

# Government Immunity: Supreme Court of Texas Addresses Proprietary/Governmental Function Test



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A June 1, 2018, Supreme Court of Texas (“Court”) opinion addressed whether a Texas municipality enjoyed governmental immunity from a terminated lakefront lessee’s lawsuit. See *Wasson Interests, LTD, v. City of Jacksonville, Texas*, 2018 WL 2449184.

The Court holds that the municipality’s leases arose from its performance of a proprietary function, not a governmental function, and therefore governmental immunity did not apply.

The Court had determined in a previous opinion that the proprietary/governmental dichotomy applied to the analysis of whether governmental immunity bars a breach-of-contract claim. In the more recent June 1st opinion, the Court holds that the nature of the function the municipality was engaged in at the time the contract was determinative for invoking governmental immunity. It rejects the argument that the determination should be made at the time of the alleged breach.

By way of background, the City of Jacksonville, Texas, terminated the leases of James and Stacy Wasson (“Wasson”) of City-owned lakefront lots on which the Wassons constructed a seven-bedroom home. The leases restricted the use of the lots to residential. In other words, the lots could not be used to operate a business or commercial enterprise. A violation of these terms would constitute grounds for cancellation of the leases.

Wasson subsequently assigned their leases to Wasson Interests, LTD (“WI”). The entity used the property as a bed-and-breakfast and event center.

Variances were sought from the Lake Jacksonville Advisory Board and the City Council. They were not granted. Nevertheless, WI began use of the property in the proposed manner. The City therefore terminated the leases.

The City later reached an agreement with WI that provided for reinstatement of the leases in exchange for its agreement to rent the property to single families and small groups for period of a month or longer. Further, the use was restricted to private residential activity.

The City again terminated the leases in early 2011. The termination was based on an alleged breach of the agreed terms. WI filed suit in response. The City sought, and was granted, summary judgment by the trial court on the grounds that governmental immunity barred the breach of contract claim.

Wasson argued that governmental immunity does not apply in cases where the municipality is performing in a proprietary function (i.e., executing contracts for leases). The argument was rejected by the Court of Appeals.

This Court initially reversed, remanding the case back to the Court of Appeals to determine whether the leases at issue were proprietary or governmental. On remand, the Court of Appeals determined the leases to be part of the municipality's governmental function, thus governmental immunity applied.

The Supreme Court of Texas for the second time, in the June 1st opinion, reversed the Court of Appeals. It determined the City was acting under a proprietary function when executing lease contracts.

According to the Court, municipalities share the protection of the State's sovereignty when acting as a branch of the state. This protection does not apply when the activities involve acting "in a proprietary, non-governmental capacity." The distinction between the two functions depends upon whether "the relationship, or lack thereof, between the municipality and the state, not the relationship between the municipality and the party bringing suit."

The Court holds that governmental functions generally consist of a municipality's activities in the performance of governmental matters solely for the benefit of the public. By contrast, proprietary functions are "performed by a city, in its discretion, primarily for the benefit of those within the corporate limits of the municipality." These are activities that could be provided by private persons.

The City argued that it was acting in the public interest when it terminated the leases because it was enforcing rules that protect its water supply. However, the Court held that the inquiry should focus on whether municipality was engaged in a governmental or proprietary function when it entered into the leases (as opposed to the point at which the alleged breach took place).

The Court then considered whether the City was acting in its governmental or proprietary capacity when it leased the lakefront lots to Wasson. Applying state law definitions of both functions, it addressed whether:

1. the City's act of entering into the leases was mandatory or discretionary,
2. the leases were intended to benefit the general public or the City's residents,
3. the City was acting on the State's behalf or its own behalf when to entered the leases, and
4. the City's act of entering into the leases was sufficiently related to a governmental function to render the act governmental even if it would otherwise have been proprietary.

In addressing these questions, the Court first determined that the City's decision to lease its lakefront property to Wasson was discretionary. Authorization for a municipality to lease property under the Texas Local Government Code provides that a municipality may lease property.

The Court next found that the leases primarily benefited the City's residents as opposed to non-residents. Therefore, this was likely a proprietary act.

Third, the Court determined that the City acted on its own behalf. It was not acting on behalf of the state by leasing the lakefront property.

Finally, the Court disagreed with the Court of Appeal's determination that the lakefront leases were related to a governmental function. It stressed that simply because a city's proprietary action touches upon a governmental function does not render the proprietary action governmental.

Rather, a city's proprietary action may only be treated as governmental if it is essential to the city government's actions. The Texas Code does identify "waterworks," "reservoirs," and "water and sewer service" as governmental functions. However, the Court reversed the Court of Appeals because it

concluded that the leasing of the lakefront property was not essential to the City's operation or maintenance of the lake. Therefore, it could not be considered a governmental function.

Because of the previous conclusions, governmental immunity did not protect the City from Wasson's suit for breach of the lease agreements. The Court reiterated its earlier holding in this case that the governmental/proprietary dichotomy applies to the determination of whether governmental immunity bars a breach-of-contract claim against a municipality. The nature of the function the municipality was performing when it entered into the contract, not when the alleged breach occurred, must govern that analysis.

A copy of the [opinion](#) can be downloaded here.