



Fear the Walking Quorum: TOMA Penalties Return from the Dead

2020 Land Use Conference

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ROSS FISCHER

Ross provides legal counsel to elected officials, candidates, trade associations, corporations, political committees, and public entities. Given his expertise in the area of professional ethics, he is often called upon to conduct investigations on behalf of organizational clients.

Ross is graduate of St. Edward's University and of the University of Texas School of Law, both in Austin.

Ross's experience includes service in numerous capacities:

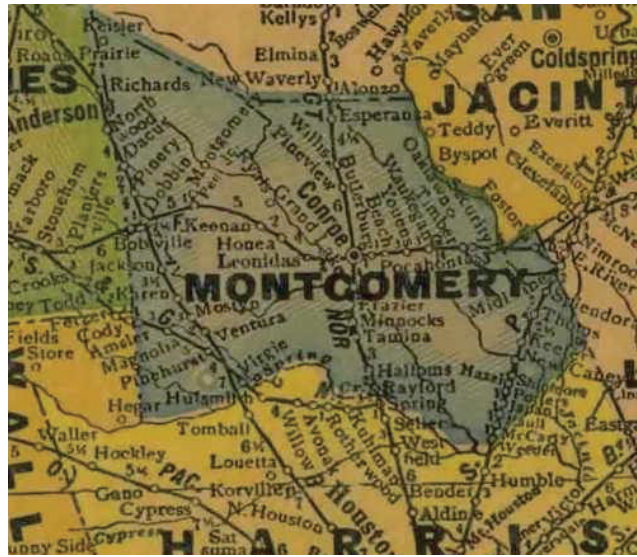
- General Counsel to the State Bar of Texas, the second largest bar association in the nation.
- Chairman of the Texas Ethics Commission, which regulates ethics laws in the political process, including campaign finance, candidates for office, officeholders, and lobbyists.
- Inaugural Chairman of the Legislative and Campaign Section of the State Bar of Texas.
- Clinical professor at the University of Texas School of Law.
- Appointed by the Texas Speaker of the House to serve on the Select Interim Committee to Study Ethics laws.
- Elected to the Board of Directors of the nation's largest electric distribution cooperative.
- Assistant Chief Disciplinary Counsel for the State Bar of Texas.
- The elected Kendall County Attorney, where he served as both the civil advisor and the misdemeanor prosecutor for one of the fastest growing counties in Texas.
- Service as a municipal judge.

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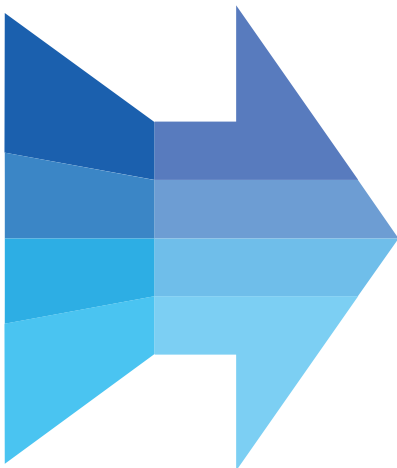
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The Scene of the “Crime”



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Motive



- Local leaders wanted to pass a road bond measure that provided for roadway improvements throughout the county.
- Previous issued had failed
- Previous measure had been opposed by local “tea party” activists
- Some members of the Commissioners Court were motivated to craft a road bond measure that would not draw objections from these local activists

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Actus Reus

- The County Judge and two County Commissioners, working with a local political consultant, negotiated the parameters of a new road bond measure with local “tea party” activists.
- Emails, project lists, and draft resolutions were exchanged between the various stakeholders.
- Ultimately, a “Memorandum of Understanding” was prepared that memorialized the agreement, including the contents of the bond proposal and an agreement that the activists would support the measure.

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Government Code § 551.143

- At the time, Government Code § 551.143 was entitled “Conspiracy to Circumvent Chapter”
- It was an offense for a member of a governmental body to knowingly conspire “to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.”
- Offense was a misdemeanor punishable by \$500 and six months in the county jail.

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