

ORAL ARGUMENT – 04/10/02
01-0383
TXDOT V. NEEDHAM

LIONBERGER: Section 554.002(b) of the Texas Whistleblower Act defines in plain English who is an appropriate law enforcement authority for receiving a report of a violation of law. Despite its clear and unambiguous meaning, the Austin CA rewrote this definition. And in doing so the court went down the primrose path of legislating from the bench. Had the court simply stuck to the statutory definition, however, it would have been compelled to hold as a matter of law that the department is not an appropriate law enforcement authority under the facts of this case.

PHILLIPS: That's not really the issue here, whether the department is or is not. It's what the employee in good faith believes.

LIONBERGER: That indeed is one of the requirements of the statute: the employee had a good faith belief that the entity to whom he reported was authorized to regulate or enforce under the law alleged to be violated in the report, or was authorized to investigate or prosecute under the criminal laws.

To simply say that all that we need to look at here is the good faith requirement and ignore specific terms that the legislature used to define the term "appropriate law enforcement authority" would essentially render meaningless what the legislature did in 1995, in specifically amending the act to specifically define the term "appropriate law enforcement authority."

PHILLIPS: Don't we have to look at the definition through the prism of judging the employee's good faith belief?

LIONBERGER: I believe that is correct.

BAKER: Is it your argument then that in order to determine whether the employee had a good faith belief, we first have to determine whether TXDOT is in fact an appropriate law enforcement agency under this set of facts?

LIONBERGER: Absolutely.

BAKER: And then having done that, whichever way, then whether his or her actions or understandings will meet a good faith test, whether it is or not, is that right?

LIONBERGER: Absolutely. We believe it would be begging the question to start off by assuming that Mr. Needham's position that he had a good faith belief that TXDOT was an appropriate law enforcement authority because he believed they could inherently discipline their employees for violating internal policies and rules. That assumes the fact that needs to be proven

here, which is that the legislature intended an inherent power to discipline to be one of the categories of things that categorized an appropriate law enforcement authority. So, yes, the very first thing we must do is look at the statutory language and decide if the legislature intended an inherent power to discipline be one of the things that categorizes an appropriate law enforcement authority. And here we would submit that the plain and unambiguous meaning of the words used by the legislature does not admit of any construction that would allow for an inherent power to discipline to be a characteristic of an appropriate law enforcement authority.

ENOCH: If the complaint was to in fact a law enforcement authority and the nature of the complaint was a whistleblower complaint, then what's the value of the good faith belief? What is it we're supposed to have a good faith about if we're making whistleblower complaint and we made it to a law enforcement authority?

LIONBERGER: First of all, the question assumes that the whistleblower is reporting to an appropriate law enforcement authority. We submit in this case that for purposes of the DWI laws of Texas that TXDOT cannot in any reasonable construction be considered...

ENOCH: Maybe I wasn't clear. I will go with you that TXDOT is not an appropriate law enforcement authority. What I'm saying is, if that ends the inquiry that you just didn't do it, does the reverse apply? Meaning, if TXDOT was in fact an appropriate law enforcement authority and you made the report, what would be the value of this notion of good faith report? How does that play into this? What does the requirement good faith mean?

LIONBERGER: I think what the good faith requirement means if we look at the structure of the act and also take a look at what the legislature had in mind when they were defining the term "appropriate law enforcement authority", I think what they were trying to do is prevent a situation where a potential whistleblower is confronted with more than one reasonable choice as to whom to report. And if confronted with two reasonable choices, the whistleblower just happens to choose the wrong one, chooses the entity that did not have authority to regulate or enforce, investigate or prosecute the law, then the whistleblower should not be denied protection. But that's different from this case. This case you did not have a situation where someone is confronted with two reasonable choices, and then just chose wrong. Here is just objectively unreasonable that someone would assume that the TXDOT is an appropriate law enforcement authority for purposes of enforcing the DWI laws.

PHILLIPS: Would that be true of everybody, or does it depend on Mr. Needham's background, that is he was an employee of _____?

LIONBERGER: Yes. We believe that although this good faith element in .002(b) has not been specifically defined, the court has defined the good faith element as far as to .002(a), which talks about a good faith report of a violation of law. In Wichita County v. Hart, this court said that there needed to be in determining good faith subjective good faith and objective good faith. And that objective good faith is judged by the standard of what an employee with that person's training and

experience would have believed.

So yes, we think, although the court hasn't specifically held that with regard to this provision, we think that the Wichita County v. Hart test would be an appropriate test.

