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

IN RE:	§	
	§	
GAINESVILLE HOSPITAL DISTRICT D/BA NORTH TEXAS MEDICAL CENTER	§	Case No. 17-40101
	§	
	§	Chapter 9
DEBTOR.	§	

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

GAYLORD BRIEF IN OPPOSITION TO PLAINTIFF'S BOND REFUNDING PETITION & EXPEDITED DECLARATORY JUDGMENT ACTION

The Court should deny Plaintiff's attempt to create a new, expansive interpretation of the term "other general or special obligation" as used in TEX. GOV'T. CODE § 1207.002 is prohibited by 100 years of Texas case law and rules of statutory interpretation. Plaintiff has made a novel attempt at creating a new interpretation of the Refunding Bond Statute (TEX. GOV'T. CODE CHAPTER 1207) and proposes that any lawful "obligation" entered into or made by Plaintiff can be "refunded" into a general obligation bond. Plaintiff in its brief cites the Supreme Court's guidance on statutory interpretation: "[t]he plain meaning of the text is the best expression of legislative intent unless a different meaning is apparent from the context or the plain meaning leads to absurd results." *City of Rockwall v. Hughes,* 246 S.W.3d 621, 625-26 (Tex. 2008). The

Plaintiff argues that the "*Refunding Bond*" (emphasis added) statute should be interpreted expansively and allows plaintiff to "refund" any obligation, not just bonds or other Public Securities into General Obligation Bonds. Under Plaintiff's expansive interpretation, any debt incurred by a government entity including a revenue bond, travel, entertainment, a credit card bill, or other short-term debt could be declared eligible under the refunding bond statute and converted to a general obligation bond, without an election and approval by the voters. Does that interpretation reach the level of absurdity the Texas Supreme Court discussed in *City of Rockwall* 246 S.W.3d 621, 625-26? What limits would there be on the use of refunding bonds to refinance debt if that interpretation were to stand? The Court should overrule Plaintiff's new expansive interpretation of "other general or special obligation" as a matter of law.

I.

TEXAS CONSTITUTION, STATUTORY AND CONTRACT LIMITATIONS ON DISTRICT TAXING AUTHORITY

The Texas Constitution places limits on the purposes hospital districts, (created under its authority), may issue bonds:

> The Legislature may by general or special law provide for the creation ... of hospital districts ... with power to issue bonds for the purchase, construction, acquisition, repair or renovation of buildings and improvements and equipping same, for hospital purposes;" (emphasis added)
> ...
> providing that such district shall not be created or such tax authorized unless approved by a majority of the qualified voters thereof voting at an election called for the purpose.

Tex. Const. art. IX, § 9. In the legislation initially authorizing the creation of the Gainesville Hospital District, ("Enabling Act"), the act granted limited powers to issue new bonds and required an election to approve them:

> The board of directors of the hospital district shall have the power and authority to issue and sell bonds for the purchase, construction, acquisition, repair, or renovation of buildings and improvements and equipping the same for hospital purposes: including but not limited to the purchasing and acquiring, and from time to time improving, repairing, renovating, and equipping all buildings, improvements, furnishings, and equipment of any hospital authority established prior to the election for the creation of the hospital district and pursuant to the provisions of Article 4437e, Vernon's Texas Civil Statutes,
> ...
> No bonds payable from taxes (except refunding bonds and bonds issued to purchase and acquire all buildings, improvements, furnishings, and equipment of a hospital authority, as provided in Section 8(b) of this Act) shall be issued by the hospital district until authorized by a majority vote of the resident qualified electors, who own taxable property within the district...

Gainesville Hospital District, ch. 211, 1975, TEX. SESS. LAW. SERV. 489 (Vernon's), § 9. *See* Exhibit Gaylord E.

The Enabling Act and Texas Constitution require an election for any new tax, (*any such tax)*: (emphasis added):

> The district shall not be created nor shall any tax therein be authorized unless and until such creation and such tax are approved by a majority of the qualified property taxpaying electors residing within boundaries of the proposed district voting at an election called for such purpose. (emphasis added)

Id. at § 3. It continues:

> At said election there shall be submitted to the qualified property taxpaying electors of said proposed district the proposition of whether the Gainesville Hospital District shall be created with authority to levy annual taxes at a rate not to exceed 75 cents

> on the $100 valuation of all taxable property within such district
> for the purpose of meeting the requirements of the district's
> bonds (including those assumed) and for the care of indigents (emphasis added).

