception of no cause of action, which was granted. The parties submitted stipulation, which included agreement that liability of individual members would be bifurcated and reserved for further proceedings, following determination of liability, vel non, of school board. Thereafter, the District Court rendered judgment against school board. Superintendent and individual members appealed.

The Court of Appeal held that:

- Superintendent was not a third party who had a right to appeal judgment rendered against school board, and

- Claims against individual members were separate and distinct from those ruled upon in judgment rendered against school board.

Superintendent was not a third party who had a right to appeal judgment rendered against school board in action against school board, superintendent, and other individual school board members; trial court rendered final judgment in favor of superintendent dismissing him as defendant from the action, this dismissal was based in part upon superintendent's admission that he was not an indispensable party to an action where his contract was at issue, and superintendent, as well as plaintiffs, did not appeal from judgment of dismissal.

Claims against individual school board members were separate and distinct from those ruled upon in judgment rendered against school board, in action against school board, superintendent, and individual members, and therefore judgment rendered against school board had no effect on rights of individual members and did not preclude them from presenting evidence or argument in defense of claims against them; individual members could only appeal portions of judgment adverse to them, judgment was rendered in favor of plaintiffs and against school board, and trial court's order designating judgment against school board as final made clear that remaining claims against individual members were distinct, severable, and governed by different standards of liability.

ZONING & PLANNING - MINNESOTA

Schulz v. Town of Duluth

Supreme Court of Minnesota - December 4, 2019 - N.W.2d - 2019 WL 6519674

Landowners sought zoning variance to build retirement home on their property. After town planning and zoning commission granted variance, neighbors, who lived adjacent to landowners and alleged that construction of home would obstruct their view of lake, appealed. The town board of supervisors denied neighbors' appeal and granted landowners' variance application, and neighbors appealed.

The District Court granted town's motion to dismiss action. Neighbors appealed. The Court of Appeals affirmed, and neighbors appealed.

The Supreme Court held that:

- To perfect appeal and confer jurisdiction on district court, aggrieved party appealing zoning variance is only required to serve municipality;
- Neighbors' failure to timely serve landowners and make them parties to their action, seeking judicial review of town board of supervisors' decision, did not mean that district court lost jurisdiction over neighbors' action;
- Statute, governing judicial review of municipal planning decisions, and town ordinance required that timely service of request for judicial review be made only on the municipality;
- District court acquired jurisdiction over neighbors' action when neighbors properly served town, regardless of neighbors' improper service on landowners;
- District court erred by dismissing neighbors' action with prejudice, rather than joining the non-municipality defendants; and
- Landowners were "necessary parties" to neighbors' action.

ZONING & PLANNING - NEW YORK

Town of Delaware v. Leifer

Court of Appeals of New York - November 21, 2019 - N.E.3d - 2019 WL 6183535 - 2019 N.Y. Slip Op. 08446

Town commenced action against landowner, seeking permanent injunction to prevent landowner from holding three-day music and camping festival on his 68-acre property.

The Supreme Court, Sullivan County, granted town's motion for summary judgment, denied landowner's cross-motion for summary judgment, and permanently enjoined landowner from advertising, selling tickets to, or holding festival on his property. The Supreme Court, Appellate Division, affirmed. Landowner appealed.

The Court of Appeals held that:

- Proposed festival was not encompassed within permitted principal or accessory use of single-family residence;
- Zoning law's theater land use restriction was content-neutral time, place, and manner restriction;
- Restrictions were narrowly tailored to serve town's legitimate interests;
- Zoning law was not overbroad;
- Zoning law afforded landowner sufficient notice that music festival was prohibited land use; and
- Injunction was not overly expansive.

IMMUNITY - TEXAS

Cutrer v. Tarrant County Local Workforce Development Board

United States Court of Appeals, Fifth Circuit - November 22, 2019 - F.3d - 2019 WL 6242860 - 2019 A.D. Cases 451, 680

Employee of county workforce development board filed suit against her employer claiming disability discrimination, retaliation, and post-employment retaliation under the Americans with Disabilities Act (ADA), and use of her personal information in violation of the Fair Credit Reporting Act (FCRA).

The United States District Court for the Northern District of Texas dismissed on basis of employer's sovereign immunity. Employee appealed.

