

WINTER 2013 NEWSLETTER

LOCAL GOVERNMENT CASE LAW UPDATE

by Laura O'Leary

TEXAS COURTS OF APPEALS

1. ***Mustang Special Util. Dist. v. Providence Vill.*, No. 02-12-00032-cv, 2012 Tex. App. LEXIS 10604 (Tex. App.—Ft. Worth Dec. 21, 2012, no pet.).**

The Texas Uniform Declaratory Judgments Act (UDJA) does not permit a suit against a governmental entity seeking to invalidate a contract because governmental immunity is not waived as to such a claim. A suit seeking to invalidate a contract with a governmental entity is an attempt to control governmental action and is therefore not authorized by the UDJA.

Mustang Special Utility District appealed the trial court's denial of their jurisdictional challenge to Providence Village's suit seeking a declaration that a contract concerning the provision of water and sewer services was void for violating the reserved powers doctrine. Mustang argued that governmental immunity barred the suit because Providence Village's attempt to invalidate the contract at issue was an impermissible attempt to control state action. Providence Village argued that because the UDJA permits suits to determine the validity of a statute or ordinance and suits to construe a contract or statute, there is no reason why a suit to contest the validity of a contract would not be permissible.

The Court noted that immunity will bar an otherwise proper UDJA claim that has the effect of establishing a right to relief against the state for which the legislature has not waived immunity and that the UDJA waives governmental immunity only for claims challenging the validity of an ordinance or statute or for certain ultra vires claims against state officials. Governmental immunity bars suits that seek to establish a contract's validity, to enforce performance under a contract, or to impose contractual liabilities because these suits seek to control state action.

Relying on a 1958 Texas Supreme Court case (*W.D. Haden Co. v. Dodgen*, 308 S.W.2d 838, 842 (Tex. 1958)), the Court held that just as a suit to establish the validity of a contract entered into by the state is barred by immunity, a suit to invalidate a contract made for the benefit of the state is also barred by governmental immunity, as both types of suit attempt to control state action.

2. ***De Los Santos v. City of Robstown*, No. 13-11-00278-cv, 2012 Tex. App. LEXIS 10328 (Tex. App.—Corpus Christi Dec. 13, 2012, no pet.).**

Taxpayers had standing to seek declaratory relief against the City to prevent illegal expenditures of public funds which had not yet occurred.

Taxpayers brought suit under the UDJA seeking to challenge the validity of City ordinances authorizing the issuance of certificates of obligation binding the City for payment of a construction project and challenging as ultra vires future actions by City officials in connection with the certificates of obligation.

The Court reversed the trial court's grant of a plea to the jurisdiction based on lack of standing, finding that, to the extent that the public money had not yet been spent, the taxpayers had a justiciable interest in ensuring that the money was not spent illegally.

3. *Harris Cnty. Hous. Auth. v. Rankin*, No 01-12-00870-cv, 2013 Tex. App. LEXIS 902 (Tex. App.—Houston [1st Dist.] January 31, 2013, pet. filed).

Governmental immunity is waived at the time a governmental entity enters into a contract for goods or services under Tex. Loc. Gov't Code Ann §271.151, not when a breach of such a contract occurs. When governmental immunity has been waived as to a contract, immunity is also waived as to any suit for breach of a subsequent contract or settlement agreement entered into in order to establish the rights of the parties to the original agreement.

Rankin was CEO of the Harris County Housing Authority under an employment contract that met the requirements of Tex. Loc. Gov't Code Ann §271.151. The Housing Authority entered into a subsequent written agreement with Rankin providing for a cash payment to Rankin to buy out his original employment agreement. Rankin alleged that the Housing Authority breached this second agreement. The Housing Authority argued that it was immune from suit under the second agreement because it did not constitute a contract for the provision of services.

The Court, relying upon *Texas A & M Univ.—Kingsville, v. Lawson* (87 S.W.3d 518 (Tex. 2002)), held that the critical inquiry was whether the governmental entity had waived its immunity at the time the subsequent agreement was reached. In this case, because one function of the buy-out agreement was to secure a release of all claims Rankin may have had for which the Housing Authority's immunity from suit had already been waived under his employment contract, the Housing Authority's immunity from suit was also waived for the buy-out contract.