

CAUSE NO. 110998-D-CV

<i>IN RE</i>	§	IN THE DISTRICT COURT OF
	§	
CITY OF AMARILLO, TEXAS	§	POTTER COUNTY, TEXAS
	§	
	§	320th JUDICIAL DISTRICT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On October 4 and 5, 2022, the Court conducted a final hearing and trial regarding the City of Amarillo's Declaratory Judgment Action under Chapters 1205 and 1431 of the TEXAS GOVERNMENT CODE and Alex Fairly's Declaratory Judgment Action under Chapter 37 of the TEXAS CIVIL PRACTICE & REMEDIES CODE. On October 25, 2022, the Court issued its Final Judgment in this matter finding for Alex Fairly and against the City of Amarillo. Now, in accordance with Rule 296 of the TEXAS RULES OF CIVIL PROCEDURE, the Court issues these Findings of Fact and Conclusions of Law:

1. The Amarillo civic center complex project includes new construction for an arena and rehabilitation of the Santa Fe Depot building, as well as other smaller buildings ("Civic Center Complex").
2. Proposition A was a ballot measure promoted by the City of Amarillo and Amarillo City Council ("City Council") placed on the November 2020 ballot ("Proposition A").
3. Proposition A was for the issuance of general obligation bonds totaling \$275,000,000 for new construction of the Civic Center Complex.
4. Proposition A failed with 61% voting against and 39% voting for.
5. Any sizable tax increase by the city of Amarillo would be a matter of special interest to the public.

6. A proposed sizable tax increase by the city of Amarillo to pay for a project recently rejected by the city of Amarillo taxpayers would be of a heightened special interest to the public.
7. The Court was requested that trial in this matter on October 4 and 5, 2022, be broadcast over YouTube because of the significant public interest even though the courtroom was open to the public.
8. The Court granted the request to broadcast the final hearing on You Tube ; the Court had previously ordered that the hearing on the Motion for Security be broadcast on You Tube and that it was allowed to be streamed over to the professional baseball team field video board.
9. The Tax Increment Reinvestment Zone ("TIRZ") #1 Board timely issued an agenda notice for their May 5, 2022 meeting.
10. The TIRZ #1 Board is a City of Amarillo board responsible for the TIRZ #1 project plan.
11. The May 5, 2022 agenda notice contained the following language under Item No. 5: "Discuss and Consider Updates to the Center City TIRZ #1 Final Project and Financing Plan."
12. The TIRZ #1 Board held a meeting on May 5, 2022 regarding Item No. 5.
13. At the May 5, 2022 TIRZ #1 Board meeting, the TIRZ #1 Board approved an amendment under Item No. 5 to include aspects of the Civic Center Complex into the TIRZ #1 project plan.
14. The item no. 5 action taken by the TIRZ #1 Board was done in furtherance of a plan by the city to ultimately issue tax anticipation notes with the intent to do so with as little notice and discussion as possible.

15. City Council timely issued an agenda notice for their May 10, 2022 regular City Council meeting.
16. The agenda notice for the May 10, 2022 regular meeting incorporated Non-Consent Item 3(D) associated with Ordinance 7980 for consideration by City Council regarding adopting the TIRZ #1 Board's amendment for the TIRZ #1 project plan.
17. Ordinance 7980 authorized the TIRZ #1 Board's amendment to the TIRZ #1 project plan ("Ordinance 7980") which was done in furtherance of the plan to issue tax anticipation notes.
18. City Council held a regular meeting on May 10, 2022.
19. At the May 10, 2022 regular City Council meeting, City Council had a first reading of Ordinance 7980 under Non-Consent Item No. 3(D).
20. City Council timely issued an agenda notice for their May 24, 2022 regular City Council meeting.
21. The agenda notice for the May 24, 2022 regular meeting incorporated Consent Item No. 2(E) associated with Ordinance 7980 for consideration by City Council regarding adopting the TIRZ #1 Board's amendment for the TIRZ #1 project plan.
22. The agenda notice for the May 24, 2022 regular meeting incorporated Non-Consent Item No. 3(L) associated with Ordinance 7985 for consideration by City Council regarding issuing Combination Tax and Revenue Notes.
23. The May 24, 2022 agenda notice contained the following language under Non-Consent Item No. 3(L):

