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SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. _____

In the Supreme Court of Texas

In re THE STATE OF TEXAS,
Relator.

On Petition for Writ of Mandamus
to the Fourteenth Court of Appeals, Houston

PETITION FOR WRIT OF MANDAMUS AND FOR WRIT OF INJUNCTION

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Respondent:
Fourteenth Court of Appeals, Houston

Real Parties in Interest:
Harris County
Harris County Commissioners Court
Lina Hidalgo, in her official capacity as Harris County Judge
Rodney Ellis, in his official capacity as Commissioner of Harris County Precinct 1
Adrian Garcia, in his official capacity as Commissioner of Harris County Precinct 2
Tom Ramsey, in his official capacity as Commissioner of Harris County Precinct 3
Lesley Briones, in her official Capacity as Commissioner of Harris County Precinct 4
Harris County Public Health
Barbie Robinson, in her official capacity as Executive Director of Harris County Public Health

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"App." refers to the appendix to this petition. "MR." refers to the mandamus record.

Statement of the Case

Nature of the Underlying Proceeding:	Harris County and certain county officials and entities (collectively, "Defendants") have created a program to dole out public funds with "no strings attached." MR.5. The State of Texas brought an *ultra vires* suit and sought a temporary injunction to stop this violation of the article III, section 52(a) Gift Clause and Equal Protection Clause of the Texas Constitution. MR.3, 16. Defendants responded and filed a plea to the jurisdiction. MR.21. After a hearing on April 18, MR.51-252, the trial court denied both the State's application for a temporary injunction and Defendants' plea to the jurisdiction. MR.254, 256. The State appealed to the Fourteenth Court of Appeals. MR.341. Because Defendants will begin disbursing the funds on April 24, the State sought emergency relief under Texas Rule of Appellate Procedure 29.3. MR.341.
Mandamus Respondent:	Fourteenth Court of Appeals, Houston
Mandamus Real Parties in Interest and Writ of Injunction Respondents:	Harris County Harris County Commissioners Court Lina Hidalgo, in her official capacity as Harris County Judge Rodney Ellis, in his official capacity as Commissioner of Harris County Precinct 1 Adrian Garcia, in his official capacity as Commissioner of Harris County Precinct 2 Tom Ramsey, in his official capacity as Commissioner of Harris County Precinct 3 Lesley Briones, in her official Capacity as Commissioner of Harris County Precinct 4 Harris County Public Health

	Barbie Robinson, in her official capacity as Executive Director of Harris County Public Health
Mandamus Respondent's Challenged Actions:	The court of appeals denied the State's motion for a temporary order. MR.412. Chief Justice Christopher would have granted the motion.

Statement of Jurisdiction

The Court has jurisdiction under Texas Government Code section 22.002(a) and article V, section 3(a) of the Texas Constitution.

Issue Presented

Whether the court of appeals' refusal to grant Rule 29.3 relief was a clear abuse of discretion for which the State has no adequate remedy by appeal.

To the Honorable Supreme Court of Texas:

Public officials may not violate the Texas Constitution—no matter how altruistic or well-intended the purpose. For more than a century, this Court has recognized that "[n]o feature of the [Texas] Constitution is more marked than its vigilance for the protection of the public funds and the public credit against misuse. This is exemplified by numerous provisions in the instrument." *Bexar County v. Linden*, 220 S.W. 761, 761 (Tex. 1920). To prevent improper patronage, the Constitution creates "a positive and absolute" ban, *id.* at 762, on most grants of public funds to private individuals, *see, e.g.*, Tex. Const. art. III, § 52(a). And to ensure the equality of rights guaranteed when men "form a social compact," it precludes arbitrariness in the provision of "exclusive separate public emoluments." *Id.* art. I, § 3. Defendant Harris County's lottery-based, free-money program, "Uplift Harris," will violate these provisions on Wednesday by providing the first of eighteen no-strings-attached monthly payments of $500 to 1,928 Harris County residents selected by lot from a pool of potential beneficiaries.

This program irreparably harms the State. This Court has repeatedly held that, "[a]s a sovereign entity, the State has an intrinsic right to . . . enforce its own laws," *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020) (quoting *State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015)), and an interest "in the maintenance and operation of its municipal corporations in accordance with th[at] law," *id.* (quoting *Yett v. Cook*, 281 S.W. 837, 842 (Tex. 1926)). Those interests are particularly acute here where a County violates the Constitution by offering a gratuitous payout, the amount and

timing of which have no specific correlation to a public purpose. Moreover, once disbursed, such funds can never be recovered.

Because the first of these payments is scheduled for sometime on Wednesday, April 24, 2024, **the Attorney General is simultaneously requesting immediate emergency relief under Rule 52.10**. If that is not possible, the Attorney General requests such relief in time to stop the *second* monthly payment and an administrative stay in the interim. *See, e.g.*, Order at 1, *In re the State of Texas*, No. 20-0715 (Tex. Sept. 15, 2020).

BACKGROUND

A. The American Rescue Plan Act (ARPA) provided federal funding for COVID-19 relief. MR.264. Instead of spending that money to respond to a global pandemic, Harris County Judge Lina Hidalgo, County Commissioner Rodney Ellis, and Executive Director of Harris County Public Health (HCPH) Barbie Robinson will use it to fund a guaranteed-income program that "will provide no-strings-attached $500 monthly cash payments to 1,928 Harris County residents for 18 months." MR.264. Completely untethered to either COVID or HCPH's asserted goal of "improv[ing] participants' financial and health outcomes," MR.264, anyone within "[t]wo cohorts of applicants will be eligible for Uplift Harris Guaranteed Income Pilot funds." MR.265-66.

> Geographic cohort: Eligibility is based on income and geography. Applicant's household income must be below 200% of the federal poverty line (FPL) and reside in one of the identified high-poverty ZIP codes. . . .
>
> ACCESS Harris: Active participants of Accessing Coordinated Care and Empowering Self Sufficiency (ACCESS) Harris County are qualified to

> apply through their participation in ACCESS Harris and having a household income below 200% FPL. ACCESS cohort participants can reside anywhere in Harris County. . . .

MR.265-66 (emphasis added). By tying eligibility to income below 200% of the federal poverty line, Uplift Harris has created a pool of recipients far greater than the number of individuals who would be eligible for Medicaid even under the Affordable Care Act, Medicaid & CHIP, HealthCare.gov, https://www.healthcare.gov/medicaid-chip/medicaid-expansion-and-you/ (last visited Apr. 19, 2024), which the Texas Legislature has declined to accept, *see* David Balat, *Texas Improves Health Care, Without Expanding Medicaid*, Tex. Pub. Pol'y Found. (July 1, 2021), https://www.texaspolicy.com/texas-improves-health-care-without-expanding-medicaid/.

