



# THE TEXAS MUNICIPAL LAWYER™

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## SOVEREIGN IMMUNITY & SECTION 1983

*These two statutes are complex, and the case law interpreting them is intricate. Our hope is that this over-simplified explanation will allow most city officials to grasp how these statutes impact how we function at city hall.*

Under the concept of sovereign immunity, Texas and its local governments cannot be sued or held liable for the actions of its agents or officers involved in a government function, with certain exceptions. However, an officer is subject to personal liability in the officer's official capacity for prospective (future) or injunctive relief when acting outside the scope of authority granted by law. Also note that Texas and its local governments can waive immunity from suit if done so clearly and unambiguously. For example, if a city breaches the Whistleblower Act, commits specifically described torts under the Texas Tort Claims Act, or fails to assert immunity as a defense, it has clearly and unambiguously waived immunity from being sued. A waiver under the Torts Claim Act is for causes of action for injuries or property damage arising from the use of a vehicle or motor-driven equipment, or the use of personal property or dangerous conditions on property. Therefore, as long as

a city is performing a government function, and the city's immunity has not been waived, it is immune from liability under *state* law.

Under *federal* law, 42 U.S.C. §1983, municipalities and local governments are subject to suit for money damages and prospective relief. Enacted in 1871 amidst the civil rights abuses many were experiencing in the southern states, Section 1983 essentially established a remedy available in civil court to those whose constitutional rights had been violated by a person acting under state authority. For example, if the police hire and give authority to an additional private security company for an event during which the security company violates a participant's First Amendment rights, the police can be sued.

So, who is subject to liability under Section 1983?

- U.S. government is not subject to suit for money damages or prospective relief.
- Texas state government may not be sued for damages, but may be sued for declaratory or prospective relief.
- Municipalities are subject to suit for damages and prospective relief for harm, or prospective harm, that is the result of some action taken by the local government. This action (e.g., a policy statement, ordi-

nance, regulation, or decision) must have been officially adopted and promulgated by that local government's officers, or the result of the local government's custom.

- Individual employees of federal, state, and local governments may be sued in their individual capacities for damages, declaratory or injunctive relief.

Note: The law of the forum state is to be applied in suits brought under Section 1983 if that section does not provide guidance.

### UPCOMING EDUCATIONAL OPPORTUNITIES

**October 28th, 9 a.m.-4:00 p.m.**  
**Texas Fire Chiefs Academy**  
**Garland Training Facility**  
**Garland, Texas**

Dottie will present two sessions to Fire Chiefs across the state on the topics of "Employee Counseling" and "Managing Employees."

**January 2012**  
**Open Government Course**  
**City of Port Arthur**  
**Port Arthur, Texas**

Alan will conduct a course on Open Government for city officials.

## CLIENT NEWS

### Dripping Springs - 3rd Annual Wild West Fest

Saturday, October 22, All day!  
Harrison Ranch Park, Dripping Springs, Texas  
Daylong celebration and family fun day offers western activities. Evening entertainment by Dale Watson. [dswildwestfest.com/Wild\\_West\\_Festival.html](http://dswildwestfest.com/Wild_West_Festival.html)

## LEGAL Q & A

**Q:** What is a municipality liable for under the Texas Torts Claim Act?

**A:** Property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within the scope of his employment if; (1) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment, and (2) the employee would be personally liable to the claimant according to Texas law.

Personal injury and death caused by a condition or use of tangible personal or real property if the government unit would, were it a private person, be liable to the claimant according to Texas law.

**Q:** What are some of the functions the Texas Legislature deemed “governmental functions” per the Torts Claim Act (i.e., governments are not liable)?

**A:** Police and fire protection and control; health and sanitation ser-

vices; street construction and design; bridge construction and maintenance; cemeteries and cemetery care; garbage and solid waste removal, collection, and disposal; establishment and maintenance of jails; hospitals; sanitary and storm sewers; airports; waterworks; repair garages; parks and zoos; museums; libraries and library maintenance; civic convention centers, or coliseums; community, neighborhood, or senior citizen centers; operation of emergency ambulance service; dams and reservoirs; warning signals; regulation of traffic; transportation systems; recreational facilities, such as swimming pools, beaches, and marinas; parking facilities; tax collection; firework displays; building codes and inspection; zoning, planning, and plat approval; engineering functions; maintenance of streets, vehicle and motor driven equipment, traffic signals, signs, and hazards; water and sewer service; animal control.

**Q:** Which functions are “proprietary” (government is not immune)?

**A:** The operation and maintenance of a public utility other than water or sewer;

Amusements owned and operated by the municipality; and any activity that is abnormally dangerous or ultrahazardous.

## ABOUT THE FIRM

We recently started an electronic news bulletin for our clients. The

one page *Texas Municipal Law Bulletin* is sent out via email periodically, in between issues of our newsletter.

To receive our *Texas Municipal Law Bulletin*, e-mail us at: [TexasMunicipalLawyers@gmail.com](mailto:TexasMunicipalLawyers@gmail.com)



Dottie & Alan at our TML Booth in Houston, Texas.

- Check out our [Forms](#) section on the website. Get free pdf downloads for all types of city forms and documents.
- Please check our website for new SimpliCITY™ municipal training literature.

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