Id.

Plaintiff states the voters made a "contract" with the Gainesville Hospital District when they approved its creation in August 1975. I agree. That "contract" places limits on the use of taxable bonds and the taxes levied for those purposes, namely facilities and capital improvements. *Id.* at § 9. Additionally, the Enabling Act required the voters to approve any "new" tax: "**nor shall any tax therein be authorized** unless and until such creation and **such tax are approved** by a majority ... electors". *Id.* at §. 3. The voters established a contract with the Gainesville Hospital District limiting taxes solely to pay for authorized bonds for limited purposes and indigent care, **nothing else**. *Id.*

What would be the purpose of placing limits on the issuance of bonds and taxes in the Texas Constitution and the Enabling Act if any hospital district with the power to issue Public Securities could circumvent those constitutional limits by using the Refunding Bonds statute to convert any debt incurred, for any reason, to General Obligation Bonds? *Foster v. City of Waco*, 113 Texas, 352, 354 (1923). The Texas Court of Civil Appeals in San Antonio stated what appears to be a reasonable relationship between "refunding bonds" and voter approval:

> If the original debt of San Juan was evidenced by bonds issued by authority of a majority of taxpaying voters of the city, then by virtue of the provisions of article 717, Revised Statutes of 1925, the city would be authorized to issue refunding bonds without again submitting the question to the voters. No bonded debt can be created by a county, incorporated city or town without first being authorized by the property holding, taxpaying voters of such county, city, or town, but when the bonds have once been authorized and issued the county or city government can issue bonds to refund the authorized outstanding bonds. That law would not, however, apply to anything but bonds, and not to warrants issued by the

> municipality. The importance of the question would seem to have demanded clear and definite proof of the character of the indebtedness which the bond issue was intended to meet.

Griffith v. Buchanan, 5 S.W.2d, 211, 212 (Tex. Civ. App.—San Antonio 1928). There is a clear rule to be drawn from this that "refunding bonds" do not require an election to authorize their issuance because the original bonds were authorized by the voters. One could infer a related rule based on the court's insistence on the character of the indebtedness that **debt in forms other than bonds not approved by the voters are not eligible to use the refunding bond statute**, (emphasis added), (article 717), to issue new bonds in place of debt that did not exist as bonds that had been approved by the voters. *Id.* The court goes on to say that obtaining an attorney general approval and comptroller registration may render the bonds prima facie valid, but the validity might be destroyed by proof that it was obtained by fraud or other illegal means. *Id.*

The Texas Supreme Court has repeatedly held that the power to issue bonds is a limited power that must be narrowly construed. *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex.1981) (citing *Eddins-Walcher Butane Co. v. Calvert.* 156 Tex, 587, 298 S.W.2d 93. 96 (1957)). CHECK TO SEE FOR BETTER CITE When the City of Waco issued bonds without an election in violation of the Texas Constitution and its charter, the court rejected a familiar rule "wherever a power is given by statute, everything necessary to the making effectual or requisite to attain the end is implied. *Id.* The court went on to say: "Another rule, equally well recognized, applies to and controls this case, to-wit: that where a power is granted, and the method of its exercise prescribed, the prescribed method excludes all others, and must be followed, *City of Waco*, 113

Texas at 354, (citing *The Citizens Bank v. The City of Terrell*, 78 Tex. 450, 456 (1890); *Bryan v. Sundberg*, 5 Tex. 209 (417-418)). The court later said: "The power to issue negotiable paper for public improvements, or for money borrowed for the purpose of acquiring such improvements, is a power which is regarded as being beyond the scope of power of the governing body of a city or a county unless it be specially granted. This extraordinary power, when granted, can be exercised only in the mode and for the purposes specified in the grant." *San Antonio Union Junior College Dist. v. Daniel*, 146 Tex. 241, 248 (1947) (citing *City of Waco*, 113 Tex. 352, 354). "The power to issue refunding bonds cannot arise by implication and cannot be implied from the power to issue the original bonds or from the mere existence of indebtedness."
60 TEX. JUR. 3D Public Securities and Obligations § 94 (citing *San Antonio Union Junior College Dist.*, 146 Tex. 241, 248).

