

# TOP LEGAL ISSUES

## 2019 TML Small Town Conference

Presenters:

**Wayne K. Olson and Mick McKamie**

Taylor, Olson, Adkins, Sralla & Elam, L.L.P.

6000 Western Place, Suite 200

Fort Worth, Texas 76107

(817) 332-2580

Email: [wolson@toase.com](mailto:wolson@toase.com)

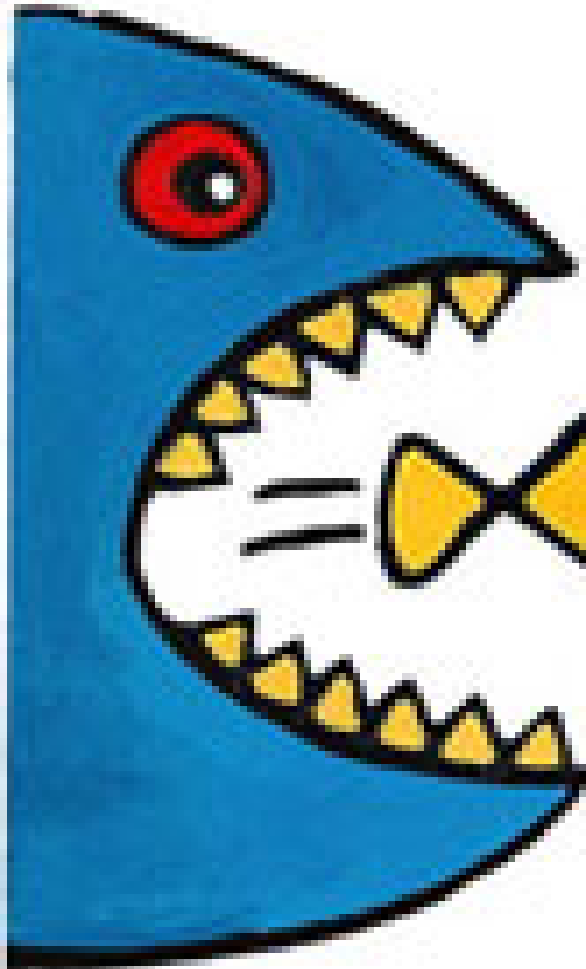
[mmckamie@toase.com](mailto:mmckamie@toase.com)



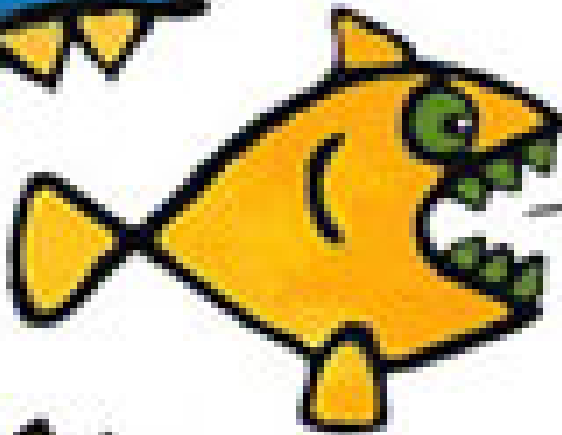
Where do cities get their  
authority?

# Authority

**Federal**



**State**



**Local**



# Home Rule Authority

A home rule city may do anything authorized by its charter that is not specifically prohibited or preempted by the Texas Constitution or state or federal law.

# General Law Authority

A general law city has no charter and may only exercise those powers that are specifically granted or implied by statute.

# General Authority of Cities Under Local Government Code

- 51.001 All cities may adopt ordinances for the good government, peace or order
- 51.012 Type A – not inconsistent with state law that is necessary for the government, interest, welfare or good order

# General Authority of Cities Under Local Government Code

- 51.032      Type B – not inconsistent with state law that governing body considers proper for the government
- 51.051      Type C – mirrors either Type A or Type B based on population or assessed value

# Specific Authority for General Law Cities

- Local Government Code Chs. 22, 23, and 24





# Specific Authority for Home Rule Cities

- Texas Constitution Article XI, Sec. 5
- Local Government Code Chapter 9
- Local Government Code Chapter 26

# Example of Differences Between Home Rule and General Law

- Sex offender residency
  - Cities adopted restrictions near schools, parks, places where children gather
  - TX AG OP GA-0526, Home Rule can regulate
  - Texas Voices for Reason and Justice sued general law cities only

# Sex Offender Residency

- September 1, 2017 legislature adopted LGC § 341.906, distance up to 1,000 feet
- Supreme Court ruled cases moot

# More Examples of Differences in Authority

- Nuisances
  - Type A 217.002
  - Type B 217.022
  - Home Rule 217.042

# Conflicts of Interest

Chapter 171	Financial interest
Chapter 176	Conflicts Disclosure Statements/Questionnaire
Form 1295	Certificate of Interested Parties

# Contracting Issues

Chapter 2270, Government Code

- Boycott Israel

Section 2252.152, Government Code

- Iran, Sudan, or a foreign terrorist organization

# Open Meetings

- Discussions of public business outside of a posted meeting – daisy chaining issues
  - *State of Texas v. Doyal*, Texas Court of Criminal Appeals
    - knowingly conspire to circumvent unconstitutionally vague on its face
  - 2019 SB 1640 prohibited series of communications

# Annexation

- Legislature turned annexation on its head in 2017
- Tier 1 and Tier 2 cities < or > 500,000
- Tier 2 – only voluntary annexations
- HB 347 – 2019 ???



# Personnel

- Applicants with a criminal record
  - Should you hire them?
    - Not automatic disqualifier
    - Individualized determination

# Social Media

According to a recent poll conducted by CareerBuilder, 51% of employers who research job candidates on social media said they've found content that caused them to not hire candidates.



