

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

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS**

**SHERMAN DIVISION**

IN RE:	§	
	§	BY _____ DEPUTY CLERK
GAINESVILLE HOSPITAL DISTRICT	§	Case No. 17-40101
D/BA NORTH TEXAS MEDICAL	§	
CENTER	§	
	§	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

**BRIEF ON PROCEDURAL ISSUES WITH PLAINTIFF’S EXPEDITED  
DECLARATORY JUDGMENT ACTION AND REFUNDING BOND VALIDATION SUIT**

**I.  
MISSING BOARD ACTION TO AUTHORIZE BOND VALIDATION SUIT WITH  
SUFFICIENT NOTICE**

The District’s complaint or petition, while mentioning several authorities for their action, omits a critical one. Where do they show that the Gainesville Hospital District Board (“Board”) voted to authorize the Bond Validation Suit? There is no mention in plaintiff’s petition of a Board vote or date where the board authorized this suit. Nor has plaintiff provided an Exhibit with the minutes of the particular Board Meeting showing when and how this suit was authorized by the board. Courts have ruled that a Texas government entity cannot file a lawsuit without taking a public vote in an Open Meeting in compliance with the Texas Open Meetings Act. *Toyah Independent School District v. Pecos-Barstow Independent School District*, 466 S.W.2d 377 (Tex. Civ. App.—San Antonio 1971, no writ).

In *Toyah Independent School District v. Pecos-Barstow Independent School District*,<sup>272</sup> for example, the Toyah school board sued to enjoin enforcement of an annexation order approved by the board of trustees of Reeves County in a closed meeting. The board of trustees of Reeves County had excluded all members of the public from the meeting room before voting in favor of an order annexing the Toyah district to a third school district. The court determined that the board of trustees' action violated the Act and held that the order of annexation was ineffective. The *Toyah Independent School District* court thus developed the remedy of judicial invalidation of actions taken by a governmental body in violation of the Act. This remedy is now codified in section 551.141 of the Act. The voidability of a governmental body's actions taken in violation of the Act is discussed in Part XI.C of this *Handbook*.

ATTORNEY GENERAL OF TEXAS, OPEN MEETINGS HANDBOOK 43 (Office of the Attorney General of Texas, 2016)

I spoke to two board members about how this Bond Validation Suit was authorized. I thought it was on the agenda for the June 26, 2017 board meeting but no action was taken. The minutes show the vice-chair who was presiding, Mr. Derrell Comer said no action was needed. See Gaylord Exhibit H. Mr. Arterbury and Mr. Mosman told me the board's attorneys said agenda item #14 at the May 30, 2017 meeting was sufficient to file this suit. The wording of that agenda item is: "**Item 14- Consider the status and Approval of certain additional limited tax bonds to refund and refinance certain District obligations and take action, as needed, to approve such additional bonds.**" (See Gaylord Exhibit G, NTMC May 30, 2017 Board Meeting Minutes.) This agenda item gives no indication to the public that a lawsuit is about to be filed against all taxpayers in the district for approximately \$34.75 million plus costs. Plaintiff in its brief cites no case law or precedent that what they are attempting has ever been done before as far as using the Refunding Bond statute to convert unsecured debts and possible future debts into general obligation bonds. How would the public know that the matter under consideration involved a \$34.75Million lawsuit against them with the above agenda item? In talking to Mr. Arterbury and Mr. Mosman, they did not know that all taxpayers in the hospital district would be

class defendants when the Bond Validation Suit was discussed in executive session, nor when the item was voted on in the open meeting at the May 30, 2017 Board meeting. The Texas Supreme Court has held that when a matter before a government entity is of heightened interest to the public, that there has to be reasonable specificity in the wording of the agenda item. *Cox Enters., Inc. v. Bd. of Trs.*, 706 S.W.2d 956, 959 (Tex. 1986).

The Supreme Court of Texas stated:

The Board did not provide full and adequate notice, particularly where the subject slated for discussion was one of special interest to the public. Selection of a new school superintendent is not in the same category as ordinary personnel matters-and a label like "personnel" fails as a description of that subject.

Similarly, a major desegregation lawsuit which has occupied the Board's time for a number of years, and whose effect will be felt for years to come, is not in the same category as the more common "litigation" which a school board may expect to face. Certainly, a school board is not expected to disclose its litigation strategy, but it cannot totally conceal that a pending desegregation lawsuit will be discussed.

*Id.* The court affirmed the holding of the appeals court that the school district acted in violation of the Open Meetings Act in regards to the actions taken on the above executive session agenda items.