PHILLIPS: Sometimes I've seen one of the TXDOT cars or trucks with lights on top and I've slowed my speed. So I'm trying to get at the question of whether this is an agency that somebody might think was appropriate, but not somebody who had worked there and presumably was familiar with the scope of its responsibilities.

LIONBERGER: That would be our position, that perhaps there is some poor soul out there that would think that TXDOT could stop them and arrest them and prosecute them for DWI. But in this case where you had a 23-year employee of TXDOT, and based on his training and experience you couldn't say that he would reasonably believe...

ENOCH: Then does TXDOT have any responsibility for regulation of trucking or anything like that? Do they do any investigation of overweight trucks, or do they do any investigation of vandalism on bridges? Do they have any sort of responsibility like that?

LIONBERGER: I'm going to have to answer your question by saying I don't have specific knowledge of the items that you refer to; although in my brief I did set out a list of the things that the Transportation Commission is empowered to see to it that TXDOT does things like planning, constructing and maintaining the highway system, developing a statewide transportation plan, awarding contracts for improving the highway system, assisting in the development of mass transportation. And the list goes on. And looking at the list here, there does seem to be one for regulating motor carriers.

ENOCH: You've been very careful in the briefing and in your argument to say in this case, under these facts, he should have known that they weren't the appropriate law enforcement authority for DWI. Which to me is just compelling. My question to you, well does that mean that our decision on good faith determines the specifics of what it is the agency's entitled to enforce, or it is a much more general category? If the dept. has some enforcement authority somewhere would they fit within your ambit of kind of a reasonable choice.

LIONBERGER: I don't think we can lay down a categorical rule here. I think where I would go as the touchstone is the language of the statute. And the statute says, does the whistleblower have a good faith belief that the entity to whom he's reporting is authorized to regulate under or enforce the law alleged to be violated in the report. So we would have to look at what the law that has been alleged to be violated to answer the question of whether or not someone could reasonably believe that TXDOT would be ____ with authority to enforce that law.

The other aspect of it is investigate or prosecute a violation of criminal law. So right there if we're talking about a criminal law TXDOT is just not in the business of

investigating or prosecuting violations of criminal law.

As J. Baker was saying, we believe that the first step in this case is for determining whether the CA misinterpreted this statute. We say that the CA did, because the CA added a third category to the statute that's not there. The statute should have simply been applied as it was written, and if the court had done that then it would have been bound to enforce the statute according to its express terms. Because the statute was unambiguous there was simply nothing there for the CA to interpret.

We would also say that the court went wrong in looking at pre-1995 amendment cases. The court specifically relied on the Moreau case to come up with its power to discipline category. When the legislature amended the act in 1995, the legislature should be presumed to be well aware of the cases that were out there that was defining the then previously undefined term "appropriate law enforcement authority." And the legislature could have adopted what the common law had held to be an appropriate law enforcement authority, but that is not what it did. What it did was enact a more limited and stricter definition. Yes there is the good faith requirement that is added to somewhat ameliorate the strictness of the standard in the statute. And if you look at the legislative history you can see that is indeed what the legislature had in mind. We want a strict definition but we're going to temper it somewhat with the good faith requirement. So there was this delicate balancing we believe that the legislature was doing.

We would like to quickly mention a second point that we've raised in this case. And that is one that has to do with causation here. We believe that even if the court were disinclined to agree with the department on the issue of statutory construction, the department should still prevail in this case because Mr. Needham's evidence of causation was legally insufficient.

We believe that the evidence was legally insufficient because at the time the department, the ultimate decision maker in the department decided to initiate the disciplinary process against Mr. Needham, the ultimate decision maker did not have knowledge of recorded violation of law.

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RESPONDENT

ROBINETT: I brought a poster I would like to put before the court. Now this poster is nothing new. It's simply the statute. And we've also provided the court with a copy of the statute as a handout. And we're proud of that statute, because what we are asserting and what we're asking the court to do is, apply the statute as it's written. We agree with the words that were stated by TXDOT that this statute is unambiguous. It is clearly written.

The point of disagreement is the assertion that the CA somehow rewrote this statute. What TXDOT is asking this court to do is rewrite the statute by taking an exacto knife to it and cutting out the provision that says the employee in good faith believes. In other words, the

department wants this statute to be read as clearly an objective standard so that a report is to an appropriate law enforcement authority only if it's made to an entity that is authorized to regulate under _____ enforcement law alleged, or investigate or prosecute a violation of criminal law without regard to what the employee in good faith believes of the case.

