

CAUSE NO. D-1-GN-24-001064

IN RE THE CITY OF AUSTIN, TEXAS,	§	
TRANSIT PARTNERSHIP LOCAL	§	IN THE DISTRICT COURT OF
GOVERNMENT CORPORATION, AND	§	
AUSTIN TRANSIT PARTNERSHIP	§	TRAVIS COUNTY, TEXAS
LOCAL GOVERNMENT	§	
CORPORATION SENIOR LIEN	§	
CONTRACT REVENUE BONDS,	§	
SERIES 2024	§	53RD JUDICIAL DISTRICT

CONSOLIDATED WITH
CAUSE NO. D-1-GN-23-008105

DIRTY MARTIN'S,	§	
GONZALO BARRIENTOS,	§	IN THE DISTRICT COURT OF
MARGARET GOMEZ, ORA HOUSTON,	§	
and SUSANA ALMANZA	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	
	§	
MAYOR KIRK WATSON,	§	
COUNCIL MEMBERS NATASHA	§	
HARPER-MADISON, VANESSA	§	
FUENTES, JOSE VELASQUEZ, JOSE	§	TRAVIS COUNTY, TEXAS
"CHITO" VELA, RYAN ALTER,	§	
MACKENZIE KELLY, LESLIE POOL,	§	
PAIGE ELLIS, ZOHAIB "ZO" QADRI,	§	
ALISON ALTER, and AUSTIN	§	
TRANSIT PARTNERSHIP BOARD	§	
MEMBERS VERONICA CASTRO de	§	
BARRERA, JOHN LANGMORE,	§	
JUAN GARZA, JEFFREY	§	
TRAVILLION, ALL IN THEIR	§	
OFFICIAL CAPACITIES,	§	
<i>Defendants.</i>	§	455TH JUDICIAL DISTRICT

**ORIGINAL ANSWER AND PLEA TO THE JURISDICTION
OF KEN PAXTON, ATTORNEY GENERAL OF TEXAS**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Ken Paxton, Attorney General of Texas, a Party herein, and pursuant to Texas Government Code Chapter 1205, files this Original Answer and Plea to the Jurisdiction in response to the Original Petition filed by the City of Austin, Texas (the “City”), and the Austin Transit Partnership Local Government Corporation (“ATP), (collectively, the “Petitioners”), and would respectfully show the Court the following in opposition to the relief sought by Petitioners:

I. GENERAL DENIAL

The Attorney General asserts a general denial pursuant to Rule 92 of the Texas Rules of Civil Procedure.

II. SPECIFIC DEFENSES

A. Pursuant to section 1205.063(a)(1) of the Government Code, the following paragraphs and declarations prayed for by Petitioners in the Original Petition are defective:

1. Petitioners’ assertion in paragraph 3 that ATP is an “issuer” of public securities within the meaning of Government Code Section 1205.001 is defective. Not being an “issuer” as defined in the EDJA, Petitioners’ declaration in paragraph 39(A) that the Court has subject matter jurisdiction is also defective. See Plea to the Jurisdiction in Article IV below;

2. The declarations in paragraph 39(B) are defective because Proposition A is invalid as it relates to the Contract Revenues; therefore, any declaration sought by Petitioners referencing its “contract with the voters” or “voter-approved purpose”

is likewise defective, including paragraphs 39(C) and (I).

3. The declaration in paragraph 39(C) is defective because Proposition A is invalid as it relates to the Proposition A Revenue and, therefore, the Funding Agreement, the vehicle through which the Proposition A Revenue is paid over to ATP, is likewise invalid;

4. As the Funding Agreement is invalid, the primary source of security for the Initial Bonds and other obligations as defined in the Master Trust Agreement is invalid, and therefore the remaining declarations in paragraphs 39(D)-(H) are also defective.

5. Paragraph 33 provides in part that as “provided in the Master Trust Agreement, the Financing Program *initially* establishes that the aggregate principal amount of obligations outstanding under the Master Trust Agreement may not exceed \$5 billion” (emphasis added). Section 210 of the Master Trust Agreement, located at exhibit A of the Original Petition, provides in part the following:

Section 210. Increase in Financing Program. The principal amount of the Financing Program set forth in Section 201, may be increased by the Corporation pursuant to 1101(m) and a Supplemental Agreement, upon a finding by the Corporation to the effect that Pledged Revenues and any other revenues (including any Additional Obligation Security) are expected to be sufficient to pay the Debt Service Requirements of all Outstanding Obligations and any then proposed Additional Obligations . . . [.]