**DISCUSSION AND CONSIDERATION OF ORDINANCE
7985:**

(Contact: Laura Storrs, Assistant City Manager)

This item is the discussion and consideration of an ordinance authorizing the issuance of the City of Amarillo, Texas Combination Tax and Revenue Notes, Series 2022A resolving other matters incident and related thereto including the approval of a paying agent/registrar agreement and purchase contract.

24. At the May 24, 2022 regular City Council meeting, City Council unanimously approved Ordinance 7980.
25. At the May 24, 2022 regular City Council meeting, City Council approved, by a vote of 4-1, Ordinance 7985.
26. Ordinance 7985 authorized the issuance of tax anticipation notes totaling \$260,525,000 for construction of the Civic Center Complex ("Ordinance 7985").

II.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW
REGARDING NOTICE VIOLATIONS OF CH. 551 OF TEXAS GOVERNMENT CODE**

A. Findings of Fact:

1. The City of Amarillo submitted Proposition A on the November 2020 ballot to gain voter approval to issue \$275,000,00 in general obligation bonds for construction of a new Civic Center Complex.
2. Proposition A on the November 2020 ballot was defeated by a vote of 61% against and 39% for.

3. A debt issuance of \$260,525,000 in the City of Amarillo is a matter of special interest to the public.
4. The Civic Center Complex is a matter of special interest to the public.
5. The anticipation notes under Ordinance 7985 that attempted to issue \$260,525,000 in debt for construction of a new Civic Center Complex considered by City Council at its meeting on May 24, 2022, was a matter of heightened special interest to the public.
6. The City of Amarillo and their governmental bodies were required to provide more specific information in their May 24, 2022 agenda notice than they provided to the public because it related to the Civic Center Complex.
7. The City of Amarillo and all affiliated entities subject to Ch. 551 of the Government Code were required to provide specific information to the public when a large debt issuance for major civic center project was a subject to be discussed by City Council or other City of Amarillo entity.
8. Item No. 5 on the May 5, 2022 TIRZ #1 Board agenda failed to mention the Civic Center Complex and failed to sufficiently inform the public that major components of the Civic Center Complex would be deliberated upon for inclusion in an amendment to the TIRZ #1 project plan.
9. Item No. 5 on the May 5, 2022 TIRZ #1 Board agenda failed to sufficiently notify the public that by including the Civic Center Complex into the TIRZ #1 project plan any debt incurred would be placed in the interest and sinking fund column of the City of Amarillo's budget which was considered exempted debt under Chapter 311 *et seq.* of the Texas Tax Code and did not require voter approval.
10. Item No. 5 on the May 5, 2022 TIRZ #1 Board meeting agenda failed to sufficiently provide adequate notice regarding the TIRZ #1 Board's actions as it related to amending the TIRZ #1 project plan to include components of the Civic Center Complex.

11. The actions taken by the TIRZ #1 Board at the May 5, 2022 meeting regarding Item No. 5 on the agenda and the Civic Center Complex, including adding the Civic Center Complex to the TIRZ #1 Project Plan, are void because of the failure to properly notify the public.
12. Non-Consent Item No. 3(D) and Ordinance 7980 on the May 10, 2022 City Council agenda notice failed to sufficiently mention the Civic Center Complex and failed to inform the public that the Civic Center Complex would be included in the TIRZ #1 project plan.
13. Non-Consent Item No. 3(D) and Ordinance 7980 on the May 10, 2022 City Council agenda notice failed to sufficiently notify the public that by including the Civic Center Complex into the TIRZ #1 project plan the City intended to categorize any debt incurred for the Civic Center Complex to be placed in the interest and sinking fund column of the City of Amarillo's budget which was considered exempted debt under Chapter 311 *et seq.* of the Texas Tax Code such that it would not require voter approval.
14. Non-Consent Item No. 3(D) and Ordinance 7980 on the May 10, 2022 City Council agenda notice failed to sufficiently provide adequate notice regarding City Council's actions as it related to the Civic Center Complex.
15. The transmittal memo attached to the back of the May 10, 2022 agenda notice was not sufficient notice of the City of Amarillo's actions because it would be unlikely that an average Amarillo citizen would know to look at the back of an agenda notice for additional information regarding specific agenda items. The agenda item filed to incorporate or make reference to the transmittal memo.
16. The transmittal memo was an internal use document for the city of Amarillo that was not intended to effectuate notice to the public.