The Texas Supreme Court said: "It is a rule of statutory construction that every word of a statute must be presumed to have been used for a purpose." *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex.1981) (citing *Eddins-Walcher Butane Co. v. Calvert.* 156 Tex, 587, 298 S.W.2d 93. 96 (1957)). Section 9 of Article IX of the Texas Constitution grants hospital districts the "power to issue bonds for the purchase, construction, acquisition, repair or renovation of buildings and improvements and equipping same, for hospital purposes." No other power to issue bonds is granted to hospital districts in the Texas Constitution nor the Gainesville Hospital District, which, was established under that section of the Constitution. *See* Gaylord Exhibit A. There is no other reasonable interpretation other than those words are used to list the only

purposes for which bonds can be issued by a hospital district. Very similar words were used in the original Enabling Act. *See* Gaylord Exhibit A.

Plaintiff argues that tax revenues can be used to pay the DIP loan and possibly other obligations. That may be possible under the Texas Constitution where voters have authorized a hospital district to levy and collect a maintenance and operations tax for general purposes. The Muenster Hospital District, just west of the Gainesville Hospital District in Cooke County is authorized to collect maintenance and operations taxes for general purposes. TEX. SPECIAL DISTRICT LAWS CODE § 1067.251(b)(2). Muenster Hospital also has an interesting provision that states explicitly: "The board may issue refunding bonds to refund any bond issued by the district." *Id.* at § 1067.207(a). **That appears to be the appropriate use for refunding bonds in one sentence, consistent with previous court reasoning, but not the expansive interpretation the plaintiff seeks.** *Griffith,* 5 S.W.2d at 211.

The Gainesville Hospital District is only authorized to levy taxes for bonds issued for the limited capital improvement purposes listed in the Texas Constitution and Enabling Act, and taxes to pay for indigent care. TEX. SPECIAL DISTRICT LAWS CODE § 1077.251. The Gainesville Hospital District, under the initial Enabling Act and current law, was and is not authorized to collect maintenance and operations taxes for general hospital purposes. *See* Gaylord Exhibit A; *Id.* Enabling Act at § 3. All Gainesville Hospital District authorized taxes are restricted to special purposes: (1) bond payments for bonds issued within prescribed limits and for (2) indigent care, nothing else. Furthermore, the Texas Constitution and the Enabling Act require voters to give their approval for any new tax such as maintenance and operations taxes to pay "general"

expenses. *See* Gaylord Exhibit A; TEX. CONST. art IX, § 9; Enabling Act at § 3. Since the maintenance and operations tax is not in the Enabling Act or the current governing act, it would take an act of the Texas Legislature followed by an affirmative vote of the district taxpayers before any maintenance and operations tax for any general purposes could be levied and used to pay accumulated debt. *Id.* Plaintiff's argument that ad-valorem taxes could be levied to pay the DIP loan or other debts beyond voter authorized bonds for capital improvements is mistaken.

II.

DISCUSSION OF PLAINTIFF'S EXPANSIVE DEFINITION OF OTHER GENERAL OR SPECIAL OBLIGATIONS

Plaintiff argues that following the words: "An issuer may issue refunding bonds under this chapter to refund all or any part of the issuer's outstanding bonds, notes," the terms "other general or special obligations" in the statute "can only be viewed expansively." TEX. GOV'T CODE § 1207.002; Plaintiff's Brief at 7. That is counter to the statutory canon of construction of *Ejusdem Generis* which says "when a general word or phrase follows a list of specific person or things, the general word or phrase will be interpreted to include only persons or things of the same type as those listed." *Black's Law Dictionary* 535 (7th ed. 1999). "The distinguishing feature of a *bond* (emphasis added) is that it is an obligation to pay a fixed sum of money, at a definite time, with a stated interest, and it makes no difference whether a bond is designated by that name or some other, if it possesses the characteristics of a bond. There is no distinction between a bond and certificates of indebtedness which conform to all the characteristics of a bond.

