

OCT 04 2017 NNR

At 11:31 a.m.  
Velva L. Price, District Clerk

Cause No. D-1-GN-17-001888

*EX PARTE*

CITY OF EL PASO

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§  
§

IN THE DISTRICT COURT

250th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, following a bench trial on July 17 and 18, 2017, makes the following findings of fact and conclusions of law.

Any conclusions of law contained herein that are actually findings of fact will be considered to be findings of fact. Any findings of fact contained herein that are actually conclusions of law will be considered conclusions of law.

## FINDINGS OF FACT

1. Plaintiff City of El Paso, Texas (“the City”) is an incorporated municipality wholly located within El Paso County, Texas. The City is an “issuer” of “public securities” as defined in TEX. GOV’T CODE § 1205.001. The City filed an expedited bond validation in Travis County action pursuant to TEX. GOV’T CODE § 1205.
2. Respondents challenging the bond validation action include the following individuals—Antonia Flores Morales, Candelaria Garcia, Emily Saenz Gardea, Olga Lopez, Yolanda Chávez Leyva, who reside in an El Paso neighborhood known as “Duranguito,” and Dr. Max Grossman, also a resident and taxpayer in the City of El Paso.
3. The Attorney General of the State of Texas also appeared pursuant to TEX. GOV’T CODE § 1205.

4. Respondent Leonard “Tripper” Goodman appeared in support of the City’s expedited bond validation action.

5. The City Council adopted Ordinance No. 0178949 (the “Election Ordinance”) on August 14, 2012.

The Election Ordinance provided:

**MUSEUM, CULTURAL, PERFORMING ARTS, AND LIBRARY FACILITIES PROPOSITION**

“SHALL the City Council of the City of El Paso, Texas, be authorized to issue general obligation bonds for the City in the principal amount of \$228,250,000 for permanent public improvements and public purposes to wit: acquiring, constructing, improving, renovating and equipping new and existing library, museum, cultural and performing arts facilities and improvements, including the acquisition of land and rights-of-way for such projects, and acquiring and installing art related to and being a part of some or all of the following; such projects to include the following:

\* \* \*

**Arts and Entertainment**

Multi-purpose performing arts and entertainment facility located in Downtown El Paso.

6. On Election Day and pursuant to the Election Ordinance, a majority of the El Paso voters approved the issuance of City general obligation bonds (the “Bonds”) to finance the Quality of Life bond initiative. An election on the Election Ordinance included the following language:

**MUSEUM, CULTURAL, PERFORMING ARTS, AND LIBRARY FACILITIES PROPOSITION**

THE ISSUANCE OF \$228,250,000 GENERAL OBLIGATION BONDS FOR MUSEUM, CULTURAL, MULTI-PURPOSE PERFORMING ARTS AND ENTERTAINMENT AND LIBRARY FACILITIES IMPROVEMENTS, INCLUDING NEW CHILDREN’S MUSEUM, CULTURAL HERITAGE CENTER AND INTERACTIVE DIGITAL WALL.

7. Years went by. By 2016, it became clear the City would allocate \$180 million of the \$228.25 million authorized by the Quality of Life Bond Initiative for a new-build structure in the Downtown area of Duranguito, primarily low-income neighborhood where the majority of residents are of Mexican descent.
8. This new-build structure (“the Facility”): its purpose, its location, and its design, form the crux of this dispute.
9. Pursuant to the 2012 bond election, and as approved by the Attorney General’s office, the City issued certain general obligation bonds to finance the construction, improvement, renovation and equipping of the Facility, and the acquisition of land and rights-of-way for the Facility.
10. The Election Ordinance and subsequent voter approval authorized the City to expend proceeds generated from the sale of the Bonds for a facility designed, constructed and equipped for the various performing arts and similar entertainment, and to function as a “multi-purpose performing arts and entertainment facility.”
11. The Election Ordinance and subsequent voter approval did not authorize the City to expend proceeds generated from the sale of the Bonds for a facility designed, constructed, or equipped for sports, or to function as a sports arena. Sports is not once mentioned in the “Museum, Cultural, Performing Arts, and Library Facilities Proposition Ordinance,” nor is it included in the Bond’s language.
12. A sports arena does not comport with the quality-of-life purpose the voters approved. A sports facility (a baseball field) was approved by the voters in the same 2012 bond election as a different bond initiative.

13. The proposed project in the original and amended RFQ issued by the City in 2016 is a sports arena.

14. The proposed project in the original and amended Request for Qualifications (“RFQ”) seeks the design, construction, and equipment of a facility that is suitable for or can accommodate sports and will thus function as a sports arena.

15. The City certified to the Attorney General’s office, prior to the Attorney General’s approval of the bonds, that the Facility would be used primarily for performing arts purposes.

### **CONCLUSIONS OF LAW**

1. Proceeds of bonds voted by the people must be used for the purposes for which they were voted.

2. When construing bond ordinances, courts use the same rules as those used when construing statutes. The primary duty is to carry out the intent of the municipality’s legislative body as reflected in the plain language of the ordinance.