The consideration of a lawsuit against all taxpayers in the hospital district for almost \$35 million is a matter of special interest. The legislature has deemed tax increases as small as 1% or less are of special interest and require heightened notification of tax increases by governmental bodies. The legislature requires at least three public notices with specific wording in a local newspaper with a 24 point type headline and a minimum of a quarter page ad to increase taxes even 1%. *See* Gaylord Exhibit M. Texas Accounts - <https://comptroller.texas.gov/taxes/property-tax/truth-in-taxation/notices.php>. Multiple board meetings are required to raise maintenance and operations taxes in any amount, one to propose a tax increase, then two public hearings and finally a fourth meeting to adopt the proposed tax increase. *Id.* In addition to the three newspaper

notices at least a week in advance of the hearings, there are requirements to post the notice on the governmental body's website and any free TV station they have access to. *Id.* There is no doubt the Texas Legislature has codified in law that even small proposed tax increases require heightened notice and specificity. In addition, any general tax increase beyond 8% is subject to a rollback election. TEX. TAX CODE §§ 26.07(a), 26.041. In the present case, the board considered almost tripling the amount of general obligations bond outstanding with a similar tripling or more of the taxes to pay the bonds, depending on the bond maturities, resulting in a tax increase on average of 300%. *See Gaylord Exhibit M.* If a tax increase of 1% or less for maintenance and operations or indigent care requires heightened notices and procedures under Texas Law, beyond the requirements of the Open Meetings Act in general, is there any doubt that the legislature would demand a tax increase approaching 300% or more would require a higher degree of specificity under the Open Meetings Act? TEX. TAX CODE CHAPTER 26. Texas courts have held that agenda items of special interest require reasonable specificity in their wording and held that "less than full disclosure is not substantial compliance." *Cox Enters., Inc.*, 706 S.W.2d at 959. There should be no doubt that if agenda item #14, (Gaylord Exhibit G) used by the Board and their attorneys on May 30, 2017, to authorize this Bond Validation Suit, plaintiff failed to meet the heightened notice requirements under the Open Meetings Act, and the suit should be dismissed as void. TEX. GOV'T CODE ANN. § 551.141; *see Smith Cnty. v. Thornton*, 726 S.W.2d 2, 3 (Tex. 1986).

In conclusion, Plaintiff has failed to show that the Board lawfully authorized the Bond Validation Suit under the Open Meetings Act. Plaintiff makes no argument and provides no exhibit that the Board voted to authorize this suit. If the authorization was via agenda item #14 at the May 30, 2017, Board meeting, the agenda items fails to give sufficient notice for a matter of

special interest and therefore is invalid and voidable. Therefore, this Court should dismiss this Bond Validation Suit action for lack of legal authorization by the Gainesville Hospital District Board.

**II.**  
**FAILURE TO PROVIDE SUFFICIENT AND TIMELY DOCUMENTATION**  
**AS REQUIRED UNDER TEX. GOV'T CODE 1205.064**

The statute under which the plaintiff is suing the property taxpayers of the hospital district requires:

Each record of an issuer relating to the public securities, a public security authorization, or an expenditure of money relating to the public securities is open to inspection at reasonable times to any party to an action under this chapter.

TEX. GOV'T CODE 1205.064(a). I have made repeated requests for information from the district related to this specific request and related requests. In the plaintiff's last response from Mr. Spurck on August 1, 2017, via e-mail, he said:

The records requested by you under Tex. Gov't Code, Section 1205.064 are encompassed by the petition and all exhibits, the brief, the proposed judgment, and the notices that have been filed with the court. You can view these documents through the District's website or directly at: <http://www.indla.com/cases/GainesvilleHD>

There are many documents I have requested on June 8, 2017, that are related to the *expenditure of money relating to the public securities*, (emphasis added), proposed debt and expenditures plaintiff seeks to refund that have not been provided, such as:

1. All attorney fee billing statements billed to NTMC for the past two years.
2. All payment/check registers showing all payments made by check, electronically or other means by the hospital district showing, date, amount paid, who was paid and what they were being paid for.

I was able to pick up some of the information I requested on July 24, 2017. I asked for it sooner as they are supposed to provide it within ten business days under the Texas Public

Information Act. TEX. GOV'T CODE § 552.221(a). The only documents they offered to let me see a week sooner, (on July 17, 2017), was the board packets. Most of the key information I needed in the board packets are online, so I waited until the 24<sup>th</sup>, in part due to my scheduling conflicts on July 17<sup>th</sup>, which was the only day they offered me to inspect earlier. The Texas Public Information Act requires the officer for public information to “certify” that they cannot produce the requested information within ten days if they cannot do so.. *Id.* at § 552.221(d). The plaintiff has never certified to anything and has tried to charge me for time to review records before they allow me to see them, which is not allowed under the act. *Id.* at § 552.262. I suspect the delays are due to the attorneys or someone else wanting more time to review the requested documents before they provide them, since Ms. Daughtry who is the designated officer for public information told me she did not have time to review them. She indicated the attorneys were reviewing the documents before they were allowing me to see them.

