

MAY 19 2017 NNR 6

At 4:40 PM.
Velva L. Price, District Clerk

NO. D-1-GN-17-001385

LA FERIA ISD, JOAQUIN ISD and	§	IN THE DISTRICT COURT OF
EQUITY CENTER	§	
Plaintiffs,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
MIKE MORATH, TEXAS	§	
COMMISSIONER OF EDUCATION;	§	
TEXAS EDUCATION AGENCY; and	§	
TEXAS STATE BOARD OF	§	
EDUCATION	§	
Defendants.	§	261 st JUDICIAL DISTRICT

TEMPORARY INJUNCTION AND REMAND ORDER

On May 15, 2017, Plaintiffs filed their Second Amended Original Petition and application for injunctive relief (the "Amended Petition"), complaining of certain actions by Defendants. In the Amended Petition, Plaintiffs requested entry of a temporary injunction.

On May 17, 2017 the Court heard Plaintiffs request for a temporary injunction. After considering the pleadings, evidence and argument of counsel, the Court finds that the underlying statute at Texas Education Code §41.013 is ambiguous. The Court finds that a memo on Texas Education Agency ("TEA") letterhead from Leo Lopez, Associate Commissioner for School Finance / Chief School Finance Officer was issued on February 1, 2017 and was admitted into evidence at the hearing as Plaintiff's Exhibit 1. The Court finds that this memo was not an "Order of the Commissioner" or a "Decision of the Commissioner" under Texas Education Code §41.013. The Court finds that the memo was an inadequate, improper, and invalid attempt at a rule amendment. The

Court finds that, after this cause of action was filed, on April 21, 2017, TEA published a proposed amendment to 19 Tex. Admin. Code 62.1071 that would amend the 2016-2017 Chapter 41 Manual for Districts Subject to Wealth Equalization by eliminating any reference in the manual to the effects of the adoption of a LOHE by a Chapter 41 district. The Court finds that this April 21, 2017 publication of notice does not comply with the mandatory requirement that proposed rules contain an accurate fiscal note. The Court finds that the Court heard evidence in the hearing which directly contradicts the statement in the notice that "there will be no fiscal implications to state or local government, including local school districts". The Court finds that evidence was presented in the hearing that there will be significant fiscal implications specifically to local government, including local school districts. The Court finds that the April 21, 2017 publication of notice was issued as part of an inadequate, improper, and invalid attempt of proposed rule amendment. The Court therefore determines that sovereign immunity has been waived pursuant to §2001.038 of the Texas Government Code with respect to this cause of action and therefore the Court finds that the Plaintiffs have standing and the Court has subject matter jurisdiction of the claims in this matter. The Court further finds that:

1. Plaintiffs are likely to succeed on their claim that Defendants may not amend 19 TEX. ADMIN. CODE § 62.1071 by recognizing local optional homestead exemptions for Chapter 41 districts without also recognizing such exemptions for districts under Chapter 42, in the absence of legislative action permitting such a change;

2. Plaintiffs (which includes the named Plaintiffs and those school districts that are members of the Equity Center) will suffer an immediate injury, because they will not receive the funds that would otherwise be provided to them under the current version of 19 TEX. ADMIN. CODE § 62.1071, under which when local optional homestead exemptions are recognized for Chapter 41 districts they must also be recognized for Chapter 42 districts, such as Plaintiffs, which loss of funds Plaintiffs would be unable to recover in a suit for damages at law.

3. The injury Plaintiffs will suffer is not only probable and imminent but also irreparable due to the inability of the State or the agency to provide funds to Plaintiffs if those funds have already been distributed to other school districts and expended.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that, due to the agency's failure to comply with procedural requirements of rulemaking under the Administrative Procedure Act, the Court REMANDS the Texas Education Agency's proposed amendment to 19 Tex. Admin. Code 62.1071 (both as published on April 21, 2017 at 42 TEX. REG. 2132 and as described in the February 1, 2017 memo) to the Texas Education Agency for a remand period of up to 120 days, during which time the agency may take steps to revise and/or readopt the proposed rule amendment through established procedure.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Texas Education Agency's proposed amendment to 19 Tex. Admin. Code 62.1071 (both as published on April 21, 2017 at 42 TEX. REG. 2132 and as described in the

February 1, 2017 memo) is HEREBY DECLARED TO BE INVALID for good cause based on the findings contained in this Order.

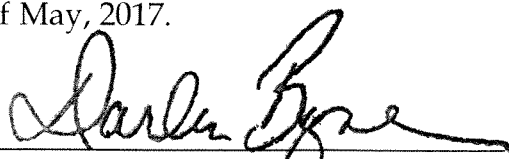
IT IS THEREFORE ORDERED that Defendants and any of their officers, agents, servants, employees, attorneys, representatives, or any persons in active concert or participation with them are immediately restrained from implementing or continuing to implement or administer the proposed rule amendment contained in Defendants' February 1, 2017 letter and are therefore immediately restrained from considering a local optional homestead exemption in determining Chapter 41 districts' equalized wealth level or amount of recapture without also considering a local optional homestead exemption for determining entitlements for districts under Chapter 42 and Chapter 46 on an equal basis.

It is further ORDERED that this cause is set for trial on the merits on August 11, 2017 at 8:30am, regarding Plaintiffs' claims.

Bond, or cash deposit in lieu of bond, is set in the amount of five hundred dollars (\$500.00).

The Clerk of the above-entitled Court shall forthwith on the filing by Plaintiffs of the required bond or cash deposit, and on approving the same according to the law, issue a temporary injunction in conformity with the law and the terms of this Order.

Signed on this 19 day of May, 2017.



The Honorable Darlene Byrne, District Judge