3. Courts look to the entire ordinance in an effort to give each part meaning. When phrases are used, individual words must be taken in the context of the entire phrase.

4. Unambiguous text equals determinative text, and at this point, the judge’s inquiry is at an end. Only when the words are ambiguous does the court “resort to rules of construction or extrinsic aids. A statute is ambiguous if its words are susceptible to two or more reasonable interpretations, and we cannot discern legislative intent in the language of the statute itself.

5. The City’s August 14, 2012 adoption of Ordinance No. 0178949 and the subsequent election of November 6, 2012, are legal, valid, enforceable and incontestable.

6. The City is authorized to issue general obligation bonds to finance the construction, improvement, renovation and equipping of the Facility described in the Ordinance, and the acquisition of land and rights-of-way therefor.

7. To the extent the Bonds have been previously issued, such Bonds are legal, valid, enforceable, and incontestable; and the additional Bonds to be issued to finance the costs of the Facility, when issued in conformity with applicable law and as approved by the Texas Attorney General, will be legal, valid, enforceable and incontestable.

8. Ordinance No. 0178949 is not ambiguous.

9. Applying the plain meaning of the terms used and considering their context, the Ordinance and ballot proposition are clear that the voters intended a facility dedicated to the various performing arts. The very beginning of the relevant section of the Election Ordinance is entitled, in bolded text, “MUSEUM, CULTURAL, PERFORMING ARTS, AND LIBRARY FACILITIES PROPOSITION.” This same bolded title appears above the Ordinance’s ballot proposition. Nowhere do these titles indicate that a sporting arena is intended.

10. After describing “library, museum, cultural and performing arts facilities and improvements” as the purpose for the bonds, the Ordinance states “such projects to include” those that are then described under the subtitles “Museum,” “Cultural,” “Arts & Entertainment,” and “Library.” Accordingly, the phrase “multipurpose performing arts and entertainment facility” that appears under the “Arts & Entertainment” subtitle must be “such [a] project,” i.e. “performing arts facilities and improvements.”

11. A “multipurpose performing arts and entertainment facility” means one that is “built for [the] specific purpose” of housing the performing arts and intended for use by various types of the performing arts, such as dance, music and theatre, as opposed to single-purpose facilities like

a concert hall, opera house or theatre. The subtitle under which the phrase appears —“Arts & Entertainment”— comports with this meaning.

12. This “performing arts” modifier is confirmed throughout the text. For example, the Ordinance grants the City authority to use any excess funds from the bond issue “for other library, museum, cultural or performing arts facilities and/or to benefit or promote the cultural and performing arts, libraries and/or museums.”

13. In construing statutes, courts will interpret a general term to be similar to more specific terms in a series and to reflect the class of objects described in more specific terms accompanying it. The general term “entertainment” must be interpreted to be similar to the more specific terms accompanying it—performing arts, museum, cultural, and library—and to reflect that same class of objects.

14. The word “Entertainment” cannot be isolated from its context to mean sports. Nowhere in the Ordinance is a sports purpose expressed or implied.

15. Therefore, the City may lawfully expend proceeds generated from the sale of the Bonds to design, construct, improve, renovate and equip the Facility in Downtown El Paso to function as a performing arts facility that is suitable for and will accommodate the various performing arts (e.g. musical performances, orchestra performances, theater and other stage performances) and similar entertainment. Such proceeds may not be used to design, construct, improve, renovate or equip the Facility with ice-skating rinks, basketball courts, soccer fields, tennis courts and the like, which are not structures suitable to a performing arts facility. No funding from other sources may be used to modify, complete or enhance the Facility beyond this voter-approved, quality-of-life purpose.

16. The City may not lawfully expend proceeds generated from the sale of the Bonds to design, construct, improve, renovate or equip the Facility in Downtown El Paso to be suitable for a sports arena. Structures that would make the Facility suitable for a sports arena include ice-skating rinks, basketball courts, soccer fields, tennis courts and the like. No funding from other sources may be used to modify, complete or enhance the Facility to make it suitable for a sports arena, which would not comport with the ordinance.

17. Subject to paragraphs 5 and 6 above, the City may lawfully expend the current and future proceeds generated from the sale of the Bonds to acquire land, design, construct, improve, renovate and equip the Facility, and each such expenditure and proposed expenditure relating to the Bonds and the Facility is legal, valid, enforceable, and incontestable.

18. This Court has no subject matter jurisdiction over, and alternatively declines to exercise venue over, the City's request that it enjoin a voter initiative purportedly underway by certain persons pursuant to the City Charter to impose an historic district overlay on property located within the following boundaries: West San Antonio Street on The North, Paisano Drive on The South, Durango Street on The West And South Santa Fe Street on The East.

19. The Final Judgment did not adjudicate or affect the claims asserted in Cause No. 2017-DCV-2528; Max Grossman v. City of El Paso, filed on July 31, 2017, and pending in the 384th Judicial District Court of El Paso County. Venue over that lawsuit lies in El Paso County, Texas.

Signed this 4<sup>th</sup> day of October, 2017.

  
The Honorable Amy Clark Meachum