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BONDS - TEXAS

[In re City of Amarillo](#)

Court of Appeals of Texas, Amarillo - August 16, 2023 - Not Reported in S.W. Rptr - 2023 WL 5279473

In November 2020, more than 60% of the City of Amarillo's voters defeated a proposition for issuance of \$275 million in general obligation bonds payable from ad valorem taxes to fund improvement and expansion of the City's civic center complex. Per statute, this meant the City could not issue certificates of obligation to fund the proposed civic center project for three years.

Some city officials remained insistent that the City needed to improve the civic center, but they wanted to avoid returning to the voters. So, after conferring with legal counsel, two officials and city staff put into place a three-step plan. First, they proposed the city council pass Ordinance 7980 to designate the existing civic center and another building as part of the City's Tax Increment Reinvestment Zone (TIRZ #1) project plan. Second, they met behind-the-scenes with lenders and legal counsel to pre-negotiate a \$260.525 million financing deal and language for proposed Ordinance 7985 wherein the City would issue tax anticipation notes. This method of funding requires no voter approval, but also carries a short repayment schedule: seven years. So, to try to avoid risk of an enormous tax increase this project would pose, they planned a third step: future issuance of 30-year refunding bonds to refinance the debt authorized under Ordinance 7985. If executed successfully, this plan would presumably allow the City to obtain what voters had already rejected: a civic center construction project funded by long-term bond financing.

On May 20, 2022, the City posted public notice of a city council meeting for May 24, 2022. Attached to the six-page agenda were 197 pages of related documents.

When the agenda discussed the final item for consideration - Nonconsent Item L-citizens were not given many specifics about proposed Ordinance 7985. The agenda entry reads in full as follows:

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 a purchase contract.

The city council passed Ordinances 7980 and 7985 on May 24, 2022. Three days later, Fairly filed a declaratory judgment action under Texas Civil Practice and Remedies Code Chapter 37 (UDJA) seeking to void Ordinances 7980, 7985, and the anticipation notes. Thereafter, the City filed an action for expedited declaratory relief under Texas Government Code Chapter 1205 and sought declarations that the ordinances and anticipation notes were valid. On the City's motion, the two actions were consolidated.

The case was tried to the bench. On October 25, 2022, the court signed a final judgment which, among other things, invalidated the two ordinances and the anticipation notes.⁶ The judgment also

awarded Fairly attorney's fees of \$351,613.82 through trial, with additional fees conditioned on his successful defense of the judgment on appeal.

Both parties appealed.

The Court of Appeals affirmed, holding that:

- The City's notice regarding Ordinance 7985 failed to substantially comply with TOMA because it failed to give the reader adequate notice of the action the City sought to take
- City's failure to disclose an intent to finance more than a quarter-billion-dollars of public funds prevented the public from determining the consequences on its own; and
- Nonconsent item L's nebulous expressions of intent were further confounded because of statements that were patently incorrect, in that the executed ordinance and financing documents differ from what the notice tells the public regarding the funds securing the debt: ad valorem taxes, not taxes and revenues.