ENOCH: What constitutes good faith?

ROBINETT: We agree with TXDOT to an extent, and we stated this in our brief, that there is both a subjective and objective development. In this case, we don't believe that there is any assertion that Mr. Needham did not have a subjective good belief.

BAKER: Would you agree then maybe the good faith test articulated in Hart should be adopted for this inquiry too?

ROBINETT: We addressed the good faith inquiry in Hart in our brief. And we believe that under that good faith test that Mr. Needham met that test.

BAKER: Well I understand that. So I guess you would answer my question yes?

ROBINETT: As a matter of _____ thought I don't know that I would agree with that. I don't know that the same objective good faith test should be applied. I don't believe that as stringent a test in theory should be applied to the question of whether the correct law enforcement authority are an appropriate...

BAKER: Well do you have another good faith test you think should be applied?

ROBINETT: Well the test that I believe should be applied is consistent with what happened in this case. And that is, that...

BAKER: I don't think we want a test that just applies to one case.

ROBINETT: Well I believe it applies to every case, but it is applicable to this case.

BAKER: Well I understand. Tell me what you think it is and then we'll see if it applies.

ROBINETT: And that is that the authority to whom the report is made is one that has authority over the matter being reported and they have that authority because this particular entity has a legitimate interest in the matter, or there's a rational relationship between the matter being reported and the entity.

HECHT: It seems like that would be every supervisor in a government position.

ROBINETT: Depending on what was being alleged.

HECHT: What state agency that employs personnel wouldn't care that any employee was driving along intoxicated, and if you reported it to a supervisor wouldn't worry if he does this on the job the government is going to be in trouble?

ROBINETT: Well that is correct. As long as it's done on the job with the entity's vehicle, the entity has a legitimate interest in regulating the employee's conduct in that regard and in investigating any allegations that the employee has violated that law.

HECHT: Your test would include virtually any employee at least a supervisory employee in the same governmental agency?

ROBINETT: Yes. I would agree that it would cover a report made about an employee in that agency. For example, if Mr. Needham had noticed an employee of the Dept. of Agriculture and complained about that person driving along intoxicated to his supervisor, the supervisor at the Dept. of Transp. would have no legitimate interest in that matter, would not have a legitimate interest in regulating or investigating it. They would only have an interest in passing that information along.

BAKER: Isn't that the same case here?

ROBINETT: No. In this case Mr. Needham reported an employee within the Dept. of Transp.

BAKER: I mean the part when you said would have the necessity to pass it on to somebody who could prosecute.

ROBINETT: I don't believe that's the case. The Dept. of Agriculture has an obligation, not just an interest and a duty, not just the authority to regulate its own employees to prevent them...

BAKER: But that's the same thing that you argue for TXDOT in this case isn't it?

ROBINETT: Well yes.

BAKER: What bothers me is, on page 16 of your brief, you said that TXDOT would simply investigate for its own internal disciplinary process or to forward to another entity for prosecution. And that sounds like you recognize that under the facts of this case that the employer doesn't have the authority to regulate, enforce, investigate or actually prosecute the violation of a DWI.

ROBINETT: I didn't write that very clearly if that was what you took on that.

BAKER: Well you say it again on page 18. So maybe you thought it was a pretty good statement.

ROBINETT: No. I agree that anyone of these authorities has the right and the duty to pass it along as well. But they also have the right...

BAKER: Why would they have to pass it on under these circumstances? If they can do all that you say they can do, why do they have to pass it to some other entity?

ROBINETT: I'm not contending that they would have to pass it along. They would certainly have the right to pass it along.

BAKER: Assume that Mr. Needham said that not only do I believe as I said that he was driving while intoxicated, Mr. Hope. But I want to have him charged with that offense, because it's a dangerous circumstance.

ROBINETT: At that point the person within TXDOT could report that himself. They could say, Mr. Needham if you want that charge brought by another department or another authority, you take it there. But TXDOT has an obligation to the public to regulate that conduct, to investigate that type of conduct, both to protect the public from possible physical injury by a drunken driver, and to protect itself and the taxpayers from something that it would be liable for under the Texas Tort Claims Act.

BAKER: Based on that statement, what about the basis upon which the CA decided this issue? As I read it, they relied solely on Moreau and relied solely on a statement that because TXDOT has the power to discipline an employee that that is what qualifies TXDOT as an appropriate law enforcement agency, and they relied on Moreau to say that.

