

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FILED
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
AUG 21 PM 12:15
CLERK, U.S. BANKRUPTCY COURT

IN RE: §
§
GAINESVILLE HOSPITAL DISTRICT §
D/BA NORTH TEXAS MEDICAL §
CENTER §
§
DEBTOR. §

Case No. 17-40101
DEPUTY CLERK
Chapter 9

EX PARTE

ADVERSARY NO. 17004072

Adversary – Un-named Class Member
Defendant – Stephen M. “Steve” Gaylord .

Property Owner/Taxpayer/ Special Tax Payer
Affected By The Plan/Suit

**DEFENDANT STEPHEN M. GAYLORD’S ANSWER TO
PLAINTIFF’S BOND VALIDATION SUIT**

**I
INTRODUCTION**

My wife and I live on a 43-acre ranch near Valley View, Texas in the southern part of Cooke County. When we bought the ranch in 2000, the property taxes were listed at \$1996 a year. In 2016, we paid \$4,704 in property taxes for our home and ranch. \$269 of that went to the Gainesville Hospital District. I am a retiree and student. My wife is a little younger and works as a teacher’s aide at the local school helping disadvantaged children. She makes less than 5x what we pay in property taxes a year.

Upon retirement, I decided to try law school. I spent three semesters at UNT’s new law school in Dallas and recently transferred to Texas A&M’s School of Law in Fort Worth. I arranged my schedule so my classes do not start until Tuesday afternoon. Hopefully, this trial

will be completed by then. I have enjoyed lifelong learning and attended North Central Texas College ("NCTC") for several years. I ended up running for the NCTC board in 2004 when I learned two of my instructors were being laid off. I ran against an incumbent and was elected to a six-year term along with two other newcomers to the NCTC Board. I did not run for reelection, in part because I do not believe in career politicians.

I am going to focus on the legal issues first in case I run out of time and then will address some of the business and service issues.

II. **PROCEDURAL ISSUES**

I have written a brief on the three procedural issues I see with the Bond Validation Suit: (1) The suit does not appear to have been properly authorized under the Open Meetings Act and in particular the notice requirement of the Act; (2) The hospital district has been extremely secretive in denying access to public records to the newspapers, the citizens such as myself and even two new board members; The statute under which the suit was filed requires the hospital district to make all relevant financial records and documents available for public inspection; While some records have been made available, many have not; (3) The Refunding Bond statute requires the board to take notice and issue a finding in the proceeding, authorizing the bond refunding on any increase in the aggregate payments that could occur as a result of the refunding process. The plaintiff's petition and the hospital board minutes fail to address these issues, which are required to be followed as a matter of law. See Gaylord Brief on Procedural Issues with Plaintiff's Expedited Declaratory Judgment Action and Refunding Bond Validation Suit. As a result, I ask the court to dismiss this Bond Validation Suit, or at least postpone it until all required records are available for the 20 days required by law. TEX. GOV'T CODE § 1205.064(a).

III.
FAILURE OF THE PLAINTIFF'S EXPANSIVE INTERPRETATION OF THE
REFUNDING BOND STATUTE AS A MATTER OF LAW

I have prepared a brief for the Court on the issues and case law that apply to the Refunding Bond statute, and why plaintiff's expansive interpretation of "other general or special obligations should be denied so, I will only provide a summary here. *See Gaylord Brief in Opposition to Plaintiff's Bond Refunding Petition & Expedited Declaratory Judgment Action.* My Exhibit A is a summary of the applicable Texas Constitutional and Statutory provisions regarding the taxing authority of the Gainesville Hospital District. *See Gaylord Exhibit A.* The top of the exhibit lists the applicable Texas Constitution and statutory provisions. I also included a column for the Voter Authorization Election in 1975 relying in part on plaintiff's Exhibit 2. On the rows, I first listed various taxing authorities that could be granted, followed by the list of debts or obligations the plaintiff seeks to "refund."

Please take notice that the Texas Constitution limits hospital district taxes to bonds for capital improvements and maintenance and operations. TEX. CONST. art. IX, § 9. The Constitution requires voter approval before any tax can be implemented. The original Enabling Legislation enacted in 1975 limits the use of taxes to pay bonds for the same capital improvement purposes and indigent care. Gainesville Hospital District, ch. 211, 1975, TEX. SESS. LAW. SERV. 489 (Vernon's), § 9. *See Exhibit Gaylord E.* Unlike the Muenster Hospital District just west of the Gainesville Hospital District; there is no provision for a maintenance and operations or "general use" tax for the Gainesville Hospital District. *Id.* The voters approved only taxes for the bonds as listed for limited capital improvements for hospital purposes and taxes to pay for indigent care. *Id.* I submit the indigent care tax is a subset of the taxes that could be levied with a more general maintenance and operations tax. Since any additional tax such as a "general use" or "maintenance

and operations” tax is not in the enabling statute and was not approved by the voters of the district, the Texas Legislature would first have to change the current enabling legislation to allow a maintenance and operations tax, and then the district voters would have to approve it. *Id.* Unless a special session of the Legislature is called for that purpose, I doubt that any authority to levy an ad-valorem property tax to pay down any of the hospital's unsecured debt is legally possible in the next two years. While as plaintiff argues in their petition, there is some case law that allows a court to compel a government entity to pay a judgment out of a general fund supported by taxes, none of those cases addressed a situation where all taxes were restricted, and none were available for general purposes. I submit where all tax revenue is restricted to specific purposes and there is no statutory authority to levy a general or maintenance and operations tax; the cases plaintiff cited do not apply since they assume a source of general tax revenue that is not available in this case.