Black's Law Dictionary 169 (7th ed. 1999) (citing Silvester E. Quindry, *Bonds & Bondholder's Rights and Remedies* § 2, at 3-4 (1934)). According to Black's, a *note* is "[a] written promise by one party (the maker) to pay money to another party (the payee) or to bearer. A note is a two-party negotiable instrument, unlike a draft (which is a three-party instrument), — Also termed *promissory note*." *Black's Law Dictionary* 1085 (7th ed. 1999). The categories of obligations plaintiff proposes to refund with general obligation bonds bear little resemblance to a bond or note. In fact, the pension obligation is a made-up number if the worst course of action was pursued which is not required by law unless the plaintiff in effect takes a suicide pill and terminates its pension plan.

Using Plaintiff's expansive argument, the District could run up or create any unsecured debt or obligation and then file an action under TEX. GOV'T CODE CHAPTERS 1205 and 1207 to convert that unsecured debt into General Obligation Bonds backed by the full faith and credit of property taxes, all without the approval of the voters, circumventing the limitations placed on the powers to issue bonds and taxation on hospital districts in the Texas Constitution. TEX. CONST. art. IX, § 9. Clearly the Texas Supreme Court's precedents spanning over 100 years indicate it would not affirm the plaintiff's expansive interpretation of "other general or special obligations" under TEX. GOV'T CODE §1207.002. I ask this Court to decline to do so too.

III.

TITLE 9: PUBLIC SECURITIES

As background, TEX. GOV'T. CODE CHAPTERS 1201-1207 were adopted by the 76th Legislature in 1999 as part of the new Title 9: Public Securities together along with

other Public Securities statutes under HB 3157, as a "nonsubstantive revision of statutes relating to public securities, including conforming amendments, repeals, and penalties." Act of May 10, 1999, 76thLeg., R.S. H.B.3157 (to be codified at TEX. GOV'T CODE CHAPTERS 1201-1509.) *See* Gaylord Exhibit C. TEX. GOV'T CODE CHAPTERS 1201-1207 were grouped together under Title 9: PUBLIC SECURITIES, Subtitle A: GENERAL PROVISIONS. *Id.* In reviewing the Subtitle, § 1202.001(3) has an interesting definition of Public Securities that starts similarly to the wording in § 1207.002 regarding Refunding Bonds:

> (3) "Public security" means an instrument, including a *bond, note*, (emphasis added), certificate of obligation, certificate of participation or other instrument evidencing a proportionate interest in payments due to be paid by an issuer, or other type of obligation that:
>
> (A) is issued or incurred by an issuer under the issuer's borrowing power, without regard to whether it is subject to annual appropriation; and
>
> (B) is represented by an instrument issued in bearer or registered form or is not represented by an instrument but the transfer of which is registered on books maintained for that purpose by or on behalf of the issuer.

The above definition adds a little specificity to what the legislature may have intended by "bonds, notes or other general and special obligations" in Tex. Gov't Code § 1207.002. § 1202.003 requires that "[b]efore the issuance of a public security, the issuer shall submit the public security and the record of proceedings to the attorney general." § 1202.005 states on receipt of documents § 1202.003(b)(2) from the attorney general, "the comptroller shall register: (1) the public security; and (2) the record of proceedings (authorizing the issuance)." § 1202.007 lists some narrow exemptions that do not apply to any of the categories of refunding requested by Plaintiff.

The Texas Supreme Court said, "In all interpretations of the Act, our primary objective is to ascertain the legislature's intent." *Cameron v. Terrell & Garrett, Inc.*, 618 SW 2d 535 (Tex. 1981) citing (*Woods v. Littleton.* 554 S.W.2d 662. 665 (Tex.1977)). "To do that, we must look to the Act as a whole, and not its isolated provisions, keeping in mind at all times 'the old law, the evil, and the remedy.'" *Id.*

In looking at the Refunding Bond Chapter 1207 as part of Subtitle A: General Provisions, of Title 9: Public Securities per the Texas Supreme Court rule on statutory interpretation, rather than the expansive definition of "general and special obligations" advocated by Plaintiff, it is clear that to be eligible for a Refunding Bond, an existing obligation, with few exceptions, must have been previously reviewed and approved by the attorney general and registered by the comptroller as a public security. Furthermore, there had to be a record of proceedings authorizing the issuance of the public security for the comptroller to register a record of the proceedings.