17. The actions taken by City Council at the May 10, 2022 meeting regarding Non-Consent Item No. 3(D) and Ordinance 7980 on the agenda and the Civic Center Complex, including adding the Civic Center Complex to the TIRZ #1 Project Plan, are void because of the failure to properly notify the public.
18. Consent Item No. 2(E) and Ordinance 7980 on the May 24, 2022 City Council agenda notice failed to sufficiently mention the Civic Center Complex and failed to inform the public that the Civic Center Complex would be included in the TIRZ #1 project plan.
19. Consent Item No. 2(E) and Ordinance 7980 on the May 24, 2022 City Council agenda notice failed to sufficiently notify the public that by including the Civic Center Complex into the TIRZ #1 project plan any debt incurred would be placed in the interest and sinking fund column of the City of Amarillo's budget which was considered exempted debt under Chapter 311 *et seq.* of the Texas Tax Code and did not require voter approval.
20. Consent Item No. 2(E) and Ordinance 7980 on the May 24, 2022 City Council agenda notice failed to provide adequate notice regarding the City Council's actions as it related to the Civic Center Complex.
21. The actions taken by the City Council at the May 24, 2022 meeting regarding Consent Item No. 2(E) and Ordinance 7980 on the agenda and the Civic Center Complex, including adding the Civic Center Complex to the TIRZ #1 Project Plan, are void because of the failure to properly notify the public.
22. Non-Consent Item No. 3(L) and Ordinance 7985 on the May 24, 2022 City Council agenda notice failed to sufficiently mention that Ordinance 7985 was related to the Civic Center Complex.

23. Non-Consent Item No. 3(L) and Ordinance 7985 on the May 24, 2022 City Council agenda notice failed to sufficiently notify the public that the City of Amarillo would consider a proposal to issue \$260,525,000 for the Civic Center Complex.
24. The City of Amarillo knew of the amount of the bonds to be issued before the agenda was prepared, but failed to state any amount in item 3(L)
25. Non-Consent Item Nos. 3(L) and Ordinance 7985 on the May 24, 2022 City Council agenda notice failed to sufficiently inform the public that their ad valorem taxes would increase.
26. As a result of Ordinance 7985 and the anticipation notes issued thereunder, the ad valorem taxes for the City of Amarillo would increase substantially, almost doubling in just two years, in order to service the debt incurred.
27. The transmittal memo attached to the back of the May 24, 2022 agenda notice was not sufficient notice to the public because it would be unlikely that an average Amarillo citizen would know or spend time to look at the back of an agenda notice, sometimes hundreds of pages after the actual agenda notice, for additional information regarding specific agenda items.
28. The actions taken by the City Council at the May 24, 2022 meeting regarding Non-Consent Item No. 3(L) and Ordinance 7985 on the agenda and the Civic Center Complex, including issuing \$260,525,000 in anticipation notes, are void because of the failure to properly notify the public.
29. The city of Amarillo failed to reference items 3(K) and 3(L) to each other even though they were inextricably linked together in the plan to issue the tax anticipation notes.

B. Conclusions of Law:

1. Under Texas law, “[e]very regular, special, or called meeting of a governmental body shall be open to the public.” TEX. GOV’T CODE § 551.002.

