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Austin, TX**TEXAS GOVERNMENT CODE, CHAPTER 554
(Everyone Hates a Snitch, Especially the Supreme Court)
(2013 Update)****JOHN JUDGE**John Judge
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Following is a section by section reprint of the Texas Whistleblower Protection Act, GOVT. CODE, Chapter 554, together with pertinent case summaries construing the various sections. This is an update of a paper that was first presented to the School Law Section of the State Bar in 2000, revised for presentation to the section on Suing and Defending Governmental Entities in 2004, and the Attorney General's symposium on Governmental Liability in 2007. Special thanks to Caroline Taylor for assistance with citations and proof reading.

§ 554.001. DEFINITIONS.

In this chapter:

(1) "Law" means:

- (A) a state or federal statute;**
- (B) an ordinance of a local governmental entity; or**
- (C) a rule adopted under a statute or ordinance.**

(2) "Local governmental entity" means a political subdivision of the state, including a:

- (A) county;**
- (B) municipality;**
- (C) public school district; or**
- (D) special-purpose district or authority.**

(3) "Personnel action" means an action that affects a public employee's compensation, promotion, demotion, transfer, work assignment, or performance evaluation.

(4) "Public employee" means an employee or appointed officer other than an independent contractor who is paid to perform services for a state or local governmental entity.

(5) "State governmental entity" means:

(A) a board, commission, department, office, or other agency in the executive branch of state government, created under the constitution or a statute of the state, including an institution of higher education, as defined by Section 61.003, Education Code;

(B) the legislature or a legislative agency; or

(C) the Texas Supreme Court, the Texas Court of Criminal Appeals, a court of appeals, a state judicial agency, or the State Bar of Texas.

Law

Texas Water Development Board v. Neal, ___ S.W.3d ___, ___(No. 03-09-00459-CV Tex. App. – Austin 2010) rejected an employee's argument that she was entitled to protection under the Whistleblower Act for reporting alleged violations of the Board's internal hiring practices, which she alleged did not comply with section 21.452 of the LABOR CODE. See *Harris County Precinct Four Constable Dept. v. Grabowski*, 922 S.W.2d 954, 956 (Tex. 1996) (holding Whistleblower Act did not apply to reported violations of constable's internal policies); *Ruiz v. City of San Antonio*, 966 S.W.2d 128, 130 (Tex. App.-Austin 1998, no pet.) (affirming dismissal of claims regarding violations of police department's internal policies); see also *City of Houston v. Kallina*, 97 S.W.3d 170, 174-75 (Tex. App.-Houston [14th Dist.] 2002, pet. denied) (on reh'g en banc) (same). Assuming arguendo that the Board's internal hiring practices amounted to "a rule adopted under a statute or ordinance," see Tex. GOV'T CODE ANN. § 554.001(1), the fact remains that the Board does not regulate under or enforce chapter 21 of the LABOR CODE, including section 21.452. See Tex. LAB. CODE ANN. §§ 21.0015, .003. Indeed, the legislature has expressly charged the Commission, not the Board, to review personnel policies to determine compliance with Chapter 21. See id. § 21.453 (West 2006).

University of Houston v. Barth, 365 S.W.3d 438 (Tex. App. – Houston [1st Dist.] 2011) “[T]estimony that the policies ‘that are established for the University of Houston System as a whole,’ i.e., the System Administrative Memorandum (SAM), provides some evidence that the administrative policies in the SAM are rules or regulations adopted by the Board of Regents. Because the Board has legislative authority to enact rules and regulations, the administrative rules set forth in the SAM, pursuant to the Board's authority, are laws for purposes of Whistleblower Act. See TEX. EDUC. CODE ANN. § 111.35; TEX. GOV'T CODE ANN. § 554.001(1) (C); *Fazekas*, 565 S.W.2d at 304; see also *Barth*, 265 S.W.3d at 625 (Alcala, J., dissenting) (concluding that the SAM is a law under the Whistleblower Act). We conclude that, as defined by the Whistleblower Act, Barth reported a violation of the law when he reported Stutts's SAM violations.

Local Governmental Entity

Ohnesorge v. Winfree Acad. Charter Sch., 328 S.W.3d 654, 656-57 (Tex. App., 2010) holds that a charter school is not a “Local Governmental entity” within the meaning of the §554.001 (2) definition. The employee claimed that that open-enrollment charter schools are “public schools.” See Tex. EDUC.CODE ANN. § 12.105 (West 2006) (“An open-enrollment charter school is part of the public school system of this state.”); 19 Tex. ADMIN. CODE § 100.1011(3) (Tex. Educ. Agency, Definitions) (defining “charter school” as “[a] Texas public school operated by a charter”). “However, the issue is not whether an open-enrollment charter school is a “public school” but whether it is a “local governmental entity” by being a “public school district” or other “political subdivision.”

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