As details have emerged, the impropriety of Uplift Harris has become more apparent. More than 82,000 residents applied to get their share of this dole-out, of which Defendants determined 55,000 were eligible. MR.28, 271. Defendants lack sufficient ARPA funding to provide this benefit to 55,000 people, creating what Defendant Ramsey recognizes are "many potential problems" in "try[ing] to identify 1,800 people." FOX 26 Houston, *Guaranteed Income Program 'Uplift Harris' Finalized Details*, YouTube (Jan. 9, 2024), https://www.youtube.com/watch?v=Vc-0U4WKHxw. Rather than taking this as a hint that the scheme may be inappropriate, the County determined that recipients "will be randomly selected to receive the funds through a lottery." MR.274. But, County Commissioner Rodney Ellis assured those lucky recipients who are selected, "[t]here will be no strings attached to the funding"; recipients may "decide what's best for them to do with this funding."

KPRC 2, *Who Qualifies for $500 a Month in 'Uplift Harris' Program*, YouTube (Jan. 12, 2024), https://www.youtube.com/watch?v=m7zBzUkrSF8 [hereinafter "Ellis Video"]; *see also* MR.275.

The County ultimately determined by lottery that approximately 2,000 people would receive Uplift Harris funds. MR.142-43. On March 18, Harris County announced that the first $500 payment would be distributed on April 24, Press Release, HCPH, *Uplift Harris Guaranteed Income Pilot Announces Award Notifications Starting Today* (Mar. 18, 2024), https://tinyurl.com/HarrisUplift. The Uplift Harris website advises recipients that they need not pay income tax on these funds, which the County has concluded "qualif[y] as a tax exempt charitable gift under IRS rules." MR.277.

B. On April 9, 2024, the State sued, MR.3, and sought a temporary injunction against Harris County and the relevant county officials and entities for violating the Gift Clause. MR.16. On April 17, Defendants submitted their response and a plea to the jurisdiction. MR.21. On April 18, the trial court denied both a temporary injunction and the Defendants' plea. MR.254, 256. The State immediately appealed the denial of the temporary injunction to the Fourteenth Court of Appeals, MR.341, and sought emergency relief under Texas Rule of Appellate Procedure 29.3, MR.345. The court of appeals denied the Rule 29.3 motion on April 22. MR.412.

Standard of Review

"Mandamus relief is appropriate when a petitioner demonstrates a clear abuse of discretion and has no adequate remedy by appeal." *In re Geomet Recycling LLC*, 578 S.W.3d 82, 91 (Tex. 2019) (orig. proceeding). A court of appeals "has no

'discretion' in determining what the law is or applying the law to the facts." *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). And this Court has recognized that it may order relief when a court improperly grants, *Geomet*, 578 S.W.3d at 91, or denies interim relief necessary to preserve its jurisdiction, *H & R Block, Inc. v. Haese*, 992 S.W.2d 437, 438 (Tex. 1999) (per curiam); *see also, e.g.*, *In re Occidental Chem. Corp.*, 561 S.W.3d 146, 156 (Tex. 2018) (orig. proceeding) (allowing a writ of injunction).

ARGUMENT

I. The Court of Appeals Abused Its Discretion in Denying Temporary Relief Under Rule 29.3.

"When an appeal from an interlocutory order is perfected, the appellate court may make any temporary orders necessary to preserve the parties' rights until disposition of the appeal." Tex. R. App. P. 29.3; *see also In re Olson*, 252 S.W.3d 747, 747-48 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding) (per curiam) (recognizing power to issue writ of injunction). Temporary relief is warranted when the Court reaches "the tentative opinion that relator is entitled to the relief sought" and "the facts show that relator will be prejudiced in the absence of such relief." *Republican Party of Tex. v. Dietz*, 924 S.W.2d 932, 932-33 (Tex. 1996) (per curiam) (citing former Tex. R. App. P. 121). The Court's Members have further indicated that temporary stays are appropriate to allow the Court a "meaningful opportunity to consider" relevant issues "upon less hurried deliberation." *Del Valle ISD v. Dibrell*, 830 S.W.2d 87, 87-88 (Tex. 1992) (Cornyn, J., joined by Hecht, J., dissenting); *cf. June*

Medical Servs., L.L.C. v. Gee, 139 S. Ct. 661, 661 (2019). The State established that such relief is necessary here.

A. Uplift Harris is unlawful.

The State is likely to prevail in showing that Uplift Harris is unlawful for two primary reasons. *First*, it constitutes an impermissible gift of public funds to private individuals in contravention of article III, section 52(a) of the Texas Constitution. *Second*, the use of a random "lottery" to distribute public emoluments violates Texas's Equal Protection Clause.

1. Uplift Harris violates the Gift Clause.

To satisfy the Gift Clause, "payments to individuals, associations, or corporations" must satisfy two main conditions. *Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 383 (Tex. 2002) (emphasis omitted). *First*, they cannot be "gratuitous." *Second*, they must (1) serve "a legitimate public purpose[] and (2) afford[] a clear public benefit received in return." *Id.* This is a conjunctive, not a disjunctive, test. In *Texas Municipal League*, this Court examined *both* whether the contested payments were non-gratuitous and whether they satisfied the public-purpose test. *Id.* at 384-85. Moreover, if these were alternative requirements, a governmental entity could, for example, receive consideration in exchange for payments that would serve a private purpose. That kind of practice would vitiate the Gift Clauses. *See* Tex. Const. art. XVI, § 6(a) ("No appropriation for private or individual purposes shall be made, unless authorized by this Constitution."). Nor does article III, section 52(a) omit the gratuitousness requirement. *Tex. Mun. League*, 74 S.W.3d at 383 ("[This Court] ha[s] held that section 52(a)'s

prohibit[ion]" on "'grant[ing] public money' means that . . . *gratuitous* payments" are unlawful.). Uplift Harris is gratuitous and flunks the public-purpose test.

a. Uplift Harris is entirely gratuitous.

To start, a $500-per-person payout provided just because the County has the funds is entirely gratuitous because "the political subdivision receives [no] return consideration." *Id.* Consideration can take many forms, including meeting otherwise applicable legal requirements. For example, the Texas Constitution requires an "efficient system of public free schools," and providing school vouchers may reduce the costs of funding those schools. Tex. Const. art. VII, § 1. And funding preventative care may satisfy conditions imposed on federal Medicaid funding. *See* Alison Mitchell, et al., Cong. Rsch. Serv., R43357, Medicaid: An Overview 12 (2023).