2. Every governmental body shall provide notice to the public in advance of the meeting. TEX. GOV'T CODE § 551.041.
3. The Supreme Court of Texas has held that the notice required under § 551.041 relating to the subject of a meeting must more specifically identify the action to be taken by the governmental body when it is a matter "of special interest to the public." *Cox Enter., Inc. v. Bd. of Trustees of Austin Indep. Sch. Dist.*, 706 S.W.2d 956, 959 (Tex. 1986).
4. Any action taken by the governmental body related to the matter of special interest to the public is voidable if the governmental body fails to provide specific notice under § 551.041 and *Cox*. TEX. GOV'T CODE § 551.141; *Cox Enter., Inc.*, 706 S.W.2d at 959.
5. The City of Amarillo and their governmental bodies were required to provide additional specificity with respect to the Civic Center Complex to comply with Ch. 551 *et seq.* of the Texas Government Code.
6. Item No. 5 on the May 5, 2022 TIRZ #1 Board meeting agenda notice violated § 551.041 of the Texas Government Code.
7. The actions taken by the TIRZ #1 Board at the May 5, 2022 meeting regarding the Civic Center Project, including the incorporation of the Civic Center Complex into the TIRZ #1 project plan, are void under § 551.141 of the Texas Government Code.
8. Non-Consent Item No. 3(D) regarding Ordinance 7980 on the May 10, 2022 City Council agenda notice violated § 551.041 of the Texas Government Code.
9. The actions taken by City Council at the May 10, 2022 regular meeting regarding Ordinance 7980 and the Civic Center Project, including the incorporation of the Civic Center Complex into the TIRZ #1 project plan, are void under § 551.141 of the Texas Government Code.

10. Consent Item No. 2(E) regarding Ordinance 7980 on the May 24, 2022 City Council agenda notice violated § 551.041 of the Texas Government Code.
11. The actions taken by City Council at the May 24, 2022 regular meeting regarding Ordinance 7980 and the Civic Center Project, including the incorporation of the Civic Center Complex into the TIRZ #1 project plan, are void under § 551.141 of the Texas Government Code.
12. Ordinance 7980 is void under § 551.141 of the Texas Government Code.
13. Non-Consent Item Nos. 3(L) on the May 24, 2022 City Council agenda notice violated § 551.041 of the Texas Government Code.
14. The actions taken by City Council at the May 24, 2022 regular meeting regarding Ordinance 7985 and the Civic Center Project, including the passage of Ordinance 7985 and the issuance of \$260,525,000 in anticipation notes, are void under § 551.141 of the Texas Government Code.
15. Ordinance 7985 is void under § 551.141 of the Texas Government Code.

III.
FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGARDING VIOLATIONS OF CHAPTER 311 OF THE TEXAS TAX CODE

A. Findings of Fact:

1. The Civic Center Complex at issue in this lawsuit, as proposed in Ordinance 7980 and 7985, are project costs under the TIRZ #1 project plan because they involved expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by the City of Amarillo.
2. City Staff member(s) testified at trial in this matter that the Civic Center Complex involved expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by the City of Amarillo.
3. City Council failed to publish a newspaper notification 7 days before the May 10, 2022 regular City Council meeting regarding the proposed amendment to the TIRZ #1 project plan under Ordinance 7980 that attempted to amend the project plan to include the Civic Center Complex thereunder.
4. City Council failed to hold a public hearing regarding the proposed amendment to the TIRZ #1 project plan that would include the Civic Center Complex under Ordinance 7980 at the May 10, 2022 regular City Council Meeting.
5. City Council failed to publish a newspaper notification 7 days before the May 24, 2022 regular City Council meeting regarding the proposed amendment to the TIRZ #1 project plan under Ordinance 7980 that attempted to include the Civic Center Complex thereunder.
6. City Council failed to hold a public hearing regarding the proposed amendment to the TIRZ #1 project plan that would include the Civic Center Complex under Ordinance 7980 at the May 24, 2022 regular City Council Meeting.

