

THE TEXAS MUNICIPAL LAWYER™

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COBRA

Many cities with fewer than 20 full-time employees assume they are not able to offer former employees COBRA Continuation Health Coverage. However, all cities must be aware that part-time employees are combined to be considered full-time employees if certain criteria is met.

COBRA stands for the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) and represents the health benefit provisions that Congress passed in 1986. COBRA provides certain former employees, retirees, spouses, former spouses, and dependent children the right to temporary continuation of health coverage at group rates. This coverage, however, is only available when coverage is lost due to certain specific events including voluntary or involuntary termination of employment for reasons other than gross misconduct, or a reduction in the number of hours of employment.



Group health coverage for COBRA participants is usually more expensive for participants than health coverage for active employees because typically the employer pays all or a part of the premium for active employees, while COBRA participants generally pay the entire premium themselves. COBRA is ordinarily less expensive, though, than individual health coverage. Those who are

subject to COBRA include group health plans for employers with 20 or more employees on more than 50 percent of its typical business days in the previous calendar year. Both full and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction of an employee, with the fraction equal to the number of hours that the part-time employee worked divided by the hours an employee must work to be considered full time.

Cities must notify its health plan administrator if the city has 20 or more full-time employees (or a combination of full-time and part-time that together could constitute 20 full-time) so that it can offer COBRA insurance to those who are entitled. For more information, go to: http://www.dol.gov/ebsa/faqs/faq_consumer_cobra.HTML

FEDERAL APPEALS COURT ARTICULATES STANDARDS GOVERNING REASONABLE SUSPICION TO MAKE A STOP FOR IMMIGRATION VIOLATIONS

In a case that concerns the constitutionality of a Border Patrol stop near Rio Grande City, just 500 yards from the Texas/Mexico border, the United States Court of Appeals for the Fifth Circuit concluded that proximity to the border without additional factors does not give agents the reasonable suspicion necessary to pull a vehicle over.

In *U.S. v. Rangel-Portillo*, a Border Patrol agent followed a vehicle out of a Wal-Mart parking lot that is well-

known as an area where illegal aliens were often smuggled into Texas from Mexico. The agent claimed he followed the vehicle because he believed the passengers looked suspicious.

When the vehicle later passed the agent on the highway, the agent noticed that the driver looked at him and made eye contact, but that the three passengers in the backseat were “stone-faced” and looked straight ahead. Though the backseat passengers were all wearing their seatbelts, the agent felt as though “the passengers didn’t look at him enough and that the driver looked at him too much.” After following the vehicle for a couple miles, the agent noted that the backseat passengers never once conversed with each other and were sweating “pretty bad.” He also observed that the passengers appeared “very stiff” and that there were no Wal-Mart shopping bags in the vehicle.



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EDUCATIONAL OPPORTUNITIES

September 16th: Alan is presenting “Your How-to Guide for Creating a More Scenic City” alongside former Houston City Attorney Jonathan Day at a seminar on Current Issues in Local Government Sign Regulation. The seminar will take place in Austin.

In consideration of all these factors, the agent decided to pull the vehicle over and conduct an immigration check, resulting in the discovery that all three backseat passengers were illegally in the United States. As a result of the stop, the driver was charged with unlawfully transporting undocumented aliens.

The driver, Mr. Rangel-Portillo, filed a motion to suppress the evidence that the agents obtained as a consequence of the stop, arguing that the agents lacked reasonable suspicion to stop his vehicle and therefore the evidence they recovered was inadmissible. The district court denied the motion. On appeal, the Circuit Court reversed, holding that the agent lacked reasonable suspicion to pull-over Rangel-Portillo's vehicle, therefore the stop was illegal under the Fourth Amendment to the U.S. Constitution.

The Circuit Court reasoned that the proximity of the stop to the border does not, without additional factors, constitute reasonable suspicion to stop and search an individual's vehicle. Furthermore, the reasons provided by the agent for pulling over the vehicle were all legal activities that do not combine with the vehicle's proximity to the border to grant the agent reasonable suspicion. The Court stated factors that do give rise to a reasonable suspicion to stop a vehicle for possible immigration violations include: driving erratically in response to observing an officer's presence; displaying the usual characteristics of a vehicle transporting illegal aliens; driving at a suspicious time; or when the officer receives a tip from an anonymous informant. Since, none of the previous factors were present in this case, the stop was unconstitutional.

CLIENT NEWS

Salado Art Fair—On August 7th and 8th, the 44th Annual Salado Art Fair will take place from 9 a.m. until 5 p.m. at Pace Park in Salado. The fair will feature plenty of art, live music, and food. Admission is \$5. For more information visit www.salado.com.



INTEGRITY AT CITY HALL

Q: Who can request an opinion from the Texas Attorney General?

A: The Attorney General (AG) is prohibited by Government Code § 402.045 from giving a written opinion to anyone other than an “authorized requestor,” those being:

- The Governor
- The Head of a Department of State Government
- The Head or Board of a Penal Institution
- The Head or Board of an Eleemosynary Institution (Note: Eleemosynary institution means a nonprofit institution organized and operated for charitable purposes whose net income does not inure in whole or in part to the benefit of shareholders or individuals)
- The Head of a State Board
- A Regent or Trustee of a State Educational Institution
- A Chairperson of a Committee

of the Texas House of Representatives or the Senate.

- A County Auditor Authorized by Law
- The Chairman of the Governing Board of a River Authority

District Attorneys and County Attorneys can request AG opinions on questions relating to actions in which the State is interested. “Proper legal authorities” can also request AG opinions on questions relating to the issuance of bonds that require AG approval.

If a person other than an authorized requestor wants an AG opinion, their best course of action would be to approach someone mentioned above and have them request an opinion on their behalf.



ABOUT THE FIRM

On June 25th and 26th the Bojorquez Law Firm was a proud sponsor of the 17th Annual Fishing Break in Port Aransas benefiting the Austin Firefighters Relief and Outreach Fund.

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