The Court of Appeals held that:

- Employee waived claims not briefed on appeal;
- County and cities were not the State and therefore could not confer Eleventh Amendment immunity on county workforce development board; and
- There was no evidence that State of Texas was source of board's funding, as could support finding that board was arm of state and thus entitled to Eleventh Amendment immunity.

County and cities were not the State and therefore could not confer Eleventh Amendment immunity on county workforce development board which they created to oversee delivery of workforce training and services; county and cities were territorially part of state but were merely political subdivisions.

There was no evidence that the State of Texas was the source of funding for a county workforce development board created in cooperation between a county and two cities to oversee deliver of workforce training and services, as could entitle it to Eleventh Amendment immunity to employee's

claims for discrimination, in violation of ADA, and violation of the Fair Credit Reporting Act (FCRA), as an arm of the state.

REVENUE BONDS . - WYOMING

Herrick v. Jackson Hole Airport Board

Supreme Court of Wyoming - November 26, 2019 - P.3d - 2019 WL 6317542 - 2019 WY 118

Potential service providers for airport, along with individuals dissatisfied with airport's current services, filed petition for declaratory judgment, challenging validity of agreement for airport board's purchase of current service provider's assets as beyond statutory authority of board.

The District Court granted summary judgment to board. Potential providers and individuals appealed.

The Supreme Court held that:

- Trial court acted within its discretion in denying motion to compel production of reports regarding valuation of specific assets;
- Trial court acted within its discretion in denying motion to compel production of legal opinion letters;
- Statute authorizing airport board to purchase "lands and other property" using revenue bonds allows purchase of both tangible and intangible property; and
- Goodwill is intangible property included in term "other property," which an airport board is authorized to purchase using revenue bonds.

Trial court acted within its discretion in denying potential airport services providers' motion to compel production of reports, which discussed how specific assets were valued, in providers' declaratory judgment action, challenging validity of board's purchase of certain intangible assets, as part of purchase agreement, as being beyond board's statutory authority; board did not deny it was buying intangible assets, and value of intangible assets was not germane to issue of board's authority.

Trial court acted within its discretion in denying potential airport services providers' motion to compel production of legal opinion letters by private attorney, which discussed powers of airport board, in providers' declaratory judgment action, challenging validity of an asset purchase agreement as beyond board's statutory authority; issue of board's authority was question of law for court to decide, and a private attorney's preliminary legal analysis was not a fact pertinent to court's statutory interpretation.

Statute authorizing airport board to purchase "lands and other property" using revenue bonds allows purchase of both tangible and intangible property.

Goodwill is intangible property included in term "other property," which an airport board is authorized to purchase using revenue bonds.

PUBLIC RECORDS - FLORIDA

DeMartini v. Town of Gulf Stream

United States Court of Appeals, Eleventh Circuit - November 21, 2019 - F.3d - 2019 WL 6207952

Employee of law firm that sought public records from town on a grand scale brought § 1983 action, alleging town filing lawsuit against her was retaliation in violation of her First Amendment speech rights, as well as a malicious prosecution claim against government contractor.

United States District Court granted defendants' motions for summary judgment.

The Court of Appeals held that:

- Town had probable cause to initiate civil litigation against employee, and
- Contractor had probable cause.

Town had probable cause to initiate Racketeer Influenced and Corrupt Organizations Act (RICO) claims against employee of law firm that filed numerous public records requests from town, precluding employee's § 1983 claims alleging town's lawsuit was retaliation in violation of employee's First Amendment right of access to the courts; firm created non-profit organization to test and enforce compliance with public records law, nearly 2,000 requests were made and 36 lawsuits were filed regarding those requests, costing town $370,000 in attorney's fees, executive director of that non-profit resigned and gave sworn testimony to town's special counsel that employee, along with non-profit and firm, engaged in scheme to extort money from town through voluminous and intentionally vague requests, employee was specifically implicated, two outside attorneys conducted investigations and recommended filing the civil lawsuit, and town had legitimate, objective reason to protect itself and taxpayers from abusive litigation.

Town contractor, who was subject to public record requests by law firm, its employee, and non-profit organization created by firm, had probable cause to file Racketeer Influenced and Corrupt Organizations Act (RICO) claims against employee, precluding employee's malicious prosecution claims under Florida law against contractor; same attorney represented both town and contractor, attorney had investigated non-profit's scheme to file vague and voluminous records requests, and contractor had agreed to join lawsuit after discussion with attorney.