Master Trust Agreement at page 13, Exhibit A to Original Petition. Paragraph 39(F) is defective in that, in addition to the Initial Bonds, it seeks to validate “any other obligations authorized by the Financing Program”. Because section 210 of the Master Agreement contemplates a principal amount in excess of \$5 billion upon certain conditions being met, either section 210 must be stricken from the Master Trust Agreement, or Petitioners must replead to provide the maximum principal amount of public securities, as required by section 1205.024 and provide new notice under section 1205.043 to advise interested persons under section 1205.041.

6. Paragraph 39(F) requests a declaration not only for the Initial Bonds, but also for “any other obligations authorized by the Financing Program”. The Master Trust Agreement is one of the financing documents that Petitioners define in paragraph 25 of the Original Petition as being part of the “Financing Program”. The Master Trust Agreement includes as one type of Obligation a TIFIA Obligation, defined on page A-16 as “an Obligation initially delivered to and owned by USDOT or other Governmental Lender related to a TIFIA Loan Agreement.” To the extent Petitioners seek to validate any TIFIA Obligation or Credit Agreement whose terms have not been provided in this proceeding, paragraph 39(F) of the Petition is also defective on these grounds.

7. Paragraph 39(G) is overbroad in that it does not identify the public security authorizations Petitioners seek to declare valid.

8. Paragraph 39(C) requests a declaration regarding the Funding Agreement; however, the Funding Agreement is not included as an exhibit to the

Original Petition.

B. Pursuant to section 1205.063(a)(2), the public securities are, or the public security authorization or an expenditure of money relating to the public securities is, or will be invalid or unauthorized. The reasons for such lack of validity or authorization include but are not limited to the following:

1. The City attempted to create a contract with the voters that Section 26.07 of the Tax Code did not authorize. Section 26.07 is a truth-in-taxation statute, authorizing a higher maintenance tax rate upon voter approval; it is not a vehicle through which the City can funnel for unlimited duration a portion of its maintenance tax for a billion-dollar capital improvement project to pay debt service on its local government corporation's bonds. *See* Atty Gen. Opin. KP-0444 (2023) at page 3 (“Section 26.07 does not authorize a municipality to ‘ earmark ’ use of a voter-approved increase in its maintenance and operation property tax revenue for debt service as defined in section 26.07”).

2. The ballot language for Proposition A was defective and misleading, in violation of the principles espoused by the Texas Supreme Court in *Dacus v. Parker*, 466 S.W.3d 820, 826 (Tex. 2015); therefore, the pledge of Proposition A Revenue (the Contract Revenues) to the Initial Bonds and other obligations under the Financing Program is invalid.

3. The Funding Agreement, comprising the primary source of security for the Initial Bonds and other obligations under the Financing Program, was void at the time of its original execution (the Initial Interlocal Agreement) as an unconstitutional

debt under article XI, section 5.

4. The subject to annual appropriation provisions added by amendment to the Funding Agreement and included in the Master Trust Agreement are incompatible with the position taken by Petitioners regarding the existence of a contract with the voters; neither are they compatible with the provisions in those same documents that the Proposition A Revenue is a voter-approved or dedicated funding source.

5. The Funding Agreement cannot be reasonably contemplated by the parties to be satisfied out of the current revenues when it constitutes a funding commitment, at least initially, for up to \$5,000,000,000 under the Master Trust Agreement. Amending the Funding Agreement to add “subject to annual appropriation” language does not cure this constitutional defect.

6. Because the Funding Agreement is invalid, the City is not authorized to pay over the Proposition A Revenue to ATP.

7. The City cannot use its local government corporation and a truth-in-taxation election to create synthetic ad valorem tax bonds for a billion-dollar project. Doing so impermissibly avoids the legislatively-mandated notice requirements for municipal ad valorem tax bonds.

8. The City’s impermissible use of the truth-in-taxation election and attempted contract with the voters and the Funding Agreement violate the reserved powers doctrine.

9. The Funding Agreement and the Financing Program raise serious

lending of credit issues under article III, section 52(a) of the Texas Constitution.

III. RIGHT TO AMEND

The Attorney General reserves the right to contest all relief requested by the Petitioners upon further review, upon failure by the Petitioners to properly prove all allegations contained in the Petitioner's Original Petition, or in the event the Original Petition is amended.