My brief entitled “Gaylord Brief in Opposition to Plaintiff’s Bond Refunding Petition & Expedited Declaratory Judgment Action” will examine and review Texas Case Law about the valid uses of refunding bonds. There have been several relevant Texas Supreme Court decisions and a few appellate court decisions on point. Texas courts have consistently denied a government entity the ability to loosely interpret the applicable bond laws and access to a refunding bond, or other type of bond or certificate of obligation, when the debt they were trying to convert to a bond or refunding bond was invalid. A court held that “no bonded debt can be created” by a government entity without first being authorized by the voters. *Griffith v. Buchanan*, 5 S.W.2d, 211, 212 (Tex. Civ. App.—San Antonio 1928). The court went on to distinguish bonds that could be refunded from other forms of debt such as warrants that it held could not be refunded under the refunding bond statute, article 717. *Id.*

Plaintiff states there is no statutory authority for an election with a “Refunding Bond.” Plaintiff’s Original Complaint/Petition at 21. I submit the reason that there is no statutory provision for an election is the legislature never anticipated a government entity would try to use it to create new secured debt that had not previously been authorized by the voters as plaintiff is attempting. *Griffith*, 5 S.W.2d at 211. I agree with the plaintiff in the case where the underlying debt was previously authorized by the voters, the taxing authority carries over to the refunding bond, and no election is required. *Id.* However, there is an absolute constitutional and statutory requirement for an election to let the voters decide whether any new tax can be levied before it can be instituted. *Id.*

To grant plaintiff’s petition for an expansive interpretation of “other general or special obligation” under the Refunding Bond Statute, this Court would most likely have to ignore more than a hundred years of Texas case law and the strict limits on the issuance of bond debt for capital acquisition and equipment that exist in the applicable Texas Constitutional provisions and statutory law. Doing so would effectively throw out virtually all limits and protections the Texas Constitution and Laws provide to taxpayers on bonded debt. Those very specific limits and procedures are in place to protect the taxpayers before a government entity can issue debt secured by general obligation bonds that the taxpayers will have to pay. We ask this Court to deny plaintiff’s petition for an expanded interpretation that appears to have no limits as to what debt it could be applied to.

IV. **PURPOSES OF FILING FOR BANKRUPTCY AND ALTERNATIVE OUTCOMES**

Bankruptcy is a means for a business, family, or government entity to temporarily stay their debts, reorganize and prioritize them. This is the first bankruptcy case I have heard of where

the Debtor seems to feel they have a right to a virtually unlimited “money tree” from taxpayers as the best solution, rather than restructuring and prioritizing their debts and operations so they can exit bankruptcy as an ongoing concern. Businesses and government entities sometimes have to make hard decisions to keep a business running in the black. I see nothing in this suit that shows how plaintiff will avoid going into debt again in the future. At a Q&A session put on by the hospital attorneys, all they could offer was hope. We need more than hope when the plaintiff wants a \$34.75 Million bailout, effectively tripling bonded debt and taxes.

One article I read said there had only been three Chapter 9 bankruptcies in 5th Circuit Court of Appeals district in the last 32 years, not including plaintiff's. The most recent case involved the Hardeman County Memorial Hospital which may be half the size or less of North Texas Medical Center. Rather than trying to issue new debt or raise taxes, they sold off some property as the Gainesville Hospital District could do to shore up their balance sheet. While the debtors asked the bankruptcy judge to order a property tax increase, the judge declined to do so. *See Gaylord Exhibit S.* I checked their enabling legislation, it appears they have the ability to levy a maintenance and operations tax for general purposes so they would be allowed under Texas law to increase the M&O tax, (not bonds for an unsecured debt), but the bankruptcy judge refused to do so. They entered bankruptcy in 2013 and successfully exited in 2015 after restructuring.

The pension plan does not appear to be a current problem unless the plaintiff elects to take the poison pill advocated by the DIP lender to terminate the plan and buy annuities for all beneficiaries. That increases the liabilities due by about \$15 Million, from \$1.8 Million to \$16.1 to \$17.9 Million or more. *See Plaintiff's Exhibit 10 at 2.* There appear to be sufficient funds to pay accrued pension benefits for many years. According to Plaintiff's Exhibit 10, the pension plan is estimated to have assets of \$13.9 Million, with estimated liabilities of \$15.7 million. With

the current performance of the stock market, that \$1.8 Million shortfall could soon disappear. If the plaintiff wants to make sure they can meet the plan obligations, the most prudent financial thing to do might be to freeze the benefits and end any future accruals as my employer, and many private sector employers have done while maintaining the plan and its assets. I also ask the court to take notice that the plaintiff may have made some unwise financial decisions as it appears in 2007 it elected to approximately double the pension benefit retroactively to current employees as of July 1, 2007. Plaintiff's Exhibit 9 at 4.1. Perhaps that was too generous. The suicide pill plaintiff and the DIP Lender / Operator are proposing for the pension plan seems to be a bad solution in search of a future problem that is not currently pressing.