PUBLIC RECORDS - FLORIDA

Deeson Media, LLC v. City of Tampa

District Court of Appeal of Florida, Second District - November 15, 2019 - So.3d - 2019 WL 6041428

Limited liability company (LLC) filed petition for writ of mandamus, seeking public records to verify that city director of finance was a city resident as required by city charter.

The Circuit Court denied petition. LLC appealed.

The District Court of Appeal held that:

- Petition for writ of mandamus was an appropriate vehicle to challenge denial of public records request, and
- Appeal was moot.

Petition for writ of mandamus is an appropriate vehicle to challenge the denial of a public records request, even where an exemption has been asserted.

Limited liability company's (LLC) appeal of circuit court's denial of its petition for writ of mandamus seeking public records to verify that city director of finance was a city resident as required by city charter was moot, where, following dismissal, LLC sought same public records in a separate action for declaratory and injunctive relief, and the circuit court denied relief.

IMMUNITY - OHIO

McConnell v. Dudley

Supreme Court of Ohio - November 20, 2019 - N.E.3d - 2019 WL 6138542 - 2019 -Ohio-4740

Motorist injured in an automobile accident with police officer who had been engaged in high-speed chase brought action against township, township's police department, and officer, alleging negligence, negligent hiring and training, and loss of consortium.

The Court of Common Pleas denied defendants' motion for summary judgment. Defendants appealed. The Court of Appeals affirmed in part and reversed in part. Township sought discretionary review.

The Supreme Court held that exception to political subdivision immunity for negligent operation of motor vehicle did not encompass action alleging that political subdivision negligently hired, trained, or supervised its employee.

Exception to political subdivision immunity for negligent operation of a motor vehicle did not encompass an action alleging that a political subdivision negligently hired, trained, or supervised a police officer who was involved in a motor-vehicle accident while responding to an emergency call; a political subdivision could not itself be negligent in the operation of a vehicle, as political subdivisions did not drive, but instead the language of the immunity statute demonstrated that it was the conduct of a subdivision's employee that established the exception from immunity.

OPEN MEETINGS - MARYLAND

Frazier v. McCarron

Court of Appeals of Maryland - November 20, 2019 - A.3d - 2019 WL 6167484

Petitioner filed suit against city council, alleging violations of Open Meetings Act (OMA), seeking, inter alia, imposition civil penalties in amount of $8,250, voiding all actions taken at closed meeting, reimbursement of legal expenses and court fees, and order directing city council to unseal minutes of meeting.

Following trial, the Circuit Court found that city council had violated OMA, but concluded that violations were "technical," and entered judgment for city council. Petitioner appealed. The Court of Special Appeals affirmed. Petition for certiorari review was granted.

The Court of Appeals held that:

- Trial court's finding that city council conducted open meeting at which vote was taken to go into closed session was clearly erroneous;
- Trial court did not abuse its broad discretion in declining to impose civil penalties on city council; and
- City council was not subject to sanctions for alleged violations of OMA.

Trial court's finding that city council conducted open meeting at which vote was taken to go into closed session, in compliance with Open Meetings Act (OMA), based on its belief that all witnesses testified to that fact, was clearly erroneous, in action on petitioner's complaint that city council conducted closed meeting in violation of OMA; although mayor testified that there was open meeting at which vote was taken to go into closed session, four city council members and city manager testified that there was no open meeting.

Trial court did not abuse its broad discretion in declining to impose civil penalties on city council for alleged violation of mandatory provision of Open Meetings Act (OMA) that city council conduct open meeting at which vote would be taken to move into closed session.

City council was not subject to sanctions, nor was petitioner entitled to award of attorney fees and costs, based on city council's purported violations of mandatory provisions of Open Meetings Act (OMA) requiring that city council conduct open meeting, to which public could attend, to take vote to move into closed session, that city council provide notice of open meeting, and to produce statement by presiding officer of reasons for moving to closed session; closed session was for purpose of obtaining legal advice with respect to potential lawsuit against city council, so there was nothing for trial court to void, there was no evidence of attorneys' fees or litigation costs, and minutes of closed session were made public within one and one-half months of closed session.