ROBINETT: That is consistent with the statute as written.

BAKER: Do we have a problem that Moreau was decided before the amendment? It obviously could not have relied on this definition to have reached this decision in Moreau.

ROBINETT: First of all, whether the CA relied on Moreau or the statute as written doesn't make any difference. The CA got it right. Secondly, you have to assume that the statute was intended to change Moreau. I do not see anything in the statute that changes Moreau. The statute when it was originally offered to the legislature as covered in the petitioner's brief, the sponsors of that amendment did have an intention to change the case law up to that point. And their intention was to make it entirely objective. But that attempt failed. That attempt was rejected by the legislature.

BAKER: As I understand the in good faith beliefs was added on the floor.

ROBINETT: That's correct. And that took the law basically back to the status that it had prior to 1995. It was basically an incorporation of the case law to that point and to this statute.

BAKER: Would you agree or disagree that even with the good faith what that person has to in good faith believe is either something under one or two of the definition, and can we or should we enlarge what that says? The reason for that question is, the CA decided this solely on the right to discipline. And that word does not appear in the definition if you want to go on a plain meaning reading.

ROBINETT: Again, the question is whether the CA got the decision right.

BAKER: We do ordinarily look to see if there's cogent or rational basis in their analysis to reach the conclusion that they did.

ROBINETT: My belief is that there was a cogent and rational basis because the authority has the right to discipline because it has a regulation prohibiting that conduct. It has the right to discipline after it investigates a conduct and determines the conduct occurred. That's what leads to the right discipline.

PHILLIPS: TXDOT says in its briefing that the evidence is undisputed that your client never intended for there to be a prosecution. He was just trying to make the agency safe. In this good faith can you read in that there must actually be an intent to whistleblowe?

ROBINETT: The issue in this case is whether if he believes that the entity he reports to has the authority to regulate and investigate without regard...

PHILLIPS: So you don't think the whistleblower has to ever _____ or that the agency has to have the power to initiate a prosecution. It's just that they can regulate or investigate what happened.

ROBINETT: That's correct. That's why it says regulate under or enforce. That's why it says investigate or prosecute. It doesn't say regulate and enforce. It doesn't say investigate and prosecute. It says _____ one of those four things, you're an appropriate law enforcement authority. Mr. Needham felt that this authority that TXDOT could regulate under the DUI statutes to control the conduct of its own employees. Not the conduct of other employees, but the conduct of its own employees. And that if it received a report of improper conduct under that statute, it could investigate it and take whatever action it deemed appropriate, whether that included reporting the matter to another authority or not. It could still investigate it and it has an obligation to do those things.

What's required is merely the making of the report of unlawful conduct. You can make the report and then it's the job of the agency to do with it as it will. And many people are satisfied with that just as if someone saw a crime committed, a mugging on the street, go report that to the nearest police officer. And whether that person is hoping for prosecution or not they have done the right thing in reporting it, and letting the law enforcement authority then do whatever it thinks is appropriate as far as regulating and investigating and prosecuting.

The whistleblower is a whistleblower when he makes the report. It doesn't make any difference what happens after the report is made. There is nothing in the statute that suggest that.

JEFFERSON: You're saying it doesn't matter that the employer knew nothing about the report, that if the _____ is taken then there is liability under this statute?

ROBINETT: No. I'm sorry I missed your point. I thought you were asking about whether adverse action was taken against a person who had committed the act that was reported. No. There must be an adverse action taken against the employee who makes the report and it must occur when it did under this court's language because of a report. It would not have occurred except for the report. If the report hadn't been made.

RODRIGUEZ: What's the evidence that that happened here?

ROBINETT: There's a no evidence point, and this court set forth in Zimilich(?) what the court does in a no evidence point, which is first it considers only the evidence in favor of the jury's verdict and disregards all contrary evidence. And that it allows circumstantial evidence to establish the causal link. And it sets forth five factors that the evidence may include. These are not necessarily exhaustive factors. But it does set forth five factors, and Mr. Needham met four of them. Knowledge of the report of illegal conduct. In this case regardless of what the department is saying, Ms. Skeen, the person who made the ultimate decision to discipline Mr. Needham knew of Mr. Needham's report eleven days before she took any action.

HECHT: But she had started an investigation before then.

