Texas Municipal League
Legislative UPDATE

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Fifth Circuit Court of Appeals: Voter ID Law has a "Discriminatory Effect"

Last week, a three-judge panel of the Fifth Circuit Court of Appeals unanimously held that the Texas voter ID law has a "discriminatory effect" and therefore violates the federal Voting Rights Act. The opinion in *Veasey v. Abbott* is the latest in the long-running legal battle over Texas' voter ID legislation, which was signed into law in 2011.

The Fifth Circuit's decision comes after the state appealed a federal district court judge's 2014 ruling that the voter ID law was enacted with a racially discriminatory purpose, has a racially discriminatory effect, is an unconstitutional "poll tax," and unconstitutionally burdens the right to vote.

The Fifth Circuit Court of Appeals partially agreed, holding that the law has a discriminatory impact on minority voters because minority voters are more likely to lack the identification necessary to vote. As a result, the court held that the voter ID law violates Section 2 of the Voting Rights Act, which prohibits a state from imposing a "voting qualification or prerequisite to voting or standard, practice, or procedure . . . which results in a denial or abridgement of the right of any citizen . . . to vote on account of race or color."

Although the appeals court upheld the district court's conclusion that the voter ID law has a discriminatory effect, the court overturned the district court's determinations that the law was enacted with a racially discriminatory purpose and constitutes an impermissible poll tax. The court of appeals remanded the case back to the district court to evaluate the "discriminatory purpose" claim in light of different legal standards laid out in the opinion, as well as to determine the proper remedy associated with the "discriminatory effect" determination under Section 2 of the Voting Rights Act.

Following the decision, Governor Abbott issued a press release promising that "Texas will continue to fight for its voter ID requirement to ensure the integrity of elections in the Lone Star State." Given this statement, it is likely that the state will fight the ruling of the Fifth Circuit, although the details of a possible appeal are unclear at this time. League staff will monitor and report on the case as it develops. Texas cities preparing for November elections should consult with their city attorney about the decision immediately.

Prop 7 Would Provide Additional Transportation Funding

Proposition 7 is a proposed constitutional amendment authorized by S.J.R. 5 (Nichols, R – Jacksonville). It would authorize a new source of transportation funding for the State of Texas by dedicating a portion of the general sales and use tax and the motor vehicle sales tax to the state highway fund. (A more detailed summary of the proposition is available here.)

While city officials may believe that this, or any, constitutional amendment is important, state law prohibits a city from spending public funds to support or oppose *any* election measure, including a statewide constitutional amendment election. (For detailed information on the prohibition, visit the Texas Ethics Commission's website.)

Please note that *nothing prohibits an individual, on his or her own time and not using city resources, from advocating for a measure*. To that end, Move Texas Forward is an organization of businesses and others that is committed to educating and informing Texas motorists, taxpayers, employers, and voters about the importance of investing in transportation infrastructure. The group has a website that allows individuals to pledge their support for Prop 7.

Utility Relocation: Court Strikes a Blow Against Cities

Earlier this week, the Dallas Court of Appeals struck a blow to the City of Richardson in *Oncor Electric Delivery Company v. City of Richardson*. The court overturned a trial court ruling that had affirmed municipal authority to require private utilities to relocate their facilities for public projects.

The dispute began in 2010 when, pursuant to franchise terms, the city requested that Oncor relocate its utility poles in 32 alleys for reconstruction and widening. Even though the franchise required the relocation of Oncor's facilities – at Oncor's cost – when required for city construction projects, Oncor refused to do so.

In 2012, the city filed suit in state district court in Dallas to enforce the franchise provisions and – alternatively – to enforce the common law rule on relocation. The common law rule has come from court opinions over the years that have concluded that the public's right to use streets is paramount to a private company's.

In 2014, the trial court ordered summary judgment in favor of the city on all issues. This week, the appeals court reversed and rendered judgment in favor of Oncor. Why the reversal? It appears that procedural issues kept the trial court from considering certain documents offered by Oncor after the hearing, but the appellate court stated it could review the documents under a doctrine called "judicial notice."

During the period in which the dispute occurred, Oncor had filed a rate case with the Public Utility Commission (PUC) seeking changes in its rates, operations, and services as set forth in its "tariff." The PUC defines "tariff" as "the schedule of a utility…containing all the rates and charges stated separately by type of service, the rules and regulations of the utility, and any contracts that affect rates, charges, terms or conditions of service."

In 2011, Oncor and the city reached a settlement on the rate changes, and the city enacted an ordinance accepting a proposed settlement with new tariff rates. There was a dispute at the trial court about whether the tariff documents were properly in evidence. The appeals court concluded that they were, and that the city had agreed to the tariff in the 2011 settlement ordinance. Those issues were the deciding factors in the case because the tariff had a standard term providing that "the *entity requesting* such removal or relocation, *shall pay* to Company the total cost of removing or relocating such Delivery System facilities."

The case presents a bad result, not only for the City of Richardson but for all cities that are served by investor owned electric utilities. That's because the case seems to do away with the common law rule and replace it with a new interpretation of the language in a utility's tariff. (All investor owned electric utility tariffs have the offending language.) Of course, a state statute still mandates that an electric utility to pay for relocations for the widening or straightening of a *street*. But, according to the court, an *alley* isn't a street.

The ultimate result is that, for projects that don't involve the widening or straightening of a street, cities may have to pay for electric utilities to relocate their facilities.

The League, along with the Steering Committee of Cities Served by Oncor coalition, filed an amicus brief in support of the City of Richardson. League staff will continue to monitor the case for additional developments.

Payday Lending Clearinghouse Updates

The League's "Payday Lending Clearinghouse" webpage, available at www.tml.org/payday-updates, includes information related to the regulation of payday and auto title lenders. It is updated from time-to-time to reflect recent developments. Interested city officials should note that, this week, Corpus Christi became the 26th Texas city to adopt business regulations governing payday and auto title lenders. During the weeks preceding the city's adoption of the ordinance, the Consumer Service Alliance of Texas (CSAT), the statewide trade association for credit access businesses in Texas, made numerous comments on the city's actions. Visit the web page for additional details.