IV. PLEA TO THE JURISDICTION

The Expedited Declaratory Judgments Act ("EDJA") authorizes an "issuer" to "bring a special, expedited declaratory judgment action to validate proposed public securities or to resolve" certain disputes relating to public securities. *Guadalupe-Blanco River Auth. v. Tex. Att'y Gen.*, No. 03-14-00393-CV, 2015 WL 868871, at *4 (Tex. App.—Austin Feb. 26, 2015, pet. denied) (citing Tex. Gov't Code § 1205.021). It also allows the issuer to seek a declaratory judgment as to "the authority of the issuer to issue the public securities" and "the legality and validity of each public security authorization relating to the public securities." Tex. Gov't Code § 1205.021(1), (2).

The term "issuer" is defined in section 1205.001(1) of the EDJA to mean "an agency, authority, board, body politic, commission, department, district, instrumentality, municipality or other political subdivision, or public corporation of this state. The term includes a state-supported institution of higher education and any other type of political or governmental entity of the state." The definition of "issuer" in the EDJA does not include a non-profit corporation created to act on behalf of a municipality.

On the other hand, the definition of “issuer” under the bond review and approval statute, Government Code sec. 1202, is defined as: “(A) an agency, authority, board, body politic, department, district, instrumentality, municipal corporation, political subdivision, public corporation, or subdivision of this state; or (B) *a nonprofit corporation acting for or on behalf of an entity described by Paragraph (A).*” Tex. Gov’t Code § 1202 (emphasis added). Subsection (B) is not included in the definition of Issuer under the EDJA.

Issuer under the EDJA § 1205	Issuer under the AG Bond Review and Approval Statute § 1202
(1) “Issuer” means an agency, authority, board, body politic, commission, department, district, instrumentality, municipality or other political subdivision, or public corporation of this state. The term includes a state-supported institution of higher education and any other type of political or governmental entity of this state.	(2) “Issuer” means: (A) an agency, authority, board, body politic, department, district, instrumentality, municipal corporation, political subdivision, public corporation, or subdivision of this state; or <i>(B) a nonprofit corporation acting for or on behalf of an entity described by Paragraph (A).</i>

The Legislature specifically delineated and differentiated the list of “issuers” under the EDJA and AG Bond and Approval Statutes. A “nonprofit corporation acting for or on behalf of an entity,” the entity being an agency, authority, board, body politic, department, district, instrumentality, municipal corporation, political subdivision, public corporation, or subdivision of this state,” is not itself an issuer for an EDJA action. Under *Conroe v. SJRA*, 602 S.W.3d 444, 456 (Tex. 2020), the EDJA must be narrowly construed.

The Original Petition alleges that the Austin Transit Partnership Local Government Corporation (“ATP”) is a “public non-profit local government corporation of the State of Texas created by the City and Capital Metro pursuant to Chapter 431, Subchapter D of the Texas Transportation Code.” Orig. Pet. ¶ 3. ATP further alleges that Subchapter D authorizes ATP “to issue bonds and notes under any power or authority available to a local government corporation, including Chapters 1201 and 1371 of the Texas Government Code,” and it seeks to issue the bonds at issue in this action. *Id.* ¶¶ 3, 25. The City alleges that it is a “sponsor of ATP pursuant to the provisions of Subchapter D.” *Id.* ¶ 4.

A “non-profit corporation” is not included in the definition of “issuer” as defined in the EDJA; therefore, it does not fall within the subject matter jurisdiction of the EDJA. Neither ATP nor the City of Austin, therefore, is an “issuer” of the bonds under the plain meaning of the EDJA statute, and this court lacks jurisdiction over this suit.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Attorney General respectfully prays that its Plea to the Jurisdiction be granted, and that the Court dismiss this lawsuit for lack of subject matter jurisdiction to the extent Petitioners are not “Issuers” as defined under the EDJA. The Attorney General requests that the Court deny the relief requested by Petitioners. The Attorney General also requests that the Court award it any further relief to which it may be entitled.