V.
VALUE OF THE GAINESVILLE HOSPITAL DISTRICT
TO THE RESIDENTS OF THE DISTRICT

Plaintiff may be overstating its value to the residents of the district. Plaintiff claims: "The Hospital serves as the primary care and acute care center for residents of approximately two-thirds of Cooke County, which comprises the majority of the county's population." Plaintiff's Complaint/Petition at 3. Many of those living in the eastern and southern parts of the District, the fastest growing areas of the county, are almost as close to hospitals with higher levels of care in Denton and Grayson Counties. For example, from my house, Texas Health Presbyterian Hospital in Denton is 19.6 miles or 23 minutes away according to Google Maps whereas North Texas Medical Center is 15.8 miles or 19 minutes away. Anytime my family has a choice, we go to Denton for any care of a serious nature. From the center of Valley View, which is a little northeast of us, Texas Health is 19.6 miles or 20 minutes away, NTMC is 11.9 miles or 14 minutes away. Most people I know facing a life threatening condition would drive the extra 4-8 miles or 4-6 minutes to get a significantly higher level of care. In most serious cases, NTMC only

does the initial treatment and assessment and then transfer the patients to a larger hospital south or east via an expensive ambulance ride. The reality is if the residents of the District “depend upon the Hospital for basic acute and long-term healthcare needs,” the hospital utilization would be far above 20%. Historically that has not been the case for several years. Additionally, while unscientific, there are 24 Google reviews of NTMC with an average 2.2 rating compared to a 4.0 average rating for Muenster Memorial Hospital as of July 24, 2017. No other hospital in the area has a Google review below 3.0 that I can find. That may explain why North Texas Medical Center has such poor utilization and financials.

VI. CONCLUSION

Plaintiff has failed to comply with the procedural requirements to file a Bond Validation Suit as required by the Open Meetings Act, the Declaratory Judgment Act, and the Refunding Bond statute. Tex. Gov’t Code Chapters 551, 1205 and 1207. Plaintiff’s expansive interpretation of “other general or special obligations” would in effect invalidate Texas Constitutional and statutory limitations on the purposes for which bonds can be used for and would fly in the face of more than 100 years of case law requiring a narrow interpretation of statutes involving bonds and taxes and refusing to allow bonds to be issued for invalid debt. Plaintiff has failed to meet its procedural and legal requirements for issuing bonds under the Refunding Bonds statute.

Plaintiff should be encouraged to sharpen its pencil and live within its means as the Hardeman County Hospital elected to do. Plaintiff should implement sound business management practices to evaluate and trim any services that are not core to its hospital business and profitable. I am hopeful that if the Board and hospital management are willing to start running the hospital as a business vs. a government entity looking for a money tree of tax

revenue, that they can stay open, pay the pension obligations and provide excellent hospital services to the community they serve, when their customers indicate they want to buy those services in sufficient volume that the hospital can do so without losing money on those services. I encourage the hospital board to visit Hardeman County Memorial Hospital to learn how they were able to turn that hospital around without raising taxes and emerge from bankruptcy.

VII.
PRAYER FOR ORDER OF DISMISSAL WITH PREJUDICE AND OTHER RELIEF

Defendant respectfully prays that the Court will follow the cited Texas case law and dismiss plaintiff's Bond Validation Suit with prejudice, and plaintiff will take nothing. Defendant asks that the court direct the plaintiff to develop and present a reorganization plan that can sustain the hospital into the future with a core set of hospital services and meet its priority obligations such as employee pensions and other earned benefits without a taxpayer bailout that is not permitted by Texas Law.

Defendant prays that this court will allow the hospital to terminate any oppressive terms that are in the management agreement with McAllen Medical Center Physicians, Inc. Upon review, some of the terms imposed appear to be very one-sided and detrimental to plaintiff/Debtor.

Defendant further prays that all attorney fees and court costs incurred as a result of this Bond Validation Suit be absorbed by the attorneys who filed this case with no legal precedent and counter to more than 100 years of Texas case law. The plaintiff and taxpayers should not be on the hook for the costs of a lawsuit that appears to have little basis in law.

Defendant further prays that all out-of-pocket expenses of defendants be paid by the attorneys and law firms that filed this action including attorney fees paid to Mr. Reedy M. Spigner for \$800 for legal consultation. In addition, defendant prays that the law firms that filed this action donate the equivalent of what they would bill out a law clerk with 40 hours of law school credit for 200 hours, to the general fund of the UNT College of Law and the Texas A&M School of Law, to be split evenly between the two law schools.

Defendant further prays for such other and further relief and orders to which the District may show itself justly entitled at law or in equity.



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