Harris County gets nothing for paying out Uplift Harris funds. Instead, from all appearances, the County is simply trying to spend the money it received from the federal government for a completely a different purpose. MR.264-68. Commissioner Ellis has emphasized that "[t]here will be no strings attached to the funding." Ellis Video, *supra*. Indeed, Uplift Harris's own website describes the funds as a "gift under IRS rules." MR.277. By definition, no one gives consideration in exchange for a "gift"—that is, something "voluntarily transfer[red] . . . to another without compensation." Gift, *Black's Law Dictionary* 803 (10th ed. 2014). It is no answer to say that the County receives consideration by participating in a study that might inform any future County decisions about whether to guarantee income in similar ways: After all, the County receives the results of that study from a third party, not from the individuals who receive the Uplift Harris payments. MR.134-35. Moreover,

recipients' participation in that study is entirely voluntary. MR.295. Absent such consideration, the distribution of such funds is unconstitutional. *Tex. Mun. League*, 74 S.W.3d at 383.

b. Uplift Harris does not serve a public purpose.

Although Texas law has long recognized the importance of providing for the less fortunate, *e.g.*, Tex. Loc. Gov't Code § 81.027, a no-strings-attached payout to certain lucky individuals does not meet any part of this Court's "three-part test [to] determine[]" if a grant of public money "accomplishes a public purpose," *Tex. Mun. League*, 74 S.W.3d at 384.

First, even if one accepts that the program has some tangential and attenuated benefits to the public, its "predominant purpose" is to "benefit private parties." *Id.* The Uplift Harris website lists seven goals of the program: (1) "[i]mproving self-sufficiency," (2) "[r]educing generational poverty," (3) "[r]educing income volatility," (4) "[r]educing housing instability," (5) "[r]educing food insecurity," (6) "[i]mproving physical and mental health," and (7) "[c]reating a framework for sustainable, equitable anti-poverty programs within Harris County." MR.260-61. The State does not dispute that these are laudable goals, but the Texas Constitution specifies how the first six are to be achieved. *Infra* pp. 10-12. And Uplift Harris's structure itself belies any notion that the seventh is the program's predominant purpose. After all, the County insists that the funds come from the federal government's extraordinary response to a once-in-a-lifetime pandemic. *See* MR.25-26. Investing those funds in some form of healthcare or poverty-related infrastructure might have "[c]reat[ed] a framework for sustainable, equitable anti-poverty programs within

Harris County." MR.260-61. Cutting one-time checks that recipients can spend however they want does not.

Second, neither the County nor its public-health department retains control over disbursed funds so as "to ensure that the public purpose is accomplished and to protect the public's investment." *Tex. Mun. League*, 74 S.W.3d at 384. To satisfy the Constitution, such controls must be "specifically tailored" to link the expenditures and the purpose they purport to serve. Tex. Att'y Gen. Op. No. MW-89, at *2 (1979); *Tex. Mun. League*, 74. S.W.3d at 384. Here, HCPH admonishes recipients not to use the money to harm others, engage in fraud or corruption, promote criminal activity, or support terrorism. MR.283-84. But Uplift Harris is not an anti-harm, anti-crime, or anti-terrorism program; it is a welfare program. More fundamentally, consistent with the assurance that "[t]here will be no strings attached to the funding" to ensure they are followed, Ellis Video, *supra*, HCPH's representative admitted that "[t]here's nothing built into the program that provides" information "to Harris County or Harris County Public Health" about whether recipients have followed HCPH's admonition. MR.123. This abject lack of control forecloses any argument that the program passes the public-purpose test. *See Tex. Mun. League*, 74 S.W.3d at 384. And the survey that Defendants insist is a control, MR.397, is merely a "short survey" to "confirm [recipients] received [their] funds," MR.295.

Third, for many of the reasons already discussed, Uplift Harris does not "afford[] a clear public benefit received in return" for the dole-out. *Id.* at 383. For example, in *Texas Municipal League*, cities benefitted from the expenditure of funds to fulfill the cities' statutory obligations. *Id.* at 384-85. But far from fulfilling a statutory

obligation, Uplift Harris spends federal funds provided for an entirely different purpose. While the County might receive a benefit from program recipients spending the program funds, the County has no way of ensuring that recipients will spend those funds *within Harris County*. MR.151-52. And it is no answer to say that this is a pilot program. "Seeing what happens" by providing what is acknowledged to be a "gift" is far from a "clear," *see id.* at 383, public benefit justifying that gift.

c. Comparisons to constitutionally authorized forms of welfare do not save Uplift Harris.

It is similarly no response to point to other welfare programs. As *Linden* recognized, the State may provide only the welfare that the Constitution itself authorizes. *See* 220 S.W. at 762. For example, the Legislature may provide "for assistance grants to [the] needy" but limits eligible categories to "dependent children and the[ir] caretakers," those "totally and permanently disabled because of a mental or physical handicap," the "aged" and the "blind." Tex. Const. art. III, § 51-a(a). In addition to such grants, the Legislature may provide "for medical care, rehabilitation and other similar services for needy persons" and "may prescribe such other eligibility requirements for participation in these programs." *Id.* art. III, § 51-a(b).

But because other Texans fund such programs, those authorizations are limited. For example, "[t]he maximum amount paid out of state funds for assistance grants, to or on behalf of needy dependent children and their caretakers shall not exceed one percent of the state budget." *Id.* § 51-a(b). And, as relevant here, the Legislature is prohibited from "mak[ing] any grant or authoriz[ing] the making of any grant of public moneys to any individual" outside the specified groups. *Id.* art. III, § 51. As this

Court has recognized, reading these two provisions together compels the conclusion that the "evident purpose is to deny to the Legislature any power to grant or to authorize the grant of public money to all others" beyond those expressly within the Constitution—and that denial is "absolute[]." *Linden*, 220 S.W. at 762. That limitation tracks the constitutional text, which prohibits "appropriation[s] for private or individual purposes . . . unless authorized by th[e] Constitution." Tex. Const. art. XVI, § 6(a). And these limitations apply not just to state action, but also to the actions of local governments like counties, as this Court has made clear. *See, e.g.*, *Fort Worth ISD v. City of Fort Worth*, 22 S.W.3d 831, 839, 843 (Tex. 2000) (applying article III, sections 51 and 52(a) to determine the constitutionality of city ordinances); *Cherokee County v. Odom*, 15 S.W.2d 538, 541 (Tex. 1929) (applying article III, section 50 to a county contract).

