



## ANNEXATION: VILLAGE OF SALADO PREVAILS IN ANNEXATION APPEAL

This month the Village of Salado received a victory at the Third Court of Appeals. In 2006, the Village of Salado annexed property along its eastern boundary, including property owned by Lone Star, pursuant to the voluntary annexation provision of Section 43.025 of the Local Government Code. That section authorizes a majority of the qualified voters living in an area next to Type B cities to petition the city for annexation.

In this annexation, the area had multiple qualified voters, but Lone Star's vacant property was the only property that was actually contiguous to the city. After the annexation, Lone Star filed suit seeking to void the annexation. The trial court ruled in favor of Lone Star, but the Village appealed.

Lone Star argued that Section 43.025 requires that Lone Star consent to the annexation because Lone Star is the only "contiguous" landowner of the "area". The Village argued that the annexation was proper because it followed the letter of the law.

On behalf of Salado, Bovey & Bojorquez argued that (1) "contiguous area" means the entire area to be annexed, not just those tracts that directly border the city; (2) the entire contiguous area may be annexed as a unified tract; and (3) the plain language of the voluntary annexation statute does not require the consent of each bordering landowner.

The court of appeals held that Section 43.025 does not distinguish between "voters" who are on the border of the city and those who are not. The statute does not require unanimous consent and does not provide an exception where one landowner owns all of the contiguous property and does not consent. The court held

that the entire area is used to determine whether the area is contiguous, not just one tract. The court of appeals reversed the district court and rendered judgment that the annexation was valid; and rendered the matter back to the District Court to determine the award of attorney's fees to the Village.

## LEGAL Q&A

**Question:** Who is the "Canvassing Authority" for municipal elections?

**Answer:** The City Council is the canvassing authority. The mayor is the presiding officer even if the mayor is a candidate. Election Code 67.002.

## TEAM MEMBER SPOTLIGHT: TREY JACKSON

We are proud to welcome Trey Jackson. Trey guides the firm's municipal clients through the intricacies of Environmental Law, with an emphasis on water, sewer, solid waste, and utilities. After graduating with a degree in Economics from the University of Texas, Trey worked as a Regulatory Analyst for the Lower Colorado River Authority (LCRA) concentrating on matters before the Public Utility Commission (PUC) and Texas Commission on Environmental Quality (TCEQ).

Prior to joining the firm, Trey served as a Staff Attorney with the TCEQ's Environmental Law Division. During his tenure with the TCEQ, Trey represented the Executive Director on water utility and district matters before the Commission and the State Office of Administrative Hearings (SOAH). Trey is also licensed in the Western District of Texas federal court and has prior experience in civil litigation at an Austin law firm. Trey received his Juris Doctor from St. Mary's School of Law in San Antonio.

In addition to his focus on Environmental and Utility matters, Trey also provides general City Attorney services.



**DALLAS COURT OF APPEALS RULES PERSONAL BLACKBERRY COMMUNICATIONS NOT SUBJECT TO THE PIA**

In a case involving open records requests for e-mails of the Mayor and various employees of the City of Dallas under the Texas Public Information Act (PIA), the Fifth Court of Appeals in Dallas ruled in favor of the City of Dallas. The dispute involves whether the Mayor’s Blackberry e-mails that never went through the City server are “public information” under the PIA. The trial court ruled in favor of the Dallas Morning News, requiring that the City had to produce all non-exempted e-mails, “including e-mail of the Mayor and other city officials and employees to or from Blackberry or similar devices, or to or from e-mail accounts other than those with City Hall addresses, made in connection with the transaction of official business, regardless of whether such e-mails passed through or were processed by City e-mail servers.” The City appealed the trial court’s decision.

*Amicus Curiae* briefs (Friend of the Court briefs) were filed by interested parties on both sides of the issue. In December 2008, Bovey & Bojorquez, LLP filed an amicus curiae brief in support of the City of Dallas on behalf of several Texas cities and city officials. The Court of Appeals held oral arguments in January 2009.

On April 9<sup>th</sup> 2009, the Dallas Court of Appeals reversed the trial court’s ruling and ruled that “a municipal governing body *is* a “governmental body,” but an individual Mayor or City employee *is not* a “governmental body” for purposes of the PIA.” The PIA defines “public information” as “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a *governmental body*; or (2) for a *governmental body* and the *governmental body* owns the information or has a right of access to it.”

The Dallas Court of Appeals also held that the City did not waive its ability to withhold the e-mails just because the City did not seek an Attorney General ruling regarding the requested records. The court determined that because the City was not claiming any exceptions to the PIA, it was not required to seek an Attorney General

open records ruling. The City did not claim an exception to the PIA because the City did not consider the Blackberry e-mails “public information” subject to the PIA in the first place. This Court’s ruling indicates that it may not consider the Blackberry e-mails “public information” either. However, because there are still unresolved fact issues in this case, the appeals court did not make a final ruling and sent the case back to the trial court for a decision based on a more thorough fact inquiry.

**CLIENT NEWS**

- The City of Dripping Springs Founder’s Day Festival was April 17—April 19.
- City of Brenham—The 119th Maifest will occur on May 8 and 9. Maifest features parades, pageants, food and fun. [www.maifest.org](http://www.maifest.org)
- The Village of Webberville’s 8th Annual Easter Egg Hunt was on April 4.



**Mayor Hector Gonzales of Webberville.**