I notified Ms. Daughtry verbally on or about the evening of July 24<sup>th</sup> at the board meeting I had been unable to find any of the payment registers I requested on June 8, 2017. She told me she had been told they were all there and I agreed to check again. I sent Ms. Daughtry and Mr. Spurk, plaintiff's attorney handling public information requests, another e-mail query about the missing payment registers on July 30, 2017. Mr. Spurek responded late on July 31, 2017, that I had not agreed to the redaction of Protected Health Information, (“PHI”) so they were withholding the payment registers while seeking an attorney general opinion. I responded back a few hours later that I had always agreed if asked, going back to 2010 and I was agreeable this time as well. He said they would work on getting it to me, but it would take a while. Ms. Daughtry sent me some files on August 3<sup>rd</sup> but said it did not include the records from mid-2015 through 2017. A few days later she sent a note saying she was mistaken and she had sent

everything. Upon looking through the files, I found key information missing such as the date and reason for which the payment was made. I was fine with withholding PHI but not any explanations for payment to vendors unrelated to PHI. We exchanged a couple more emails where she offered to run another report. I confirmed I needed the requested information in my note to her on August 10, 2017, Gaylord Exhibit K. I have received nothing more from the plaintiff in terms of additional communication, nor the records I requested 70 days ago.

The plaintiff is seeking up to \$9.6 Million for the DIP loan, pre, and post-bankruptcy petition debts. The plaintiff has failed to itemize those debts other than list some of the creditors in their Exhibit 5 for a total of about \$3.83 Million. As a party to the lawsuit, I am entitled to see where all that money is going to and what it is being spent on. Plaintiff has been very slow and limited in providing payment register information. They have withheld all attorney fee billings to date. I have not received one page of attorney fee billings, not even a summary and I have been unable to find it in the Exhibits.

Based on the above evidence, the plaintiff has failed to comply with the requirements of TEX. GOV'T CODE § 1205.064 which is a requirement to proceed under a Bond Validation Suit. Therefore; the suit should be dismissed or postponed until at least three weeks after the plaintiff has made available all required records.

### **III.** **LIMITATIONS OF THE REFUNDING BOND STATUTE**

The Refunding Bond statute relied upon by the District for this lawsuit has a Limitation Section limiting any increases in the aggregate payments of any "Refunding Bonds" beyond the scheduled payments of the bonds being refunded:

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Sec. 1207.008. 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. (emphasis added – bolding and underlines)

TEX. GOV'T CODE 1207.008.

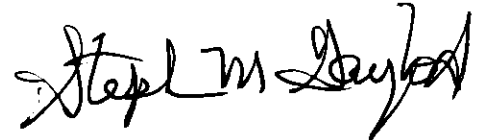
There is no record in the District's minutes that any required Finding or Statement was made by the Board that the aggregate payments will exceed the payments that would otherwise occur if timely paid, nor is there any finding that doing so is in the best interests of the issuer, §1207.008(a)(1)& (2) or a statement that "that the manner in which the refunding is being executed does not make it practicable to make the determination required by that subsection" as required by §1207.008(b). The bonds are projected to run from 10-30 years, based on the latest web statement by the hospital district, so it follows that stretching payments on the current debt over 10 to 30 years will result in increased aggregate payments than if paid out of current funds.

In conclusion, the Court should dismiss the Declaratory Judgment Action under TEX. GOV'T CODE Chapter 1205 since the plaintiff failed to comply with the limitation provisions of TEX. GOV'T CODE 1207.008.

#### IV. 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. The court should void and dismiss plaintiff's Bond Validation Suit due to plaintiff's failure to comply with the notice requirements of the Open Meetings Act. Furthermore, if not dismissed for violating the Open Meetings Act, the suit should be dismissed for failure to comply with the limitation requirements of TEX. GOV'T CODE § 1207.008. Finally, if the court does not dismiss for any of the above reasons, the court should order the plaintiff to comply fully with the disclosure requirements of Tex. Gov't Code 1205.064 and postpone any proceedings until the first Monday 20 days after they have made the requested documentation fully available for inspection.

A handwritten signature in black ink, appearing to read "Stephen M. Gaylord". The signature is written in a cursive, flowing style with some capitalization and a prominent initial "S".