Uplift Harris transgresses those constitutional boundaries by extending eligibility beyond the categories specified in article III, section 51-a(a) to everyone under 200% of the federal poverty line living in certain geographic areas or participating in certain programs. MR.265-66. To approve such a program would effectively require the Court to read a broad, all-purpose welfare exception into the text of the Gift Clauses. That is not only counter to precedent and constitutional text—it would also violate the "elementary rule of construction that, when possible to do so, effect must be given to every sentence, clause, and word of a statute so that no part thereof be rendered superfluous or inoperative." *See Spence v. Fenchler*, 180 S.W. 597, 601 (Tex. 1915). After all, if a locality could grant public funds to any group it deemed worthy, the detailed requirements of article III, section 51-a and any similar constitutional

exceptions would be entirely superfluous. *See Spence*, 180 S.W. at 601. Nor does Uplift Harris truly respond to "public calamity," *see* Tex. Const. art. III, § 51: The criteria with which the County determined eligibility for the program—specifically, geographic location and participation in ACCESS Harris—have nothing to do with COVID. MR.266-68.

2. Uplift Harris's arbitrariness violates Texas's Equal Protection Clause.

Uplift Harris's Gift Clause violation is particularly concerning because it also provides a "set of men"—namely, those randomly selected in a lottery—with an "exclusive separate public emolument[]" in direct violation of Texas's equal-protection guarantee. Tex. Const. art. I, § 3. Although this Court has never been asked to review a program like this one, it is generally accepted that this guarantee precludes classifications that are "arbitrary or unreasonable," requiring instead that there be "a real and substantial difference having a relation to the subject of the particular enactment." *Crawford Chevrolet, Inc. v. McLarty*, 519 S.W.2d 656, 661 (Tex. App.—Amarillo 1975, no writ); *see City of Brookside Village. v. Comeau*, 633 S.W.2d 790, 795-96 (Tex. 1982). A classification is invalid if "it appears that the basis therefor is purely arbitrary," *Inman v. R.R. Comm'n*, 478 S.W.2d 124, 127 (Tex. App.—Austin 1972, writ ref'd n.r.e.), or that the basis has no rational connection to the putative justification for the law, *see Whitworth v. Bynum*, 699 S.W.2d 194, 195 (Tex. 1985).

Uplift Harris violates the equal-protection guarantee primarily because there is no rational connection among the source of the funds, the eligibility criteria, and the

program's putative purpose. Harris County has attempted to justify this program partly by insisting that it is funded entirely from federal funds, MR.264-65, that Texas received "to respond to the COVID-19 public health emergency and its economic impacts," Coronavirus State and Local Fiscal Recovery Funds, 86 Fed. Reg. 26786, 26787 (May 17, 2021). Harris County has pointed to no real connection between its proposed payouts and COVID. And the County fares little better in comparing the distribution to Harris County's own self-described goals. After all, if the purpose were truly to improve "financial or health outcomes," MR.264, one would expect the classifications to focus on the poorest and the sickest. But payouts are not based on any health-related criteria. MR.265-66. And the wealth-based criteria are drawn so broadly that the County had to choose randomly who receives the windfall.

The randomness of the beneficiaries and the *sui generis* nature of the payments show that Harris County cannot justify these payouts as some form of pilot program. For example, when Texas transitioned between different models of Medicaid funding, it began that transition with classes with unique characteristics. Waiver Overview and Background Resources, HHSC, https://tinyurl.com/HHSCWaive (last visited Apr. 19, 2024). Generally, when government entities have used random selection, no "exclusive separate public emolument[]" has been at issue, Tex. Const. art. I, § 3, because the question is typically *how* a public benefit would be provided—not if.[1] Here, by contrast, Uplift Harris hands a one-time series of payments to some

[1] For example, though lottery selection has been used to effectuate school choice, no one was denied a public education. Houston ISD, School Choice, https://www.houstonisd.org/schoolchoice (last visited Apr. 19, 2024).

people but not others from within the class the County defined. Such payments are a violation of the Gift Clause, and the random selection in the distribution of those payments is a violation of the State's equal-protection guarantee.

B. Temporary relief was the only way to prevent such illegality.

1. The court of appeals failed to preserve the status quo.

The court of appeals abused its discretion in refusing to halt those illegal payments under Rule 29.3 because this Court has indicated that the status quo "should remain in place while the court of appeals, and potentially this Court, examine the parties' merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought." Order at 1, *In re Abbott*, No. 21-0720 (Tex. Aug. 26, 2021); *see also Geomet*, 578 S.W.3d at 89. The status quo is "the last, actual, peaceable, non-contested status which preceded the pending controversy." *Clint ISD v. Marquez*, 487 S.W.3d 538, 556 (Tex. 2016). Here, that means that the funds should remain with the County. If Harris County were allowed to disburse its self-described "gifts" to random residents, MR.277, it is virtually certain that such funds can never be recovered, altering that status quo forever.

2. The court of appeals failed to preserve its own jurisdiction.

Temporary relief under Rule 29.3 was also warranted to protect the court of appeals', and potentially this Court's, jurisdiction. *See Geomet*, 578 S.W.3d at 90. In *In re TEA*, the Court held that it was appropriate to issue temporary orders to prevent the installation of a board of managers in the Houston Independent School District. 619 S.W.3d 679, 681-82 (Tex. 2021) (orig. proceeding). Doing otherwise would have risked mooting the underlying dispute because the Court could never have reached

the legal merits. *Id.* at 688-89, 692. Similarly, the Court forbade Harris County from mass-distributing unsolicited mail-in ballot applications to preserve its jurisdiction to resolve *Hollins.* Order, *In re State of Texas*, No. 20-0715 (Tex. Sept. 15, 2020).