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

KIMBERLY GDULA
Chief, General Litigation Division

/s/ Alyssa Bixby-Lawson

ALYSSA BIXBY-LAWSON
Attorney-in-Charge
Texas Bar No. 24122680
Assistant Attorney General
THOMAS BEVILACQUA
Texas Bar No. 00793342
Assistant Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(210) 270-1118 | FAX: (512) 320-0667
Alyssa.Bixby-Lawson@oag.texas.gov
Thomas.bevilacqua@oag.texas.gov

Counsel for Ken Paxton, Attorney General of Texas

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2024, a true and correct copy of the foregoing, *Answer, Special Exception, and Plea to the Jurisdiction of Ken Paxton, Attorney General of Texas* was served on the attorney of record via EFileTexas.gov and/or email on:

Elliot Clark
eclark@winstead.com
Jeff Nydegger
jnydegger@winstead.com
Matthew Hines
mhines@winstead.com
WINSTEAD PC
401 Congress Avenue Suite 2100
Austin, Texas 78701
(512) 370-2800 telephone
(512) 370-2850 fax

COUNSEL FOR ATP

Bill Aleshire
AleshireLAW, P.C.
3605 Shady Valley Dr.
Austin, Texas 78739
Telephone: (512) 320-9155
Facsimile: (512) 320-9156
Bill@AleshireLaw.com

Rick Fine, Attorney at Law
1313 Spyglass Drive
Austin, Texas 78746-6906
Telephone: (512) 497-2171
rickfinelaw@gmail.com

**COUNSEL FOR DIRTY MARTIN'S,
GONZALO BARRIENTOS,
MARGARET GOMEZ, ORA
HOUSTON, SUSANA ALMANZA**

Paul Trahan
Emily Wolf
NORTON ROSE FULBRIGHT US
LLP
paul.trahan@nortonrosefulbright.com
emily.wolf@nortonrosefulbright.com
98 San Jacinto Blvd., Suite 1100
Austin, Texas 78701
(512) 474-5201 — Telephone
(512) 536-4598 — Fax

COUNSEL FOR CITY OF AUSTIN

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Sharron Lee on behalf of Alyssa Bixby-Lawson

Bar No. 24122680

sharron.lee@oag.texas.gov

Envelope ID: 85612463

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elliot Clark		eclark@winstead.com	3/15/2024 2:28:53 PM	SENT
Paul Trahan		paul.trahan@nortonrosefulbright.com	3/15/2024 2:28:53 PM	SENT
Julie Wright		julie.wright@nortonrosefulbright.com	3/15/2024 2:28:53 PM	SENT
Elliot Clark	24012428	eclark@winstead.com	3/15/2024 2:28:53 PM	SENT
Jeffrey Nydegger	24077002	jnydegger@winstead.com	3/15/2024 2:28:53 PM	SENT
Rosemarie Kanusky	790999	rkanusky@mphlegal.com	3/15/2024 2:28:53 PM	SENT
Emily Wolf		emily.wolf@nortonrosefulbright.com	3/15/2024 2:28:53 PM	SENT
Matthew Hines	24120892	matthewphiliphines@gmail.com	3/15/2024 2:28:53 PM	SENT
Matthew Hines		mhines@winstead.com	3/15/2024 2:28:53 PM	SENT
Bill Aleshire		bill@aleshirelaw.com	3/15/2024 2:28:53 PM	SENT
Rick Fine		rickfinelaw@gmail.com	3/15/2024 2:28:53 PM	SENT

Associated Case Party: CITY OF AUSTIN

Name	BarNumber	Email	TimestampSubmitted	Status
Paul Trahan		paul.trahan@nortonrosefulbright.com	3/15/2024 2:28:53 PM	SENT

Associated Case Party: KEN PAXTON ATTORNEY GENERAL OF TEXAS

Name	BarNumber	Email	TimestampSubmitted	Status
Alyssa Bixby-Lawson	24122680	alyssa.bixby-lawson@oag.texas.gov	3/15/2024 2:28:53 PM	SENT
Thonas Bevilacqua		thomas.bevilacqua@oag.texas.gov	3/15/2024 2:28:53 PM	SENT

Associated Case Party: AUSTIN TRANSIT PARTNERSHIP

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Sharron Lee on behalf of Alyssa Bixby-Lawson

Bar No. 24122680

sharron.lee@oag.texas.gov

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Associated Case Party: AUSTIN TRANSIT PARTNERSHIP

Name	BarNumber	Email	TimestampSubmitted	Status
Elliot Clark		eclark@winstead.com	3/15/2024 2:28:53 PM	SENT
Jeff Nydegger		jnydegger@winstead.com	3/15/2024 2:28:53 PM	SENT