

For the International Municipal Lawyer's Association - IMLA's 5 things to know for June 8th

1. The Utah Supreme Court addressed a perplexing question involving government lawyers. An attorney was hired by a city into its merit system. She was promoted in 1998 and required to sign a waiver if she accepted the promotion. The waiver noted that the position into which she was promoted was an "at will" position. In litigation stretching back to 2007 when she was terminated, the Supreme Court noted that it could not disturb lower court rulings not before it including a decision that she was a merit system employee or whether she could waive that status. Instead, the court concluded that she had not specifically challenged the lower court determination that she was estopped from bringing the action based on having accepted the promotion on the basis of the waiver.

https://www.utcourts.gov/opinions/supopin/Howick%20v.%20Salt%20Lake%20City%20Corp.20180525_20150738_20.pdf

2. In Texas, that state's Supreme Court recently addressed the perplexing question of when immunity applies under the proprietary vs governmental dichotomy. In the same case it had previously concluded that the dichotomy applied to breach of contract actions filed against a city. In this follow up case, the court concluded that leasing property on a lake that it built as a reservoir amounted to a proprietary function. The really odd conclusion in this case comes from the court's conclusion that if leasing the property is a governmental function and the breach is for a proprietary reason the city is immune, but if the leasing is for a proprietary purpose its breach for governmental reasons is not immune. The test it concludes comes from the purpose of the lease not the breach. Seriously, I'm not making this up.

<http://www.txcourts.gov/media/1441779/170198.pdf>

3. In the 7th Circuit a panel started their opinion by calling it a hornbook case on how to waive an issue on appeal and concluded by reminding that attorneys need to follow the rules because the rules are there for a reason. I'm not clear on who the attorneys were in this case, but among their arguments below was a claim that an informant's statements as to probable cause were hearsay and should be excluded and on appeal completely abandoned their arguments below to assert that there was a disputed fact as to whether the informant actually existed and also asserted a *Brady* claim that fingerprint evidence should have been procured even though it was never asked for. The panel referred to their arguments as irrational – a sure sign they weren't going to win. The case was a Section 1983 claim against officers based on a search and arrest.

<http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2018/D06-06/C:17-2073:J:Gilbert:aut:T:fnOp:N:2166644:S:0>

4. In the 9th Circuit and one that didn't turn out so well for the police, a deputy was sued for violating a coach's 4th Amendment rights when the deputy searched the coach's office using a K-9 without a warrant or probable cause. The case is somewhat unique as the coach sought an injunction in state court against the deputy based on the illegal search which was granted based on a finding that the deputy had conducted an illegal search. The 9th Circuit panel in a 2-1 decision found the state court decision preclusive as to the issue of whether the Plaintiff's 4th

Amendment rights were violated. Oh, BTW, the deputy was upset with the coach because the coach had benched the deputy's son during a football game. Seriously, I'm not making this up.

<http://cdn.ca9.uscourts.gov/datastore/opinions/2018/06/06/16-16764.pdf>

5. In Arizona, a stunning win for Brad Holm, Phoenix City Attorney and his team in what must be the first case decided after Masterpiece Cake addressing claims that a business can discriminate based on the sincerely held religious views of its owners against gays who wish to marry. The court described the issue as one where the owners "want to be able to legally refuse to create custom made merchandise for all same-sex weddings. Additionally, [they] desire to post a public statement explaining their religious beliefs." An Arizona intermediate appellate court concluded that the business could not use religion to avoid complying with the city's anti-discrimination laws.

<http://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2018/1%20CA-CV%2016-0602.pdf>

We're already getting ready for our conference in Houston. We plan to have a program on disruptive technologies – are dockless bicycles worrying you. Find out what's the rub. Register today. Get more from IMLA by joining. Not a member? Contact us. Sign up at www.imla.org . Have a great day and make today an inspirational one.