Similar relief was demanded here because absent temporary relief, the court of appeals and this Court will be precluded from issuing "injunctive and declaratory relief," which is the only relief available in a claim asserting either *ultra vires* conduct or that a local policy violates the Constitution. *Hollins*, 620 S.W.3d at 410; *see Rolling Plains Groundwater Conservation Dist. v. City of Aspermont*, 353 S.W.3d 756, 760 (Tex. 2011) (per curiam) ("Generally, however, only prospective relief is available; retroactive relief dictated by a court is not."); *City of Elsa v. M.A.L.*, 226 S.W.3d 390, 392 (Tex. 2007). This principle applies at both a micro and macro level. At the micro level, after April 24, no injunctive relief can recoup the first round of illegal payments, which will total nearly $1,000,000. At a macro level, appeals—and particularly appeals like this one, presenting weighty constitutional issues of first impression—often take years.[2] Here, Harris County intends to make monthly payments out of a set pool of cash that will be exhausted in eighteen months. MR.264. The court of appeals therefore should have granted temporary relief under Rule 29.3 to prevent subsequent monthly payments and to stop the entire case from becoming moot if eighteen months pass before the full appellate process concludes.

[2] For example, the notice of appeal in *Borgelt v. Austin Firefighters Association, IAFF Local 975*, No. 22-1149 (Tex. argued Feb. 21, 2024), the Gift Clause case currently pending before this Court, was filed on May 14, 2021.

II. The State Has No Adequate Appellate Remedy.

The State is entitled to mandamus relief because it *cannot* appeal the denial of Rule 29.3 relief, which in this instance vitiates the State's ability to ensure that counties follow the Constitution. The State has a "justiciable interest in its sovereign capacity in the maintenance and operation of its municipal corporations"—and counties—"in accordance with law." *Hollins*, 620 S.W.3d at 410 After all, "[t]he county is merely an arm of the state. It is a political subdivision thereof." *Childress County v. State*, 92 S.W.2d 1011, 1015 (Tex. 1936). The sovereign "would be impotent to 'enforce its own laws' if it could not temporarily enjoin those breaking them pending trial." *Hollins*, 620 S.W.3d at 410. (citation omitted). And, here, the case will likely never reach trial because absent interim relief, Harris County will make its first payment on April 24, and the case will become moot after eighteen months, likely before the full appellate process concludes. When the ordinary appellate process cannot afford timely relief, mandamus is proper. *See In re Woodfill*, 470 S.W.3d 473, 480-81 (Tex. 2015) (per curiam).

Prayer

The Court should direct the court of appeals to grant temporary relief under Rule 29.3, order Defendants not to issue the Uplift Harris payments pending resolution of the State's appeal and to stop their agents from doing so. *See* MR.114, 139. The Court should also grant any other relief the Court deems appropriate. Because the first Uplift Harris payment will occur on Wednesday, April 24, 2024, **the Attorney General also seeks immediate emergency relief under Rule 52.10**. If that is not possible, the Attorney General requests an order stopping the second payment and an administrative stay in the interim.

Respectfully submitted.

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/s/ Lanora C. Pettit
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Counsel for Relator

Mandamus Certification

Pursuant to Texas Rule of Appellate Procedure 52.3(j), I certify that I have reviewed this petition and that every factual statement in the petition is supported by competent evidence included in the appendix or record. Pursuant to Rule 52.3(k)(1)(A), I certify that every document contained in the appendix is a true and correct copy.

/s/ Lanora C. Pettit
Lanora C. Pettit

Certificate of Compliance

Microsoft Word reports that this document contains 4,323 words, excluding exempted text.

/s/ Lanora C. Pettit
Lanora C. Pettit

No. _____

In the Supreme Court of Texas

In re THE STATE OF TEXAS,
Relator.

On Petition for Writ of Mandamus
to the Fourteenth Court of Appeals, Houston

RELATOR'S APPENDIX

TAB A: ORDER DENYING TEMPORARY INJUNCTION

CAUSE NO. 2024-22320

STATE OF TEXAS, *Plaintiff(s)*	§ § §	IN THE DISTRICT COURT OF
vs.	§ §	HARRIS COUNTY, TEXAS
HARRIS COUNTY TEXAS, *Defendant(s)*	§ §	165th JUDICIAL DISTRICT

ORDER ON PLAINTIFF'S PETITION AND APPLICATION FOR TEMPORARY INJUNCTIVE RELIEF

On April 18, 2024, the court heard the application of the State of Texas, the plaintiff in the above proceeding, for a temporary injunction to enjoin and restrain defendant Harris County, Texas from continuing its "Uplift Harris" program, inter alia. Plaintiff and defendant appeared in person and by their attorneys of record. The court, having considered the pleadings and heard the evidence and arguments of counsel, finds that plaintiff is not entitled to the injunctive relief requested, and that the application of plaintiff for a temporary injunction should be denied.

It is therefore ordered, adjudged, and decreed that the temporary injunction requested by plaintiff be and is DENIED.

Signed April 18, 2024

Ursula Hall

Hon. URSULA A. HALL
Judge, 165th District Court

TAB B: ORDER DENYING DEFENDANTS' PLEA TO THE JURISDICTION

CAUSE NO. 2024-22320

STATE OF TEXAS, *Plaintiff(s)*	§ § §	IN THE DISTRICT COURT OF
vs.	§ §	HARRIS COUNTY, TEXAS
HARRIS COUNTY TEXAS, *Defendant(s)*	§ §	165th JUDICIAL DISTRICT

ORDER

On April 18, 2024, defendant's plea to the jurisdiction in the above cause was heard by this court. The plea having been presented to the court in implicitly due form, with implicit due notice, after hearing argument from plaintiff and defendant (including an implicit argument that consent to hearing of a duly noticed temporary injunction was insufficient).

It is ordered that the plea be overruled.

Signed April 18, 2024

Hon. URSULA A. HALL
Judge, 165th District Court

TAB C: ORDER DENYING RULE 29.3 MOTION

FILE COPY

Fourteenth Court of Appeals

301 Fannin, Suite 245
Houston, Texas 77002

Monday, April 22, 2024

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RE: Court of Appeals Number: 14-24-00290-CV
Trial Court Case Number: 2024-22320

Style: The State of Texas
v.
Harris County, Texas

Please be advised that on this date the Court **DENIED APPELLANT'S** emergency motion for temporary order in the above cause.

Panel Consists of Chief Justice Christopher and Justices Zimmerer and Wilson. Chief Justice Christopher voted to grant the motion.

Sincerely,

\s\ Deborah M. Young, Clerk

Tab D: Texas Constitution, Article I, Section 3

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article I. Bill of Rights (Refs & Annos)

Vernon's Ann.Texas Const. Art. 1, § 3

§ 3. Equal rights

Currentness

All freemen, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Credits
Adopted Feb. 15, 1876.