ROBINETT: She had begun the investigation but she was only investigating. She had not made any decision until 11 days after she learned that Mr. Needham had made his report. The jury concluded based on the evidence that because she knew of the report, she took harsher action than she otherwise would have. And that was supported by the failure of the department to adhere to established company policies regarding employment decisions, one of the factors in Zimilich(?), primarily that it did not follow the progressive discipline policy beginning with advising Mr. Needham of his purported deficiencies, counseling with him, giving him an opportunity to improve. It simply came in on March 18 and brought the axe down on him.

BAKER: Well I know how the jury decided this case, but couldn't you also draw inferences that none of those things could be causation based on the report? They are all based on another reason why.

ROBINETT: The jury could have found against Mr. Needham. Yes. But it didn't.

BAKER: I understand that. But that's not the only inference that could be made from those things.

ROBINETT: No. That's correct. There was also evidence in the record of discriminatory treatment. That is that Mr. Needham was treated differently than other employees who had committed similar acts.

BAKER: But that's not based on the report. Doesn't the adverse employment activity, whatever it is, have to be found to be based on making the report?

ROBINETT: That's correct. And certain of the factors the jury considers in determining whether the report was related to it is whether...

BAKER: Well what evidence is there that you say supports an inference that the adverse employment was based on the report, and where can we find it?

ROBINETT: Well a) she knew about the report before making her decision; b) she treated Mr. Needham differently than the policy would require, which is an indication of bad faith, the policy would have required her to call Mr. Needham in and say, Mr. Needham we've had these complaints...

BAKER: But she doesn't have to have any faith one way or the other. It's his viewpoint under the statute.

ROBINETT: Not on the causation factor. The jury has to believe that his report caused her to discipline him more harshly...

BAKER: You just quoted what it was from Hines(?). And that is, the adverse employment action would not have been taken but for the fact of the report.

ROBINETT: That's correct, and that can be established by circumstantial evidence, which includes factors such as not following the policy, treating Mr. Needham more harshly than other people who allegedly committed the same violations, or the fact that there was little or no evidence to support any of the allegations against Mr. Needham. In fact, Mr. Needham denied all of the allegations except one, which was enough evidence in and of itself for the jury to conclude that he had not committed them, and that this was a retaliatory effort, not a good faith disciplinary action.

So there is an abundance of evidence in the record to support the conclusion that the jurors came to, which is that Mr. Needham's report was the cause of the discriminatory action taken against him when it was taken against him.

PHILLIPS: Let's go to the statute one more time. And let's suppose one of our employees reports to the court that another employee had been driving _____ while delivering _____. So that it's clearly an on the job activity. We clearly have no power to enforce the DWI law. What's our _____ power to regulate under it?

ROBINETT: You have the power to adopt rules when your employees come in to work for the court, especially employees who are going to drive for the court, that those employees shall not drive under the influence of alcohol as defined by ch. 49 of the penal code. That's a regulation. If you receive a report that one of your employees did in fact drive under the influence of alcohol while on duty with a court vehicle, then you would have the obligation, not just the authority, but the obligation to investigate that and find out if that really was happening on your watch.

PHILLIPS: You believe then of every criminal statute, every state agency has authority to make regulations thereunder and the obligation to make an investigation?

ROBINETT: If it is something that's rationally related to what the agency is doing. If the agency is not sending anyone out in any vehicles, then it might not be rationally related to that agency's authority to say we will get you for driving under the influence while you are not on agency business.

OWEN: But if the legislature had wanted broad supervisory power to be turned over to - I mean if they want a whistleblower to apply to supervisors why wouldn't they have just said that?

ROBINETT: Well the converse of that is why would they have said it when that was the status of the law at the time and nothing in the amendments they made specifically changed that. Why wouldn't they specifically say this is no longer the law.

Let me give you another example. I do a lot of work with school districts. School districts like other authorities have certain inherent authorities to regulate their employees. For example, to tell their teachers: don't engage in any sexual conduct with students. Now if a complaint is brought that a teacher is engaging in sexual conduct with a minor student, does the district have the authority to regulate that? Does it have the authority to investigate it, or do they simply have to turn a deaf ear and say we didn't hear? You need to take that to another agency. You need to report it to someone else, or we will report it to you. The fact of the matter is, the school districts routinely investigate those allegations and they investigate them thoroughly.

ENOCH: Well that's just what a reasonable employer ought to do.

ROBINETT: Because they have the authority to do it.