ZONING & PLANNING - MASSACHUSETTS

Leonard v. Zoning Board of Appeals of Hanover

Appeals Court of Massachusetts, Plymouth - November 13, 2019 - N.E.3d - 2019 WL 5959566

Florists brought action against zoning board of appeals seeking declaration that their outdoor displays were a lawful prior nonconforming use of their lot, and that concrete barriers separating their property from abutting restaurant property were not an alteration of a prior nonconforming lot requiring a special permit or site approval.

Town sought declaratory relief. On motions for summary judgment, the Superior Court declared florists' outdoor displays were unlawful prior nonconforming uses, thus requiring a special permit, but the concrete barriers were not an alteration that would require a special permit. Parties appealed.

The Appeals Court held that:

- Florists' outdoor displays were not prior nonconforming uses entitled to protection from enforcement of amended zoning bylaws, thus requiring a special permit;
- Items placed on metal racks outside of shop were not structures, and thus ten-year statute of limitation for enforcement of zoning regulations did not apply to prevent town from seeking zoning enforcement;
- Even if metal racks were structures, ten-year statute of limitations applicable to actions

complaining of structural violations for which no special permit was given did not protect florists' use of the metal racks;
- Concrete barriers did not alter and intensify the nonconformance of florist's property, and thus were exempt from requirements of a special permit;
- Concrete barriers were not structures under zoning bylaws;
- Florists failed to exhaust their administrative remedies challenging fire chief's order to remove concrete barrier; and
- Town was precluded from seeking declaratory relief for issues involving its zoning bylaws, and thus vacatur of judgment addressing town's complaint was required.

REVENUE BONDS - MINNESOTA

Matter of Trusteeship Created by Port Authority of City of St. Paul Relating to Issuance of Tax Exempt Senior Lien Parking Ramp Revenue Bonds (Fourth and Minnesota Parking Ramp Project) Series 2000-1 & 2000-7

Court of Appeals of Minnesota - October 28, 2019 - Not Reported in N.W. Rptr. - 2019 WL 5543957

Wells Fargo Bank serves as Trustee for a Trust Indenture relating to the issuance of tax-exempt senior lien parking ramp revenue bonds and taxable subordinate lien parking ramp revenue bonds.

LLCs holds taxable subordinated cash flow notes issued by the Port Authority in connection with the ramp. The subordinated cash flow notes include an acceleration provision or an assumption obligation in the event the ramp is sold to a third party. The Port Authority also entered into an Option to Purchase and First Refusal Agreement with LLCs, granting LLCs an option to purchase the ramp and a right of first refusal in the event that the Port Authority receives an offer to purchase the ramp that the Port Authority intends to accept or does accept.

Due to the parking ramp's lack of profitability, both the senior and subordinate bonds were in default. Rather than foreclose the mortgage and dispose of the facility in a sheriff's sale, the Trustee proposed transferring ownership of the ramp by structuring the transaction as a deed in lieu of foreclosure (deed in lieu) on the senior mortgage.

The Trustee filed a petition for preliminary approval to proceed with the disposition of the parking ramp. LLCs filed a notice of objection to the petition, asserting that the Deed in Lieu of Foreclosure Agreement and the Assignment Agreement constituted a "sale" of the ramp and triggered certain rights and obligations under the parties' respective agreements with the Port Authority. The Port Authority disputed this assertion.

Although this case was remanded on other grounds, the moral of this story appears to be the need to explicitly stipulate in the applicable documents whether or not this type of transaction constitutes a sale.

LIABILITY - NEW YORK

Zurich American Insurance Company v. City of New York

Supreme Court, Appellate Division, Second Department, New York - October 23, 2019 - N.Y.S.3d - 176 A.D.3d 1145 - 2019 WL 5406553 - 2019 N.Y. Slip Op. 07640

Insurer and insured warehouse operators brought separate actions against city, alleging negligent performance of governmental function, after fire department personnel shut off main water supply valve to warehouse's sprinkler systems, and warehouse was destroyed during fire.

Following consolidation, the Supreme Court, Kings County, denied city's motion to dismiss. City appealed.

The Supreme Court, Appellate Division, held that insurer and insureds sufficiently alleged special relationship with city, so as to state claim for negligent performance of governmental function.

Insurer and insured warehouse operators sufficiently alleged special relationship with city, so as to state claim for negligent performance of governmental function; complaint alleged that city fire department personnel, upon arriving at scene and assuming control over ongoing fire, shut off main water supply valve to warehouse's sprinkler systems, then certified to warehouse employees that it was safe to reenter building when in fact the fire was still at risk of rekindling, which it did within minutes after fire department personnel left premises.