Editors' Notes

INTERPRETIVE COMMENTARY

2018 Main Volume

All of the constitutions of the State of Texas have contained provisions guaranteeing to all persons equality of rights, the terminology used in Article I, Section 3 being a readoption in the same language of Article I, Section 2 of the Constitutions of 1845, 1861 and 1866. Equality of rights is a concept of republicanism, indigenous to America, finding first expression in the Declaration of Independence. Section 3 of Article I sets forth two meanings of equality, that of equal protection of the laws, and that of political equality.

Under the United States Constitution, the guaranty of equal protection of the laws was originally assumed by the states, but upon addition of the fourteenth amendment of that constitution the duty was expressly imposed upon the states in the following words: “nor [shall any State] deny to any person within its jurisdiction the equal protection of the laws.” Broadly speaking equal protection of the laws means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. All free men have equal rights in the eyes of the government. Justice Field has defined the principle well in the United States Supreme Court case of Barbier v. Connolly, 5 S.Ct. 357, 113 U.S. 27, 28 L.Ed. 923 (1885). He declared: “that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burden should be laid upon one than are laid upon others in the same calling and conditions, and in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses.”

Equal protection of the law does not prevent classifications in the law which subject some persons to a form of regulation from which others are relieved or confers upon some an advantage denied others. However equal protection does create a test for the classification and requires such to be reasonable, not arbitrary. The classification must be based on reasonable grounds to promote the general peace, good order, morals or health of the community, between

classes substantially different from each other, and the classes established must include substantially all those who stand in a similar position with respect to the law. Conversely, if the classification brings about unjust, unreasonable or arbitrary discrimination it will be unconstitutional.

The terminology of Section 3 declaring that "no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services" is said to declare the principle of equality in political rights. The Supreme Court of Texas has asserted that this principle constitutes "..... a denial of all title to individual privileges, honors, and distinctions from the community but for public services. It was directed against superiority of personal and political rights, distinctions of rank, birth, or station, and all claims of emoluments from the community by any man or set of men, over any other citizen of the State." Glasgow v. Terrell, 100 T. 581, 102 S.W. 98 (1907).

Notes of Decisions (821)

O'CONNOR'S ANNOTATIONS

Klumb v. Houston Mun. Emps. Pension Sys., 458 S.W.3d 1, 13 (Tex.2015). "To state a viable equal-protection claim under the Texas Constitution, [EEs] must show they have been 'treated differently from others similarly situated.' Because neither a suspect classification nor a fundamental right is involved, [EEs] must further demonstrate that the challenged decision is not rationally related to a legitimate governmental purpose. In conducting a rational-basis review, we consider whether the challenged action has a rational basis and whether use of the challenged classification would reasonably promote that purpose. These determinations are 'not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.' *At 14:* [T]he pension board has a legitimate interest in preserving sources of pension funding that are adequate to meet the demands on the fund, which it may rationally accomplish by ensuring the City meets its contribution obligations to the pension system. [¶] The pension board also has a legitimate interest in policies that lessen the risk of overpaying pensioners or allowing them to 'double dip.' [¶] Because we conclude that any differentiation between employees is rationally related to legitimate governmental objectives, [EEs'] equal-protection claims fail as a matter of law." *See also* ***Owens Corning v. Carter***, 997 S.W.2d 560, 580 (Tex.1999) (Texas and U.S. equal-protection analyses are substantially similar); ***Rose v. Doctors Hosp.***, 801 S.W.2d 841, 846 (Tex.1990) (same).

Barshop v. Medina Cty. Underground Water Conserv. Dist., 925 S.W.2d 618, 631 (Tex.1996). "Generally, a classification under an equal protection challenge must only be rationally related to a legitimate state purpose. However, classifications impinging upon the exercise of a fundamental right or distinguishing between individuals on a suspect basis, such as race or national origin, are subject to strict scrutiny, requiring that the classification be narrowly tailored to serve a compelling government interest."

Richards v. League of United Latin Am. Citizens, 868 S.W.2d 306, 314 (Tex.1993). "Fundamental rights 'have their genesis in the express and implied protections of personal liberty recognized in federal and state constitutions.'"

McGarry v. Houston Firefighters' Relief & Ret. Fund, __ S.W.3d __, 2023 WL 2415595 (Tex.App.--Houston [1st Dist.] 2023, pet. denied) (No. 01-21-00624-CV; 3-9-23). "We reject [P's] contention that simply distinguishing between ceremonial and informal marriage could violate her right to equal protection. The constitutional guarantee of equal protection does not require governmental actors to treat all persons or classes of persons alike heedless of their differences; rather, it 'keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike.' [¶] Ceremonial and informal marriage are not alike in all relevant respects. Proving the existence of an informal marriage invariably requires evidence different from that required to prove a ceremonial marriage because an informal marriage is one in which the requisites of ceremonial marriage were not observed. Thus, the [Retirement] Fund's revised policies and procedures are not constitutionally suspect simply because they distinguish between ceremonial and informal marriages, imposing certain evidentiary requirements on the latter but not the former. And consequently, [P's] equal-protection argument is facially invalid and therefore inadequate to state a cognizable *ultra vires* claim against members of the board."

Caleb v. Carranza, 518 S.W.3d 537, 543 (Tex.App.--Houston [1st Dist.] 2017, no pet.). "'[R]ecognition of a class-of-one theory of equal protection in the public employment context--that is, a claim that the State treated an employee differently from others for a bad reason, or for no reason at all--is simply contrary to the concept of at-will employment.' [T]he … petition failed to plead a facially valid equal-protection claim by alleging that [EE], alone, suffered an adverse employment consequence as compared to other employees." *See also* ***Engquist v. Oregon Dept. of Agric.***, 553 U.S. 591, 605-06 (2008) (public EE's claim must allege class-based discrimination; claim that EE has been irrationally singled out as "class of one" is not sufficient to support equal-protection claim).

Vernon's Ann. Texas Const. Art. 1, § 3, TX CONST Art. 1, § 3
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

End of Document

Tab E: Texas Constitution, Article III, Section 51-a

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article III. Legislative Department
Requirements and Limitations

Vernon's Ann.Texas Const. Art. 3, § 51-a

§ 51-a. Assistance grants, medical care, and certain other services for needy persons; federal matching funds

Currentness

(a) The Legislature shall have the power, by General Laws, to provide, subject to limitations herein contained, and such other limitations, restrictions and regulations as may by the Legislature be deemed expedient, for assistance grants to needy dependent children and the caretakers of such children, needy persons who are totally and permanently disabled because of a mental or physical handicap, needy aged persons and needy blind persons.

