

ULTRA VIRES UPDATE

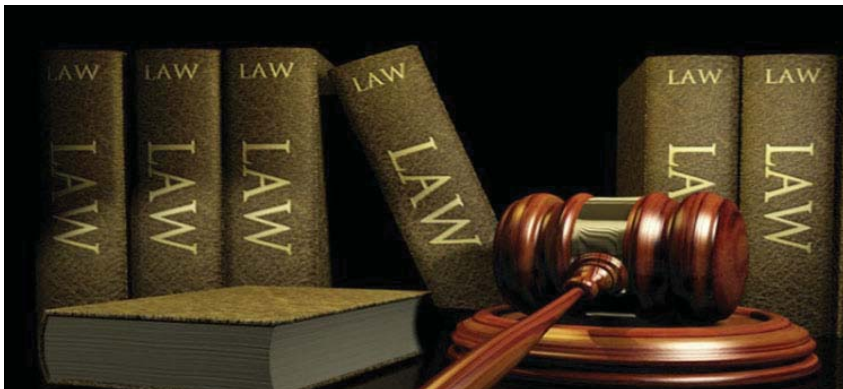


Presented by:

Linda B. Secord
Texas Attorney General's Office

J. Bruce Bennett
Cardwell, Hart &
Bennett, LLP

What does *ultra vires* mean?



BLACK'S LAW DICTIONARY

The phrase “*ultra vires*” traditionally has been understood to mean an act that is beyond the lawfully conferred powers of a corporation or municipality to perform under any circumstances or for any purpose.

What does the Texas Supreme Court think it means?

- Before 2009, the Court rarely used the phrase “*ultra vires*” in connection with suits against the state, its political subdivisions, or the officials employed by, or representing, governmental units.
- But in 2009, the Court began regularly using the phrase in the context of suits against governmental entities and their officials.

Heinrich

- A widow's suit for declaratory and injunctive relief against a pension fund board and its members for allegedly unlawfully reducing her benefits.
- The court held governmental immunity did not bar the widow's suit for prospective injunctive relief against the pension board members in their official capacities based on their alleged violation of statutes governing the pension.
- The court held that *ultra vires* suits couldn't be brought against the state or its political subdivisions, but only against governmental actors in their *official* capacities.
- In doing so, the court created an "*ultra vires*" exception to the rule that an official-capacity suit is, for all practical purposes, a suit against the governmental agency for which the defendant official works or serves.

Heinrich (Con'td)

- To fall within this exception, the suit "must not complain of a governmental officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act."
- The court defined an *ultra vires* claim as "an action to determine or protect a private party's rights against a state official who has acted without legal or statutory authority"
- It did *not* confine *ultra vires* acts to those taken "outside" or "beyond" the agency's jurisdictional authority, and thus outside or beyond the scope of the defendant official's assigned duties.
- The court should have made it clear that "acting without legal or statutory authority" means "acting outside or beyond the governmental agency's jurisdiction."

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Ultra Vires Update

Also available as part of the eCourse

[Current Issues in Administrative Law: APA Rulemaking and Ultra Vires](#)

First appeared as part of the conference materials for the
12th Annual Advanced Texas Administrative Law Seminar session
"Ultra Vires Update"