7. City Council failed to publish newspaper notifications for the proposed amendment to the TIRZ #1 project plan in accordance with Ch. 311 of the Texas Tax Code.
8. City Council failed to hold public hearings for the proposed amendment to the TIRZ #1 project plan in accordance with Ch. 311 of the Texas Tax Code.
9. City Council intended to amend the TIRZ #1 project plan to avoid an election on an increase of ad valorem taxes above 3.5% as required by House Bill 1869 that was codified under Ch. 26 *et seq.* of the Texas Tax Code.
10. City Council attempted to amend the TIRZ #1 project plan so that debt incurred for the Civic Center Complex would be considered exempted "debt" from the calculation of the 3.5% tax increase threshold requiring voter approval under Ch. 26 *et seq.* of the Texas Tax Code.
11. The debt incurred for Civic Center Complex intended to be added to the TIRZ #1 Project Plan is not exempt "debt" under Tax Code 26.012 and, therefore, because it increases ad valorem taxes by more than 3.5% in a year, a public election was required.
12. The \$260,525,000 contemplated by Ordinance 7985 for the Civic Center Complex would necessarily increase non-exempt debt above the 3.5% tax increase voter approval threshold, requiring an election.
13. No election was held regarding Ordinance 7985.

B. Conclusions of Law:

1. Under Texas law, "[i]f an amendment [to a TIRZ reinvestment project plan or finance plan] . . . increases the total estimated project costs . . . the approval must be by ordinance or order, as applicable, adopted after a public hearing that satisfies the procedural requirements of §§ 311.003(c) and (d)." TEX. TAX CODE § 311.011.

2. Under § 311.003(c), the governmental body is required to hold a public hearing regarding the amendment and “[n]ot later than the seventh day before the date of the hearing, notice of the hearing must be published in a newspaper having general circulation in the municipality or county.” *Id.* § 311.003(c).
3. Project costs is defined by statute and “means the expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by the municipality or county designating a reinvestment zone that are listed in the project plan as costs of public works, public improvements, programs, or other projects benefiting the zone, plus other costs incidental to those expenditures and obligations.” *Id.* at § 311.002(1)
4. City Council violated Ch. 311 *et seq.* of the Texas Tax Code regarding adopting Ordinance 7980 which was meant to amend the TIRZ #1 project plan and, therefore, Ordinance 7980 is void.
5. Ordinance 7985 is void. TEXAS TAX CODE §§ 311.011(e) and 311.003(c); Texas Tax Code Ch. 26 *et seq.*

IV.

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING VIOLATIONS OF CHAPTER 1431.008(A) OF THE TEXAS GOVERNMENT CODE

A. Findings of Fact:

1. City Council never planned to make any payments toward the 7-year repayment schedule found under Ordinance 7985.
2. City Council members knew the week prior to the May 24, 2022 meeting that the plan was to refinance the \$260,525,000 anticipation notes with refunding bonds in the future
3. City Council planned to refinance the \$260,525,000 anticipation notes authorized by Ordinance 7985 with refunding bonds in the future.

4. The refunding bonds issued to refinance the \$260,525,000 anticipation notes would be paid by ad valorem taxes.
5. The anticipation notes issued under Ordinance 7985 were payable from refunding bonds that would be secured by an ad valorem tax.
6. No public election was held regarding Ordinance 7985.

B. Conclusions of Law:

1. Under Texas law, a governmental body that issues debt under § 1431 must hold an election if the anticipation notes that are issued are payable from bonds under § 1431.008(a):

A governing body may not issue anticipation notes that are payable from bonds secured by an ad valorem tax unless the proposition authorizing the issuance of the bonds:

(1) is approved by a majority of the votes cast in an election held by the issuer; and

(2) states that anticipation notes may be issued.

TEX. GOV'T Code § 1431.008(a).

