

# Texas Supreme Court advisory

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For Wednesday, April 21, 2004

## **ONE ARGUMENT SET WEDNESDAY**

### **... Whether 'plead and implead' statutory language waives home-rule city's immunity**

The argument begins at 9 a.m. in the courtroom in Austin. Each side will have 20 minutes.

03-0878

Judy Tooke and Everett Tooke v. City of Mexia

from Limestone County and the 10th District Court of Appeals, Waco

For petitioners: Brian L. Gibson, Groesbeck, and Robert C. Lyon, Dallas

For respondent: Kathleen French Dow and O. Charles Buenger, Waco

For amicus curiae State of Texas: R. Ted Cruz, Austin

The principal issue in this breach-of-contract case is whether “plead and be impleaded” as used in Local Government Code section 51.075 waives a home-rule city’s immunity. In this suit over a brush-removal contract terminated by the city, the Tookes also argue that Mexia acted in a proprietary function in contracting for their services. The city contracted with the Tookes, who operate a landscaping business, to collect curbside brush for three years. The contract provided that it was renewed automatically each year unless either the city or the Tookes gave written 60-day termination notice at least 60 days before the anniversary date. In the second month of the second year, the city orally gave the Tookes notice that the contract was terminated because of budget problems. Then the city manager followed with a letter confirming the prior notification after the contract’s termination. The trial court rendered judgment for the Tookes on the jury verdict, but the court of appeals reversed, holding that the plead-and-implead language in section 51.075 does not clearly and unambiguously waive the city’s immunity and that brush removal in this case was a governmental function.

[Online briefs](#) (petition for review and respondent’s brief only)

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