Plaintiff makes no claim, nor presents any evidence, that any of the categories of obligations it proposes to refund via general obligation bonds are public securities approved by the attorney general and registered by the comptroller since they do not qualify for one of the narrow exceptions under §1202.007. I made public information requests of the Texas Attorney General and Texas Comptroller for any documents related to the approval and registration of the debts plaintiff proposes to "refund" late on Monday, August 14, 2017. To date, I have not received a response from the attorney general. However; I received two notes and a standard report from Mr. James G. Nolan, Assoc. Deputy General Counsel for the Comptroller, in response to my public information request, listing the Public Securities that had been registered by plaintiff and

indicating that none of the debts plaintiff proposes to "refund" are currently registered as "Public Securities." See Exhibits Gaylord F-1 & F-2. Therefore, plaintiff's suit to refund said debts and obligations should be denied and dismissed since they are not "public securities" and are not "bond[s], note[s], certificate[s] of obligation, certificate[s] of participation or other instrument[s] evidencing a proportionate interest in payments due to be paid by an issuer, or other type of obligation under §1202.001(3).

IV.
FURTHER REQUIREMENTS AND LIMITS OF TEX. GOV'T CODE CHAPTER 1207 ON REFUNDING BONDS

TEX. GOV'T CODE §1207.005 has a limitation on the revenue sources used to pay for "refunded bonds" in the Refunding Bond Statute where it says:

> SOURCES AVAILABLE FOR PAYMENT. Except as provided by Section 1207.0621, a refunding bond may be secured by and made payable from taxes, revenue, or both, another source, or a combination of sources to the extent the issuer is *otherwise authorized* (emphasis added) to secure or pay any type of bond by or from that source or those sources.

TEX. GOV'T CODE §1207.005. The reasonable interpretation of this statute is that the "Refunding Bond" Statute does not provide or create a source of revenue from which to pay the refunded bond. Rather, it requires that the newly issued "refunded bond" only use the sources of revenue previously or otherwise authorized to pay for the bond being refunded. *Griffith*, 5 S.W.2d at 212. In the case of Plaintiff's petition, the Texas Constitution does not authorize the forms of debt or obligation listed by plaintiff to be funded by bonds that are authorized to be paid for by ad-valorem taxes. TEX. CONST. art. IX, § 9. See Gaylord Exhibit A.

Plaintiff argues that the refunding bonds can be issued without an election and payable from ad-valorem taxes. Plaintiff brief at 6. I agree with plaintiff as long as the bonds being refunded were previously authorized by the voters and payable from ad-valorem taxes such as the April 2017 series plaintiff "refunded." *Griffith*, 5 S.W.2d at 212. However, plaintiff has over generalized the authority in the statute and extended the ability to pledge ad-valorem taxes to any bond they propose to issue regardless of whether the underlying debt or obligation they propose to refund has been authorized in the Texas Constitution and the Enabling Act as an expense that is eligible for the issuance of bonds. Plaintiff brief at 6. Plaintiff's reasoning is contrary to the court's ruling in *Griffith*. *Griffith*, 5 S.W.2d at 212. I submit the second part of the section's wording, "to the extent the issuer is *otherwise authorized* ... (emphasis added)" expresses a limitation that the source of revenues is limited to the sources the original bond could be authorized from and be paid from. TEX. GOV'T CODE § 1207.005. *Griffith*, 5 S.W.2d at 212. What other purpose could that phrase have other than to express a limitation that a refunded bond only brings forward the sources of payment from which the original obligation had available? "It is a rule of statutory construction that every word of a statute must be presumed to have been used for a purpose." Cameron v. Terrell & Garrett, Inc., 618 S.W.2d 535, 540 (Tex. 1981). To illustrate the absurdity of plaintiff's reasoning, it would open the door for

a revenue bond, (a special obligation), that was prohibited from using tax revenue as a source of payment could then be refunded and converted to a general obligation bond payable from ad-valorem taxes. That makes no sense.

Some argument could be made that some of plaintiff's listed debts and obligations could be paid from maintenance and operations ("M&O") taxes which are authorized in the Texas Constitution. However, in the case of the Gainesville Hospital District, no M&O taxes for general purposes were authorized by the original Enabling Act, nor the resolution which authorized the election held on August 23, 1975, creating the District. Enabling Act at 3.