ZONING & PLANNING - OKLAHOMA

Cloudi Mornings, LLC. v. City of Broken Arrow

Supreme Court of Oklahoma - November 19, 2019 - P.3d - 2019 WL 6123533 - 2019 OK 75

Retail marijuana establishment and its manager petitioned for declaratory judgment and injunctive relief, alleging city had no authority to zone or otherwise regulate medical marijuana businesses within city limits.

The District Court issued declaratory judgment, finding city was precluded from adopting regulations, zoning overlays, fees or other restrictions relating to medical marijuana business activities. City appealed. The Supreme Court remanded for findings of fact and conclusions of law addressing whether city had unduly changed or restricted zoning laws so as to prevent the opening of a retail marijuana establishment, and the impact of the statutory amendment on the validity of the City ordinances. The District Court filed its findings of fact and conclusions of law in which it concluded ordinances did not unduly change or restrict zoning so as to prevent opening of retail marijuana establishments.

The Supreme Court held that:

- City had the authority to follow standard planning and zoning procedures as to marijuana growers under amendments to the Act that legalized medical marijuana, and
- Retail marijuana establishment lacked standing to bring declaratory judgment action.

City had the authority to follow standard planning and zoning procedures as to marijuana growers under amendments to the Act that legalized medical marijuana, which specifically stated that "municipalities may follow their standard planning and zoning procedures to determine if certain

zones or districts would be appropriate for locating marijuana-licensed premises, medical marijuana businesses or any other premises where marijuana or its by-products are cultivated, grown, processed, stored or manufactured."

Retail marijuana establishment lacked standing to bring declaratory judgment action against city for a determination as to whether city had authority to zone or otherwise regulate medical marijuana businesses within city limits, as the amendments to the Act legalizing medical marijuana authorized the city to follow standard planning and zoning procedures as to marijuana growers, retail marijuana establishment was not denied any city permits, required to pay a particular city fee, or prohibited from locating in a chosen location within city limits altogether, and thus, there was no actual, justiciable controversy between city and the marijuana establishment.

UTILITIES - CONNECTICUT

Summit Saugatuck, LLC v. Water Pollution Control Authority of Town of Westport

Appellate Court of Connecticut - October 29, 2019 - A.3d - 193 Conn.App. 823 - 2019 WL 5538269

Property owner sought review of determination by town's water pollution control authority denying owner's application for sewer extension to service proposed affordable housing development.

The Superior Court sustained owner's appeal and ordered conditional approval of application. Authority appealed.

The Appellate Court held that trial court impermissibly substituted its own discretion and judgment for that of authority by ordering conditional grant of application.

Although conditional approval of application for sewer extension to service proposed affordable housing development by water pollution control authority was viable and available option for agency, authority was not required to exercise option whenever possible, and thus, trial court impermissibly substituted its own discretion and judgment for that of authority by ordering conditional grant of application; authority exercised cautious approach of requiring developer to file new application once it could demonstrate that sufficient sewer capacity existed for planned development, unknown and unforeseen problems could potentially arise between time for approval and completion of sewer upgrades, and authority had settled policy to not grant conditional approval of applications.

MUNICIPAL ORDINANCE - FLORIDA

Classy Cycles, Inc. v. Panama City Beach

District Court of Appeal of Florida, First District - November 13, 2019 - So.3d - 2019 WL 5945495

Motorized scooter vendor brought action against city, challenging validity of ordinances which prohibited motorized scooter rentals.

The Circuit Court granted summary judgment in favor of city. Vendor appealed.

The District Court of Appeal held that:

- Ordinances were not arbitrary or unreasonable, and
- State traffic statute did not impliedly preempt ordinances.

Municipal ordinances which prohibited night rentals of motorized scooters, and which imposed a general prohibition against all motorized scooter rentals after a certain date, were not arbitrary or unreasonable for only prohibiting rental rather than operation of scooters, and therefore ordinances were valid pursuant to rational basis analysis; ordinances were enacted based on findings that sheer volume of daily scooter rentals and often reckless operation of scooters had placed an impracticable strain on city resources, negatively impacted tourist experience, and posed safety risks, and it was reasonable to conclude that scooter owners would be more experienced and safe than one-time renters.