ENOCH: So why wouldn't the statute - if I was still in the legislative house, and I would say well let's talk about whistleblower. What's whistleblower? Every employer has the authority to regulate improper employee conduct while they are on the job. I can't imagine anybody would say they didn't have the authority to raise their improper conduct on the job. You could fire them. Why wouldn't they say a report to the employer or to an appropriate law enforcement authority would protect them from retaliation. Why wouldn't they just say that as opposed to going through this whole thing about sort of a good faith belief of a right to regulate under the law or be a law

enforcement ____? What you're telling me is all you've got to do is just say report to your supervisor, if you report to an appropriate law enforcement authority, you are protected. And this doesn't say that.

ROBINETT: If it's a report to the employer in a matter than the employer has a legitimate and compelling interest in, in fact I keep using the word obligation, it's not simply any improper conduct. It has to be a violation of the law. But that's covered in subsection (a).

JEFFERSON: So all employers then are law enforcement authorities.

ROBINETT: To an extent.

JEFFERSON: So anytime there's a violation this statute was meant to cover all employers in all context, so long as anything the employee was doing had some relationships with the job. That's pretty ____ reading of the statute.

ROBINETT: To read it any other way is to restrict the statute. What the department wants to do in addition to remove the good faith requirement is add the words "is authorized by statute." In other words they are asking you to look through the law and say, ch. 49 of the Penal code does it say what authorities can pass regulations and investigate under that provision. No it doesn't. If the legislature had wanted to restrict reports to entities that are specifically authorized by the words of the statute, then why didn't it include those entities in the statute? Why didn't it say, or enforce the law the employee in good faith believes is authorized by a statute. It just simply says authorized. The question is, What does the word authorize mean? Do we say authorization for the constitution, from statutes, or by inherent authorities based on the function of the particular entity in question.

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REBUTTAL

LIONBERGER: Mr. Needham would have this court read the good faith requirement as only being a subjective good faith belief. We think that that would just be bad policy, and...

PHILLIPS: He's made a totally objective argument that the Texas SC can regulate under the DWI law, and can investigate. What's wrong with that?

LIONBERGER: We disagree with that. Because the statute specifically says that the entity must be authorized to regulate under, or enforce the law alleged to be violated in the report. The word law is defined in the whistleblower act under §554.001(1). Law means a state or federal statute, a local ordinance, or a rule adopted under a statute or ordinance. So simply saying well just because the SC can generate its own internal policies, rules, guidelines to control its employees and their conduct at work, that does not comport with the definition of law that's in the whistleblower statute.

And that's precisely what they are trying to do. They are trying to do the same thing that the CA did here, is read...

PHILLIPS: Why aren't we authorized to investigate...

LIONBERGER: Because investigate is very specific. It's investigate a violation of criminal law. This court is not authorized to go about investigating violations of criminal law. I think that the statute is very clear. And we also think that it's clear that the legislature didn't intend that result. They intended for people to report violations of law to authorities who are steeped in that law, understand that law, are qualified to investigate and bring prosecutions.

We don't think, and we would not agree that the legislature's purpose in enacting the whistleblower statute was to encourage reporting. We don't believe you can find that in the statute. We believe the legislature's purpose is much more limited. It's only to protect employees who actually are engaged in whistleblower activity as defined by the statute.

PHILLIPS: Why should it only protect employees who run first to an outside official and not somebody who tries to go through their chain of command?

LIONBERGER: We think that the structure of the statute shows that the legislature has expressed a preference for external reporting, and the legislature should be assumed to have balanced the competing interests and weighed the various policy considerations. There are some policy considerations, several in fact, for encouraging going outside.

PHILLIPS: We have to look at the purpose it seems to me apart from that language to decide what the preference is. So I think it could be read rationally either way.

LIONBERGER: I will give you some of the purposes. Channeling employees outside the agency would increase the likelihood that the alleged violation would be taken seriously and corrected expeditiously. Another reason would be that it would protect against possible coverup by an employer when the report concerns that employee. Another reason could be that it ensures that a report is made to those persons who know the law and are qualified to handle a particular complaint. For example here TXDOT is not qualified to look into DWI violations.

This would also serve to protect the identity of a whistleblower who wishes to remain anonymous. It would also tend to decrease the likelihood of retaliation if you go outside. And another purpose would be that it could protect against frivolous claims by unscrupulous employees who may report alleged violations of law to get the drop on their employer. In other words, if the unscrupulous employee discovers that his employer is legitimately considering an adverse employment action against him, he could attempt to immunize himself by dropping a bogus whistleblower on the employer.