TEX. GOV'T CODE §1207.008 further limits the aggregate payments of the new bonds compared to the obligations being refunded:

> LIMITATION. (a) An issuer may not issue refunding bonds if the aggregate amount of payments to be made under the refunding bonds exceeds the aggregate amount of payments that would have been made under the terms of the obligations being refunded unless:
>
> (1) the governing body of the issuer, in the proceedings authorizing the issuance of the refunding bonds, finds that the issuance is in the best interests of the issuer; and
>
> (2) the maximum amount by which the aggregate amount of payments to be made under the refunding bonds exceeds the aggregate amount of payments that would have been made under the terms of the obligations being
> refunded is specified in the proceedings.
>
> (b) An issuer is not required to comply with Subsection (a) (2) if the governing body of the issuer determines and states in the proceedings authorizing the issuance of the refunding bonds that the manner in which the refunding is being executed does not make it practicable to make the determination required by that subsection.

TEX. GOV'T CODE §1207.008. Plaintiff does not address the requirements of Tex Gov't Code §1207.008 in plaintiff's Complaint (Petition). This section limits the issuer's ability to issue refunding bonds where the aggregate payments of the refunded bonds exceed the remaining payments of the obligations being "refunded." Considering the hospital district is converting some debts that are currently due and proposing to securitize them into general obligation bonds with maturities of 10-30 years, (See

plaintiff's latest *Important Information Regarding The Bond Validation Suit,* Exhibit L at 2), it should be obvious that with the added interest over 10 to 30 years that the aggregate payments will be higher than if paid in the near future. That would trigger the provisions of §1207.008. In the case of the pension liability, the hospital by its Exhibit 10 estimates pension liabilities at $1.8 Million as of June 30, 2017. They want to convert that small pension shortfall, that is not currently due or bearing interest as a debt, into a $16.6 Million "*other general or special obligation*" (emphasis added). Does that not increase the aggregate payments as specified in §1207.008? If the board vote on agenda item #14 at the May 30, 2017, Gainesville Hospital District Board Meeting, is the basis for the suit to authorize the issuance of the refunding bonds, the GHD Board failed to take the proper notice as required in TEX GOV'T CODE §1207.008. Their petition asks the court to find that they have met all the legal requirements to issue the bonds and they are authorized to do so. Plaintiff's complaint (petition); Tex. Gov't Code 1205. Their failure to comply with the statutory requirements of § 1207.008 should result in a dismissal of their petition for failure to comply with the statute. *Guadalupe Blanco River Authority v. Texas Attorney General*, No. 03-14-00393-CV (Tex. App. —Austin, Feb. 26, 2015, no pet.) (mem.op., not designated for publication).

We agree with Plaintiff's proposal in Plaintiff's Brief In Support Of Original Complaint/Petition For Expedited Declaratory Judgment "Plaintiff's Brief" that a "Contract" was formed with the voters when the voters of the district authorized the creation of the district and the original bonds to be sold. Plaintiff's Brief at 5; *San Saba v. McCraw*, 108 S.W.2d 200 (Tex. 1937); see Tex. Att. Gen. Op. JC-0400 (2001).

However; in reviewing the laws in existence at that time, we arrive at significantly different conclusions.

Gov't Code §§ 1207.007 & 1207.008 are both written as limits from the perspective that this Chapter is written for *Refunding Bonds* as the *chapter is so titled*, and not a back door to convert any non-securitized debt or obligation of the plaintiff into a General Obligation Bond, backed by the full faith and credit of the taxpayers.

The Texas Legislature has made it increasingly difficult for government entities to raise taxes for maintenance and operations. Plaintiff's petition would be a major circumvention of those restrictions. It would also bypass the Rollback Rate increase limit of 8% allowing the voters to reject a tax increase that exceeds 8% through a rollback election. Is it reasonable to interpret the Refunding Bond statute as a way to circumvent the above limitations and increase taxes by 200 to 500%, all without an election as plaintiff argues?

