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of Travis County, Texas

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Velva L. Price, District Clerk

353RD DISTRICT COURT

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December 2, 2015

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Re: Cause No. D-1-GN-15-004139; *EMCF Partners, LLC v. Travis County, Texas*;
in the 98th Judicial District Court, Travis County, Texas

Dear Counsel:

Plaintiff's Petition challenges the authority of Defendant to issue "regulations" restricting the hours of operation of mass gatherings governed by Chapter 371 of the Health and Safety Code, the Texas Mass Gathering Act (TMGA). Plaintiff's Petition does *not* challenge the authority of Defendant to grant or deny permits pursuant to Chapter 2104 of the Occupations Code governing outdoor music festivals (hereinafter OMFA). Plaintiff's event is nominated the Euphoria Music & Camping Festival, reflecting what may be considered to be both a mass gathering and an outdoor music festival.

Through the TMGA, the Legislature imposes obligations on the *County Judge*. Through the OMFA, the Legislature imposes obligation on the *Commissioners Court*.

The TMGA authorizes the County Judge to deny a mass gathering permit if she finds the preparations do not ensure "minimum standards of ... health will be maintained." Section 751.007(b)(6). The TMGA also authorizes the Texas Board of Health to adopt rules relating to "minimum standards of health ... to be maintained at mass gatherings." Section 751.010.

The OMFA authorizes the Commissioners Court to deny an outdoor music festival permit if it finds the preparations are insufficient to "protect the *community* or the persons attending the outdoor music festival from *health dangers*" [emphasis added]. Section 2104.104(4). It does *not* make reference to minimum standards of health or designate others to adopt them. And when the Legislature imposes an obligation on a commissioners court, the commissioners court has the implied authority to exercise the power necessary to accomplish its assigned duty. *Anderson v. Wood*, 152 S.W.2d 1084, 1085 (Tex. 1941).

Plaintiff's Petition seeks a Declaratory Judgment that the Commissioners Court "ordinance" restricting the hours of operation of its festival is unlawful and invalidated by operation of the Health and Safety Code and the Texas Constitution, and an injunction restraining enforcement of the hours of operation restriction.

The actions taken by the Commissioners Court and the County Judge do not literally restrict the hours of *operation* of the Euphoria Music & Camping Festival. Instead, they granted the permit, but restricted the hours of *amplified sound* while still permitting camping and other non-amplified activities.

The record reflects two different documents, each entitled, "Order Granting Conditional Mass Gathering Permit for 2016 Euphoria Music & Camping Festival;" one dated September 8, 2015 and signed by four members of the Commissioners Court, and one dated October 15, 2015 signed by the County Judge.

If the event is viewed simply as a "mass gathering," Plaintiff may be legally, literally entitled to the narrowly-requested relief under the TMGA. However, if the event is viewed as an "outdoor music festival," it must be recognized that the Commissioners Court has been given authority to exercise its discretion under the OMFA to deny the Application, if it finds that certain activities, such as amplification after certain hours or above certain levels, would constitute health dangers to the community.

The Application submitted by Plaintiff is for a "Major Event Permit," per its title. Paragraph 4 of the Application states that the promoter agrees to comply with all applicable Travis County Event Permit Guidelines, but also allows the promoter to request a waiver of requirements that it specifies. Paragraph 12 of the Application states that amplified sound is prohibited after certain hours. Presumably, Plaintiff could have requested waiver of that requirement, but apparently consciously chose not to do so. (In fact, at the hearing on the Application, Plaintiff's representative requested that the Commissioners Court *deny* its application if the permit was conditioned on restricted hours of amplified sound - presumably in order to judicially challenge the actions.)

The standard for review of questions of law or statutory construction is *de novo*, while a substantial evidence standard applies to actions under Chapter 2104 of the Occupations Code.

In applying the former, the Court presumes that in enacting a statute, "*public interest* is favored over any *private interest*" [emphasis added] (Government Code 311.021) and that statutes (a) shall be liberally construed to achieve their purpose and that (b) strict construction of statutes in derogation of the common law does not apply (Government Code 312.006).

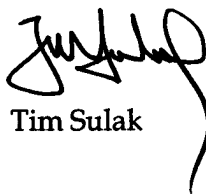
In applying the latter, in order to affirm the action, there must merely be more than a scintilla of evidence (even if less than a preponderance) by which reasonable minds could reach the conclusion; or the decision must not be arbitrary and capricious or contrary to law.

It is clear from the record that the Commissioners Court, over a period of months, received substantial commentary and testimony regarding the issues of hours of operation and noise levels from witnesses and experts. It is also clear from the record that one of the primary objectives was to facilitate the processing of applications for major events such that applicants would have some meaningful understanding of expectations for approval by the Commissioners or the County Judge. The record also reflects that the Commissioners Court adopted "guidelines" and that its members articulated (and provided for) deviations from the guidelines on a case-by-case basis.

While consideration of the "guidelines" as *requirements* may not be legally permissible under the TMGA, they may be under the OMFA. Because it is unclear whether the conditional grant of the permit was under one or the other, or both, the Court is unable, on this record, to make a determination as to validity of the actions.

Therefore, the Court is of the opinion that it lacks jurisdiction to grant the relief requested under the Declaratory Judgment Act as an advisory opinion, and declines to issue injunctive relief on this record. As there is no direct request to review the conditional grant of the permit under provisions of the Occupations Code, the Court takes no action in that regard, as well. Accordingly, Plaintiff's Petition is dismissed on the Court's motion.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Sulak', with a long, sweeping flourish extending from the bottom right.

Tim Sulak

TS:ps

Orig: Ms. Velva L. Price, District Clerk