State traffic statute did not impliedly preempt municipal ordinances which prohibited night rentals of motorized scooters, and which prohibited all motorized scooter rentals after a certain date, even though statute precluded passage of any conflicting city ordinances as well as ordinances on traffic matters absent authorization; ordinances did not regulate the method of scooter driving or apply penalties for improper scooter driving in conflict with state traffic statute, and statute provided for a local government's reasonable exercise of police powers to prohibit incompatible traffic from heavily traveled streets.

IMMUNITY - GEORGIA

Cannon v. Oconee County

Court of Appeals of Georgia - October 30, 2019 - S.E.2d - 2019 WL 5588788

Surviving parents brought wrongful death suit against county, alleging county was responsible for sheriff's deputy's actions in high-speed police chase that led to their daughter's death.

The county moved for summary judgment, and surviving parents filed a motion for sanctions and a motion to substitute sheriff as defendant. The Superior Court granted county's motion and denied surviving parents' motions. Surviving parents appealed.

The Court of Appeals held that:

- Sheriff's office constituted "local government entity" under statute waiving sovereign immunity for motor vehicle claims, and
- County sheriff would not suffer prejudice as result of being substituted as defendant.

Sheriff's office constituted "local government entity" under statute waiving sovereign immunity for motor vehicle claims, and thus sheriff's office, and not county, was proper party in wrongful death action brought by surviving parents' alleging sheriff's deputy's actions in high-speed car chase contributed to their daughter's death; sheriff's offices, which were separate from county itself, performed governmental services on local level.

County sheriff would not suffer prejudice as result of being substituted as defendant in surviving parents' wrongful death action against county, alleging sheriff's deputy's actions in high-speed police chase contributed to their daughter's death, for purposes of substitution relating back to original pleading date, where sheriff had received notice of action through his coordination with county through their vigorous defense of action, and sheriff should have known that, but for parents'

mistake in identifying proper party, based on their misunderstanding of proper local government entity to sue, action would have been brought against him.

PUBLIC RECORDS - MISSOURI

Wyrick v. Henry

Missouri Court of Appeals, Western District - November 12, 2019 - S.W.3d - 2019 WL 5874668

Records requester whose mother died after sustaining injuries in motor vehicle accident filed petition against city clerk seeking a declaration that clerk purposefully violated the Sunshine Law's open records requirement by failing to disclose the requested traffic records after requester sent a notice of claim city.

The Circuit Court granted partial summary judgment in favor of requester. Clerk appealed.

The Court of Appeals held that:

- As a matter of first impression, requested records did not possess, by their inherent nature, a clear nexus to litigation, and thus were not exempt from disclosure under the Sunshine Law;
- Substantial evidence supported trial court's finding that clerk knowingly and purposefully violated the Sunshine Law, as would allow imposition of civil penalty on city;
- Trial court's award of attorney's fee in the amount of $38,550 in favor of requester was not unreasonable;
  Substantial evidence supported imposition of civil penalties amounting to $4,000 against city for clerk's knowing and purposeful violation of the Sunshine Law; and
- Imposition of civil penalties in the amount of $4,000 against city did not prejudice city, and thus was appropriate.

Requested traffic records relating to accidents or complaints involving the intersection where requester's mother died after sustaining injuries in a motor vehicle accident did not possess, by their inherent nature, a clear nexus to litigation, and thus were not exempt from disclosure under the Sunshine law, even if the records might have been relevant, that is, discoverable or admissible, in potential litigation between city and requester who sent a notice of claim to city before making request for the records.

ZONING & PLANNING - PENNSYLVANIA

Protect PT v. Penn Township Zoning Hearing Board

Commonwealth Court of Pennsylvania - November 14, 2019 - A.3d - 2019 WL 5991755

Citizens' association sought judicial review of decision by zoning board, which denied association's challenge to constitutionality of zoning ordinance permitting unconventional natural gas development (UNGD) in township's low-density residential district.

The Court of Common Pleas upheld the ordinance. Association appealed.

The Commonwealth Court held that:

- Evidence was sufficient to establish that UNGD was compatible with purposes of zoning district;
- Evidence was sufficient to establish that overlay district was consistent with township's comprehensive plan and residential land use expectations;
- Evidence was sufficient to establish that ordinance protected residents' right to enjoy their property and their right to a healthy environment under state constitution; and
- Association failed to establish that ordinance posed a substantial actual risk to environment or health of residents.