(b) The Legislature may provide by General Law for medical care, rehabilitation and other similar services for needy persons. The Legislature may prescribe such other eligibility requirements for participation in these programs as it deems appropriate and may make appropriations out of state funds for such purposes. The maximum amount paid out of state funds for assistance grants, to or on behalf of needy dependent children and their caretakers shall not exceed one percent of the state budget. The Legislature by general statute shall provide for the means for determining the state budget amounts, including state and other funds appropriated by the Legislature, to be used in establishing the biennial limit.

(c) Provided further, that if the limitations and restrictions herein contained are found to be in conflict with the provisions of appropriate federal statutes, as they now are or as they may be amended to the extent that federal matching money is not available to the state for these purposes, then and in that event the Legislature is specifically authorized and empowered to prescribe such limitations and restrictions and enact such laws as may be necessary in order that such federal matching money will be available for assistance and/or medical care for or on behalf of needy persons.

(d) Nothing in this Section shall be construed to amend, modify or repeal Section 31 of Article XVI of this Constitution; provided further, however, that such medical care, services or assistance shall also include the employment of objective or subjective means, without the use of drugs, for the purpose of ascertaining and measuring the powers of vision of the human eye, and fitting lenses or prisms to correct or remedy any defect or abnormal condition of vision. Nothing herein shall be construed to permit optometrists to treat the eyes for any defect whatsoever in any manner nor to administer nor to prescribe any drug or physical treatment whatsoever, unless such optometrist is a regularly licensed physician or surgeon under the laws of this state.

Credits

Adopted Aug. 26, 1933. Amended Aug. 24, 1935; Aug. 23, 1937; Aug. 25, 1945; Nov. 2, 1954; Nov. 13, 1956; Nov. 5, 1957; Nov. 6, 1962; Nov. 9, 1963; Nov. 2, 1965; Aug. 5, 1969; Nov. 2, 1982; Nov. 2, 1999.

Editors' Notes

INTERPRETIVE COMMENTARY

2007 Main Volume

In order to grant state aid to needy aged persons, needy blind persons and needy children, Section 51 again had to be amended by the adoption of Section 51a [now this section] which permitted the legislature to provide for the payment of assistance to the above-mentioned classes of persons.

By this amendment, the state was permitted to enter into the Federal-State cooperative program for aid to the aged, children and the blind. By the Federal Social Security Act, federal aid is made available to states that would institute an approved program of aid for the above classes of people provided the state pays a certain portion.

To take advantage of this federal program and to make possible such aid, this amendment was placed in the constitution, and the legislature is given authority to accept such federal financial aid, subject to certain restrictions set forth.

Section 51a is a result and combination of four earlier amendments on this subject of social security.

The first amendment [adopting § 51a] came about as a direct result of the great depression when, in 1933, an amendment was added which permitted the state to borrow twenty million dollars for relief purposes.

When the Federal Government enacted the Social Security Act in 1935 and abolished relief grants to states, the constitution was amended [adopting § 51b] to provide for aid to the needy aged and to take advantage of the federal act. This amendment limited the state's share of the cooperative program to $15 per person a month which was the maximum amount the Federal Government would match with federal moneys.

In 1937 two constitutional amendments [adopting §§ 51c and 51d]were added permitting the state to receive federal grants-in-aid, and authorizing state aid up to $15 per month for aid to the needy blind, as well as authorizing assistance for needy children. A proviso was included as to the latter to the effect that the total share of aid could not be greater than $1,500,000 yearly, and children under fourteen years of age only could receive aid.

In 1945 the present section was adopted consolidating and changing to some degree the former amendments. As noted, a top of thirty-five million dollars a year was the maximum which the state was then permitted to put up to assist the three classes of people.

The state's share of the federal-state payment to the aged was increased from fifteen dollars to twenty dollars a month per person, thus bringing the state's provision in line with the amended federal act as to maximum payments.

The annual maximum limit of $1,500,000 on aid to dependent children was dropped, and the age limit was raised to under sixteen years of age. The legislature was authorized to decide the amount of individual payments for the needy blind.

This section was again amended in November, 1954, by permitting an increase in the total amount which the Legislature could appropriate for the state's three public assistance programs from $35,000,000 a year to $42,000,000 a year. In addition the Legislature is required to enact laws under which the name of recipients of public assistance are available to the public.

At the time of the adoption of the 1954 amendment, Texas ranked thirty-ninth among the states in the average monthly payments to the aged, paying $38.83 against a national average of $51.46. Texas ranked forty-third among the states in its aid to dependent children with an average monthly check of $59.63 against a national average of $85.26. And

the state ranked thirty-eighth in average payments to the needy blind of $43.80 monthly against a national average of $56.06.

The Department of Public Welfare, in urging adoption of the amendment, pointed out that the additional $7,000,000 per year would permit the average check in the three classes of public welfare to be increased $5 a month. Because the Federal Government matches states' dollars, it would actually mean $14,000,000 additional.

In 1939, Congress enacted legislation requiring states receiving welfare funds to keep welfare records confidential. In 1951, the Indiana Legislature passed a law opening up that state's public assistance rolls to public inspection despite the threat of loss of federal aid. Following the Indiana Legislature's action, the 1939 federal law was amended permitting states to open relief rolls to public inspection without loss of federal aid.

Public records are a traditional characteristic of American government, and it was contended that the secrecy requirement for welfare records imposed by Congress in 1939 was a violation of the public's basic "right to know."

The question of publicizing the names of relief recipients is not involved in this amendment. Federal law still prohibits publishing names of relief recipients. The amendment merely permits making lists available for inspection to anyone who may be interested.

COMMENT--1962 AMENDMENT

<Legislative Reference Division, Texas State Library>

Before August 25, 1945, the aid programs for the aged, for the blind and for needy children were carried by separate sections under Article III, having been adopted separately.

But on that date an amendment combined these three programs (§ 51a, Article III) and set an overall ceiling of $35,000,000.

In 1951 an attempt to raise this ceiling to $42,000,000 was defeated, but when another attempt was made in 1954 this increase (to $42,000,000) was successful with the voters.

At a special election held on November 5, 1957, the ceiling was again raised, this time to $47,000,000.

The * * * [1962 amendment again raises] the ceiling; this time to $52,000,000 for these three programs.

Various pre-requisites to allowance of aid are set forth in these several amendments but they are not changed as between those of the 1957 amendment and those of this * * * [amendment].

In addition to such aid under § 51a, Article III, medical aid is also provided under Subsection 51a-1, adopted November 4, 1958.