2. A governmental body that plans to refinance anticipation notes with refunding bonds is required by statute to hold an election where the majority of votes cast approves the issuance of the anticipation notes. *Id.*
3. Because City Council planned to refinance the tax anticipation notes under Ordinance 7985 with refunding bonds, the City of Amarillo was required to hold a public election on the anticipation notes issued under Ordinance 7985. *Id.*

4. The anticipation notes issued under Ordinance 7985 violated § 1431.008(a) and, therefore, Ordinance 7985 is void. *Id.*

V.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGARDING VIOLATIONS OF CHAPTER 1431.004 OF THE TEXAS GOVERNMENT CODE

A. Findings of Fact:

1. The intended proceeds of the anticipation notes issued in Ordinance 7985 under § 1431 of the Texas Government Code were not for an authorized use of anticipation notes.
2. One of the intended purposes of the Civic Center Complex was to include housing a semi or professional sports team.
3. A civic center complex intended to house a semi or professional sports team cannot be considered a public work.
4. The Civic Center Complex project does not meet the applicable meaning of public work.
5. If the project is not identified as a public work, then City Council has violated § 1431.004 and the issuance of debt under Ordinance 7985 is not for an authorized use.
6. The Civic Center is not a public work.

B. Conclusions of Law:

1. Under Texas law, a governmental body that issues debt under § 1431 of the Texas Government Code may pay for a contractual obligation incurred for the construction of a public work under § 1431.004. Section 1431.004 states in part:

(a) An issuer, other than an eligible school district, may use the proceeds of an anticipation note to pay:

(1) A contractual obligation incurred or to be incurred for:

(A) The construction of a public work

TEX. GOV'T CODE § 1431.004.

2. A governmental body that issues anticipation notes may use the proceeds if the project is identified as a public work.
3. Texas Government Code Section 1371.001(8) provides the most applicable definition of "public work" for purposes of the use of that term in Chapter 1431 of the Government Code regarding anticipation notes.
4. The Civic Center Complex is not a public work under 1371.001(8).
5. The Civic Center Complex does not meet the necessary criteria for being a public work under § 1431.004.
6. The anticipation notes issued in Ordinance 7985 were not for an authorized use under § 1431.004.
7. Ordinance 7985 is void.

VI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING VIOLATIONS OF ART. VIII, § 21 OF TEXAS CONSTITUTION

A. Findings of Fact:

1. The May 24, 2022 City Council agenda notice failed to notify the public of its intent to increase taxes.
2. The \$260,525,000 anticipation notes under Ordinance 7985 would substantially increase ad valorem taxes, almost double ad valorem taxes over the first two years, for Amarillo residents.

3. City Council failed to have a public hearing on May 24, 2022 regular City Council meeting regarding the significant increase in ad valorem taxes.

B. Conclusions of Law:

1. Article VIII, § 21 of the Texas Constitution requires notice and hearing for any proposed increase in taxes. Article VIII, § 21 states in pertinent part:

. . . the total amount of property taxes imposed by a political subdivision in any year may not exceed the total amount of property taxes imposed by that subdivision in the preceding year unless the governing body of the subdivision gives the notice of its intent to consider an increase in taxes and holds a public hearing on the proposed increase before it increases those taxes.

Tex. Const. Art. VIII, § 21.

2. The May 24, 2022 agenda and regular City Council meeting violated Article VIII, § 21 of the Texas Constitution and, therefore, Ordinance 7985 is void.

VII.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGARDING ARTICLE II, § 23 OF AMARILLO CITY CHARTER

A. Findings of Fact:

1. As of the date of judgment in this case, the Texas Attorney General Finance Division has not approved Series 2022A Notes pursuant to Texas Government Code Ch
2. Article II, § 23 of the Amarillo City Charter applies to Ordinance 7985.

B. Conclusions of Law:

3. Article II, § 23 of the Amarillo City Charter applies to Ordinance 7985 until the point in time when anticipation notes are authorized by the Texas Attorney General Public Finance Division.
4. Article II, § 23 of the Amarillo City Charter applies to Ordinance 7985.

DATED: 12-14-22



THE HONORABLE JUDGE WILLIAM C. SOWDER

Visiting Judge for the 320th Judicial District Court
of Potter County, Texas