# Social Media

- A job applicant tweeted:

“Cisco just offered me a job! Now I have to weigh the utility of a fatty paycheck against the daily commute to San Jose and hating the work.”

- The tweet caught the attention of a Cisco partner who responded:

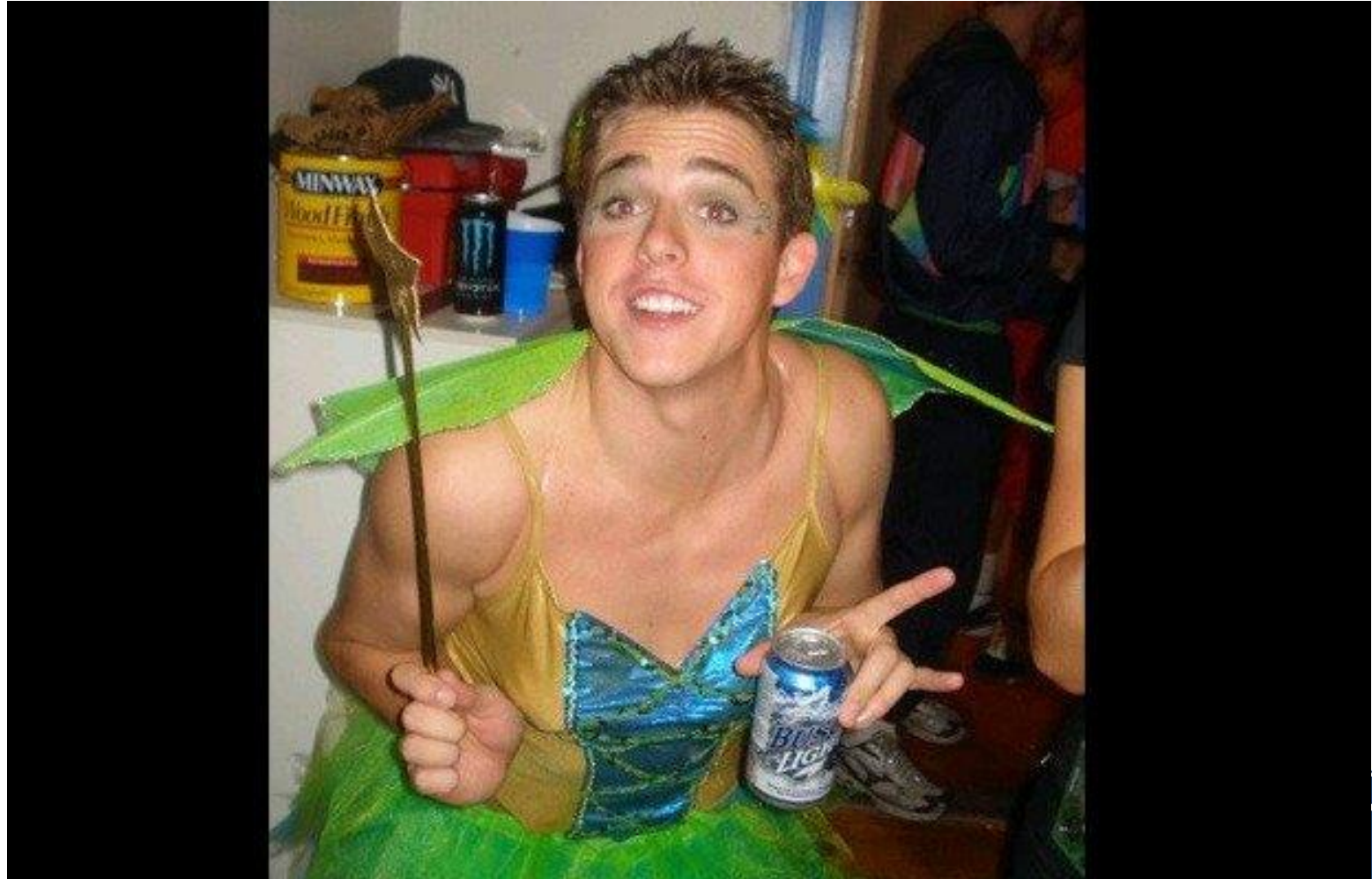
“Who is the hiring manager. I’m sure they would love to know that you will hate the work. We here at Cisco are versed in the web.”



# Social Media

Kevin Colvin thought he could pull a fast one on his manager while interning at Anglo Irish Bank. Colvin told his supervisor, Paul Davis, that he was going to miss work due to a "family emergency." Turns out his "family emergency" was a Halloween party. Davis discovered as much after Colvin posted a questionable image on his Facebook page.

# Social Media



# Social Media

## Employee fired from Taco Bell for licking shells



A photo of an unnamed employee licking Taco Bell shells caused disgust on social media. / FACEBOOK

# Social Media

- Do you have to hire them if they're stupid on social media?
  - No
- Can you fire them?
  - No

# Social Media

- First Amendment rights
- Can do stupid and embarrassing things as long as they don't identify with the city
- Can speak their minds about political issues
  - Criticize council?
  - Can't harass or discriminate



# Guns and Knives

- May not regulate discharge of firearms at sport shooting range
- May not regulate discharge of shotguns and other weapons on tract 10 acres or larger and more than 150 feet from residence

# Guns and Knives!

- May not regulate keeping of firearms or ammunition
- H.B. 905
  - 2015 legislature added knives



# Guns in City Buildings

- Government meeting
- Courtroom – KP-0047 (2015)
- Posting of signs

# Red Light Cameras

Texas Transportation Code Chapter 707



# More Questions?