Under it the Legislature is authorized to provide for vendor payments for medical care for the recipients of the four aid programs (old age, blind, children and disabled) with no ceiling set but with a limitation that payments by the State could not exceed those from Federal funds.

Notes of Decisions (20)

Vernon's Ann. Texas Const. Art. 3, § 51-a, TX CONST Art. 3, § 51-a
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

Tab F: Texas Constitution, Article III, Section 52

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article III. Legislative Department
Requirements and Limitations

Vernon's Ann.Texas Const. Art. 3, § 52

§ 52. Restrictions on lending credit or making grants by political corporations or political subdivisions; authorized bonds; investment of funds

Currentness

(a) Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company. However, this section does not prohibit the use of public funds or credit for the payment of premiums on nonassessable property and casualty, life, health, or accident insurance policies and annuity contracts issued by a mutual insurance company authorized to do business in this State.

(b) Under Legislative provision, any county, political subdivision of a county, number of adjoining counties, political subdivision of the State, or defined district now or hereafter to be described and defined within the State of Texas, and which may or may not include, towns, villages or municipal corporations, upon a vote of two-thirds majority of the voting qualified voters of such district or territory to be affected thereby, may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such district or territory, except that the total bonded indebtedness of any city or town shall never exceed the limits imposed by other provisions of this Constitution, and levy and collect taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, as the Legislature may authorize, and in such manner as it may authorize the same, for the following purposes to wit:

(1) The improvement of rivers, creeks, and streams to prevent overflows, and to permit of navigation thereof, or irrigation thereof, or in aid of such purposes.

(2) The construction and maintenance of pools, lakes, reservoirs, dams, canals and waterways for the purposes of irrigation, drainage or navigation, or in aid thereof.

(3) The construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof.

(c) Notwithstanding the provisions of Subsection (b) of this Section, bonds may be issued by any county in an amount not to exceed one-fourth of the assessed valuation of the real property in the county, for the construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes, or in aid thereof, upon a vote of a majority of the voting qualified voters of the county, and without the necessity of further or amendatory legislation. The county may levy and collect taxes to pay the interest on the bonds as it becomes due and to provide a sinking fund for redemption of the bonds.

(d) Any defined district created under this section that is authorized to issue bonds or otherwise lend its credit for the purposes stated in Subdivisions (1) and (2) of Subsection (b) of this section may engage in fire-fighting activities and may issue bonds or otherwise lend its credit for fire-fighting purposes as provided by law and this constitution.

(e) A county, city, town, or other political corporation or subdivision of the state may invest its funds as authorized by law.

Credits

Adopted Feb. 15, 1876. Amended Nov. 8, 1904, proclamation Dec. 29, 1904; Nov. 3, 1970; Nov. 7, 1978; Nov. 4, 1986; Nov. 7, 1989; Nov. 2, 1999.

Editors' Notes

INTERPRETIVE COMMENTARY

2007 Main Volume

In the early days of Texas, private capital for large scale investments was scarce. This was due to the predominantly agricultural character of the economy. It was difficult for private enterprise to obtain capital for any large scale undertaking, and consequently the state was called on to aid business enterprise by grants of land or loans of money and credit. The theory underlying these requests for aid was that it was the duty of the state to promote the prosperity of all its members, and that it might use its powers, even to the extent of appropriating money from the treasury, to foster laudable enterprises in which a considerable number of its people were interested.

The greatest benefit from loans and gifts of state money and credit accrued to railroads. The state was seeking more people for her vast domain, a better means of communication between them, and a better exchange of their products. Either the state had to furnish aid to railroads, or else had to organize rail transportation itself. It chose to do the former, and lent a considerable amount of the permanent school fund to railroads prior to and during the Civil War. After the war the railroads were unable to meet their payments, which eventually caused considerable embarrassment to the state, and was responsible for the constitutional prohibition against the loaning of state credit to private enterprise.

But while the legislators were considering how best to provide the transportation facilities needed by the people, the people of various localities requested legislative authorization to issue bonds and levy taxes to pay the interest and create a sinking fund to retire the bonds, the bonds to be donated to railroads to be built through or to them.

Prior to the Civil War, only a few counties and cities in Texas had indulged in this type of railroad aid, but after the war, and following the repeal in 1869 of a law passed in 1854 granting state lands to aid in railroad construction, there were widespread and insistent appeals from counties and cities along projected routes of several important railroads, then building or preparing to do so, for authority to issue bonds to assure the building of roads through their communities. In 1871, the legislature yielded to these appeals and authorized any city or county to hold elections on the question of issuing bonds to be donated to railroads. The railroads made use of this law, by threatening to bypass localities which refused them aid, and thereby secured greater contributions than they would have secured otherwise.

The Democrats, upon regaining control of the state government in 1874, immediately repealed the law, and also incorporated in the constitution this prohibition against the legislature from authorizing any county, city or town to lend its credit or grant public money to any individual association or corporation, or to become a stockholder in such association or corporation.

By 1904, Texans were awakened to the fact that unless extensive water conservation measures were undertaken, the state could not grow in populace or in industry. But the constitution recognized only three entities which could collect taxes and expend public money, namely, the state, counties, and cities and towns, and all of these were so severely limited in the rate of tax they could levy that large scale permanent improvements such as water conservation projects, or a wide-spread road construction program were out of the question.

Therefore Art. 3, Sec. 52 was amended adding to the state's taxing units "districts" which could be established for permanent improvements including conservation projects and road-building projects. These districts could issue bonds in an amount not exceeding 25% of the total assessed value of real property lying within the district, and could levy a tax at a rate sufficient to pay the principal and interest on such bonds.

By 1917, it was recognized that the 1904 amendment was too restrictive in its limitation as to the maximum amount of indebtedness which a district might create in order to accomplish water conservation or major road-building projects. Thus Art. 16, Sec. 59 was added to the constitution, allowing the creation of conservation and reclamation districts as governmental agencies with power to incur such debts as might be necessary. The limitation on indebtedness established by Art. 3, Sec. 52 was thus removed.

After the adoption of the 1917 amendment, the legislature passed the Canales Act (General Laws, 35th Leg., 4th called session--1918--pp. 40-43) which provided that any conservation or reclamation district which had been organized under the authority of Art. 3, Sec. 52 might by a prescribed procedure avail itself of the benefits of the new amendment which removed former limitations on indebtedness.

Notes of Decisions (339)

Vernon's Ann. Texas Const. Art. 3, § 52, TX CONST Art. 3, § 52
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

End of Document

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