

Texas Public Policy Foundation

Local Government

Legislator's Guide to the Issues | 2017-18

Local Ordinance Integrity



The Issue

Local governments are held accountable for violations of civil law only when a group of injured Texans happen to have sufficient time, money, energy, and interest to challenge the violation in court.

Texas' local governments violate the law if they adopt a charter amendment or ordinance that is “inconsistent with the Constitution of the [Nation, or the] State, or of the general laws enacted by the Legislature,” or if they transgress another established charter provision or ordinance. Currently however, enforcement of civil law against municipal overreach is almost exclusively handled by private parties. There is no general grant of statutory standing or authority that provides for public enforcement when local governments violate civil laws.

- **Violations of Federal Law:** The state cannot legally challenge cities that adopt their own policies in violation of federal law, e.g., “sanctuary cities.”
- **Violations of State Law:** The state cannot intervene when municipal ordinances violate state laws. For example, Texas Health & Safety Code Section 361.0961 prohibits cities from enacting certain types of plastic bag restrictions. Many of the municipal plastic bag bans in place throughout the state run afoul of this statute. Yet, rather than allowing the state to step in and enforce its laws or resolve the interpretation issue, current statute requires private citizens and businessmen to challenge the cities’ plastic bag bans one-by-one in court.
- **Violations of Local Law:** Individual Texans are required to wage legal battles to enforce municipal charters. In 2010, the Houston City Council used legally-insufficient language to misrepresent a drainage fee charter amendment to voters. Later, in 2014, the council refused to put the controversial “HERO” ordinance on the city’s ballot, in violation of Houston’s referendum procedures. In both instances, Houstonians had to pay tens—if not hundreds—of thousands of dollars to take the cases before the Texas Supreme Court and mandamus city officials to force them to comply with the law.

The rule of law is fundamental to our constitution-based society, and must be upheld. In America, this is largely accomplished through the separation of powers; if the legislative branch overreaches or enacts an illegal law, the judicial branch has the power and responsibility to strike it down. However, a court cannot act unless and until the case is before it. Thus, someone must bring suit, charging the city with a legal violation. Currently, Texas puts the burden on private citizens to find sufficient time, money, and energy to enforce the rule of law and hold their cities accountable. Another avenue is needed to ensure accountable governance.

The Facts

- Cities throughout the state are passing bag ban restrictions that arguably violate state law. Texas Health & Safety Code Section 361.0961(a) prohibits ordinances that “assess a fee or deposit on the sale or use of a container or package,” or “prohibit or restrict, for solid waste management purposes, the sale or use of a container or package.” In 2014, then-Attorney General Greg Abbott issued an official opinion regarding pnm Section 361.0961, stating that municipal plastic bag bans were subject to the statute, and could not be enacted for waste management purposes. Despite this, many cities have plastic bag bans in place. Dallas repealed its ordinance in the face of private legal action, and the Laredo Merchants Association is currently paying extensive legal fees to hold their city accountable as well.

continued on back

2017-2018 LEGISLATOR'S GUIDE TO THE ISSUES

- Houstonians had to pay tens of thousands of dollars to force the city to comply with its own charter procedures and requirements. In 2014, Houstonians gathered approximately 30,000 signatures to challenge an Equal Rights Ordinance passed by the City Council. The city refused to recognize the legitimacy of the petition, or to put the ordinance on the ballot. Ultimately, residents challenged the city before the Texas Supreme Court in *In re Jared Woodfill*. The Court issued a *writ of mandamus* compelling city officials to either repeal the ordinance, or put it on the ballot.
- Houstonians had to fund a court case to challenge Houston's deceptive and misleading ballot language. The Houston City Council passed a drainage fee charter amendment in 2010, putting it before the voters for approval. However, the city's ballot description of the amendments failed to mention its key characteristic: the drainage fee. Reviewing the amendment in the 2015 case *Dacus v. Parker*, the Texas Supreme Court held that Houston failed to identify the measure for what it is, and thus misled voters as a matter of law.
- In October 2015, Dallas County Sheriff Lupe Valdez announced a new department policy to determine whether illegal immigrants should be detained for ICE on a "case-by-case" basis. Governor Greg Abbott chastised Sheriff Valdez for her policy, calling on her to comply with all ICE detainer requests, regardless of her "case-by-case" opinion. However, even the governor could not give teeth to his request; instead, he simply detailed the legislation he planned to advance to force the sheriff to comply with federal law.
- Per Article 4, Section 22 of the Texas Constitution, and Section 402.021 of the Texas Government Code, the attorney general has the power and responsibility to "represent the State in all suits and pleas," and to "prosecute and defend all actions in which the state is interested."

Recommendation

Reaffirm and refine the attorney general's power to intervene in instances of local government overreach.

Resources

[Local Ordinance Integrity: Written Testimony to the Senate Intergovernmental Relations Committee](#) by James Quintero, Texas Public Policy Foundation (Dec. 2015).

