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Supreme Court of Texas Update

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SUPREME COURT OF TEXAS UPDATE

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September 1, 2014 – August 31, 2015

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SUPREME COURT OF TEXAS UPDATE

Phil Johnson
Justice
Supreme Court of Texas

I. SCOPE OF THIS ARTICLE

This article surveys cases that were decided by the Supreme Court of Texas from September 1, 2014 through August 31, 2015. Petitions granted during that time but not yet decided are also included.

II. ADMINISTRATIVE LAW

A. Agency Review of Administrative Decisions

1. Thompson v. Tex. Dep't of Licensing & Regulation, 455 S.W.3d 569 (Tex. December 19, 2014) [13-0686].

At issue in this case was whether the Texas Department of Licensing and Regulation correctly applied a statute when revising an administrative law judge's finding that an occupational license applicant should receive a license. John Thompson applied for a tow truck operator's license after he was released from military prison. The Department issued a proposed denial of Thompson's application based upon his conviction. Thompson received a hearing in front of an administrative law judge, who weighed the evidence and found Thompson to be rehabilitated as required by Texas Occupations Code Section 53.023(a)(5). The Department, in turn, revised the administrative law judge's findings of fact and conclusions of law to modify its proposed denial of Thompson's application. Specifically, the Department disagreed with the administrative law judge's finding that Thompson was rehabilitated, instead deciding that Thompson's failure to admit to the crime for which he was convicted precluded him from being rehabilitated.

The trial court reversed the Department's denial on the grounds that the alteration of the findings of fact and conclusions of law was unlawful. The court of appeals reversed the trial court's judgment to uphold the Department's original decision, finding that the Department sufficiently justified the alteration.

The Supreme Court reversed the court of appeals' judgment, holding that the Department wrongly applied the statutory definition of "rehabilitation" in denying Thompson's application. The Department's requirement that a convict formally confess to the crime in order to be rehabilitated is unsupported by the relevant sections of the Texas Occupations Code or the plain meaning of the term. Because the Department misinterpreted an unambiguous statute, its reading was not entitled to deference.

B. Judicial Review

1. Klumb v. Hous. Mun. Emps. Pension Sys., 458 S.W.3d 1 (Tex. March 20, 2015) [13-0515].

The dispute in this case arises from a determination by the Houston Municipal Employees Pension System that municipal employees who were transferred to a non-profit corporation remained city employees for pension-fund purposes. A board of trustees has exclusive authority to determine all legal and factual questions pertaining to administration of the pension fund and eligibility for membership, service, and benefits. The overriding issue in the case was whether the challenged determination resulted from a permissible interpretation or an impermissible alteration of the statute.

In connection with broader cost-saving measures, the City of Houston formulated a plan to remove a division of employees from the pension system by outsourcing municipal services and related employees to a local government corporation (LGC) that was governed by a board selected by City officials and partially funded by City taxes. The pension board determined that the transferred employees remained under the City's effective control and payroll and therefore fell within the ambit of the statutory definition of "employee," which determines an individual's status as a pension-fund member. In response, the City created a non-profit corporation that would

employ the affected employees and lease them to the LGC for the provision of outsourced municipal services. Once again, the pension board determined that the employees remained pension-system members. Pension plan documents were accordingly amended to reflect that the statutory term “employee” included full-time employees in a City-controlled LGC as well as “any entity controlled, directly or indirectly” by the City.

Several pension-fund members claimed that a separation from municipal service had occurred and, as a result, they were entitled to either begin receiving pension benefits or to defer retirement and cease making mandatory contributions to the pension fund. They sued the pension system and several pension board members, asserting that the pension board’s actions were *ultra vires* and violated their equal protection and due course of law rights. The City intervened, aligning itself with the plaintiffs. Considering the pension system and pension board members’ plea to the jurisdiction, the trial court found jurisdiction to be lacking. The court of appeals affirmed based on the statutory judicial-review bar and the facial invalidity of the plaintiffs’ constitutional claims.

The Supreme Court affirmed, holding that (1) the pension board acted within the scope of its broad statutory authority in construing the term “employee” and (2) the individual petitioners failed to assert viable constitutional claims. Assuming without deciding that the *ultra vires* doctrine is an exception to the statutory ban on judicial review, the Court observed that the pension system’s enabling statute imbues the pension board with unquestionably broad authority to construe the statute, add language deemed necessary, and determine all eligibility issues. Courts may not review the board’s actions in doing so absent a manifest conflict with express statutory terms. The Court determined that no such circumstances were presented here because (1) the statutory definition of “employee” is composed of essential terms that are undefined and (2) the supplemental language the board adopted to articulate its construction of the term “employee” neither inherently nor patently conflicts with the statute. To the extent the pension-fund members and the City alleged that the board’s actions violated a statutorily authorized agreement between the pension system

and the City, such a claim was a breach of contract claim, not an *ultra vires* claim.

The constitutional claims were likewise insufficient to overcome the statutory prohibition on judicial review and sovereign immunity. Even assuming the pension board had treated similarly situated employees differently on prior occasions, the board’s actions were rationally related to at least two legitimate government objectives promoted by the challenged classification:

(1) preserving sources of pension funding that are adequate to meet demands on the fund, and (2) reducing “double dipping” by those under the nominal employment of a third party but who receive salaries and 401(k) contributions originating in dollar-for-dollar reimbursements paid by the City-controlled and tax-funded LGC. The due-course-of-law claims failed due to the absence of a vested right in retirement benefits and pension-fund contributions.

C. Public Information Act

1. Boeing Co. v. Paxton, S.W.3d , 58 Tex. Sup. Ct. J. 1246 (Tex. June 19, 2015) [12-1007].

This appeal concerns one of the exceptions to disclosure under the Texas Public Information Act. The Act generally gives the public the right to access information the government collects. However, the Act excepts from disclosure information “that, if released, would give advantage to a competitor or bidder.” TEX. GOV’T CODE § 552.104. In 1998, The Boeing Company signed a lease with the Port Authority of San Antonio to lease 1.3 million square feet at Kelly Air Force Base for a term of twenty years. Several years after signing the Kelly lease, a former Boeing employee, Robert Silvas, submitted a Public Information Act request to the Port for various Boeing corporate information, including the lease. The Port notified Boeing of the request and its right to seek relief from the Attorney General. Boeing provided a redacted version of the lease to Silvas and filed objections with the Attorney General as to the redacted parts. Boeing asserted that the withheld information is competitively sensitive information regarding its overhead costs at Kelly that would give an advantage to its competitors. The Attorney General, determined the Section 552.104 exception protects the purchasing interests of a

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