Courts have continued to narrowly construe Texas Laws involving the ability of government entities to convert non-capital expenses into bonds or certificates of obligation. In a 1977 case, the court rejected a city's attempt to pay the salaries of employees not engaged in construction or repair of public works projects with a certificate of obligation. *Lopez v. Ramirez*, 558 S.W.2d 954 (Tex. Civ. App.—San Antonio 1977). The court held:

> Therefore, certificates of obligation may not be used to pay regular salaried county employees, unless such employees are engaged in the construction or repair of a public works project. It would be improper in construing the Act of 1971 to take a few words out of context, such as Sec. 7(5), and with them thus isolated, attempt to determine their meaning.

> With Sec. 7(5) read in context with the entire Act, it is evident that the legislature intended that the Certificate of Obligation Act of 1971 pertains only to public works and to hold otherwise would virtually destroy the meaning of the entire context.

Id. The consistent court rulings make it clear the limitations in place for the purposes which bonds and certificates of obligations may be issued for capital improvements is a hard limit that the courts will not allow to be transgressed.

Courts have ruled against Texas Government Entities that sought approval for bonds and refunding bonds under Tex Gov't Code Chapters 1205 and 1207 and their predecessor statutes for debt that was invalid either on the original bond, or a refunding bond. In a recent Bond Validation Suit, the court held that TEX GOV'T CODE CHAPTER 1205 was intended to provide only a limited set of legal determinations based on § 1205.024(1)-(7) and only allows claims mentioned in § 1205.021. *Guadalupe Blanco River Authority v. Texas Attorney General*, No. 03-14-00393-CV (Tex. App. —Austin, Feb. 26, 2015, no pet.) (mem.op., not designated for publication). The key provisions here are: (1) the authority of the issuer to issue the public securities; and, (2) the legality and validity of each public security authorization relating to the public securities. TEX GOV'T CODE § 1205.021(1&2). The court denied the plaintiff's petition because while it asked for a declaratory judgment in its prayer, it failed to show in its argument that it had met the statutory requirements to issue the bonds but rather argued that it needed the bonds and the water supply it was seeking. *Id.* In *City of Laredo v. Looney*, 108 Tex. 119, 120 (1916), the court found that some of the bonds that the City wanted to "refund" had originally been issued in violation of the Texas Constitution. The court held that only valid indebtedness may be refunded. *Id.* It stated "If they may be refunded for their

full amount, the result is a clear evasion of the Constitution ... the purpose of the constitutional provision is to prevent such taxation." *Id.* at 121.

The debt plaintiff proposes to refund is not eligible to be refunded. To issue a "refunding bond," it must replace a public security previously authorized by the voters. TEX. CONST. art. IX, § 9; Enabling Act; Griffith 5 S.W.2d 211. Based on Exhibits F & F1, none of the debt plaintiff proposes to "refund" is registered as a public security as required by law, with a few narrow exceptions that do not apply here. TEX. GOV'T CODE §§ 1202.003, 1202.005 & 1202.007. Therefore, none of the debt is eligible to be "refunded" through a refunding bond.

IV.

CONCLUSION

The Court should deny plaintiff's request for the issuance of refunding bonds for the listed debt as a matter of Texas Law. The Texas Constitution and the District's Enabling Act limit the issuance of bonds to a specified list of capital improvements and repairs. Both require voters to approve any new tax in an election. The Enabling Act restricts the use of ad-valorem taxes to the payment of authorized voter approved bonds and indigent care. There is no legislative authority for the district to issue and collect taxes for general purposes such as maintenance and operations. Nor have the voters approved any such tax as required by law. While the definition of "other general or special obligation" is not explicitly defined, it is reasonable to conclude that it should resemble a bond or other public security since the authority to refund "bonds, notes, or other general or special obligations" is part of the Public Securities Title under the TEX. GOV'T. CODE. None of the debt or obligations plaintiff seeks to "refund" meet the

characteristics of bonds, notes or other public securities, nor have they been registered as such, as required by law. Nor do the debt or obligations arise from purposes whereby the district is authorized to issue bonds. Tex. Const. art. IX, § 9; Enabling Act. Allowing the plaintiff to redefine the meaning of "other general or special obligations" in a very expansiv way as they have proposed would make the limitations in the Texas Constitution null and void and ignore more than 100 years of Texas case law, establishing a new precedent. Therefore, plaintiff's petition to issue "refunding bonds" to "refund" the listed debts and obligations in plaintiff's petition must be denied as a matter of law.