

IN THE CIRCUIT COURT OF MILLER COUNTY, ARKANSAS  
CIVIL DIVISION

**JOHN WARMACK;**  
**et alii (and others), listed on**  
**Exhibit "A" (Plaintiffs**  
**Pares)**

**PLAINTIFFS**

vs.

Case No. 2017-\_\_\_\_\_

**RUTH PENNEY BELL, in**  
**her capacity as Mayor for**  
**the City of Texarkana,**  
**Arkansas; DR. KENNY**  
**HASKIN, in his capacity as**  
**City Manager for the City of**  
**Texarkana, Arkansas**

**DEFENDANTS**

**PETITION FOR DECLARATORY RELIEF AND**  
**WRIT OF MANDAMUS**

The Plaintiffs, John Warmack, et al, by and through undersigned counsel, state the following in support of their *Petition for Declaratory Relief and Writ of Mandamus*:

**I. Introduction**

1. This is an action for declaratory relief brought by citizens and residents of Miller County and the State of Arkansas pursuant to the Arkansas Declaratory Judgment Act, Arkansas Code Annotated §§ 16-111-102, -103, and -104, challenging the City of Texarkana, Arkansas' implementation of Ordinance No. K-553 and K-554 that provide for the collection of a special sales and use tax for the purpose of Texarkana, Arkansas Police Department ("TAPD") salary increases and for the maintenance of base pay salary parity between the police departments of Texarkana, Arkansas, and Texarkana, Texas.

2. The Defendants named herein are named only in their official capacities and are named as the city officials responsible for the implementation and enforcement of Ordinance No. K-554.

3. On November 20, 1995, the Board of Directors of the City of Texarkana, Arkansas (also referred to herein as “the City”), passed Ordinance No. K-553, providing for the levy of a one-fourth of one percent (.25%) sales and use tax within the City for the purpose of TAPD salary increases, and maintaining base pay salary parity between the police departments of Texarkana, Arkansas, and Texarkana, Texas.

4. On December 6, 1995, the Board of Directors of the City of Texarkana, Arkansas passed Ordinance No. K-554, calling a special election to submit the question of the levy of the special sales and use to the electors.

5. On January 9, 1996, 2,903 citizens of Texarkana, Arkansas, voted FOR adoption of a .25% local sales and use tax within the City for the purpose of TAPD salary increases and maintenance of base pay salary parity between the police departments of Texarkana, Arkansas, and Texarkana, Texas.

6. While the City has continued to collect the proceeds from special sales and use tax, the City has not maintained salary parity.

## **II. Jurisdiction and Venue**

7. This Court has subject matter jurisdiction pursuant to Arkansas Code Annotated §§ 16-111-102, -103.

8. Proper venue lies in Miller County because the Plaintiffs reside here, the cause of action arose in Miller County, and the Defendants are city officials of the City of Texarkana, Arkansas located in Miller County, Arkansas.

### **III. Parties**

9. Plaintiffs, John Warmack et al (listed on Exhibit "A") are residents of the City of Texarkana, Arkansas. Each named person on Exhibit "A" has reviewed this Pleading and has agreed to be a named pares Plaintiffs.

12. Separate Defendant Ruth Penney Bell is the Mayor of the City of Texarkana, Arkansas.

13. Separate Defendant Dr. Kenny Haskin is the City Manager of the City of Texarkana, Arkansas. As the top appointed official in the City, Dr. Kenny Haskin is responsible for all the day-to-day administrative operations of the municipality.

### **IV. Ordinance K-554**

14. The City of Texarkana, Arkansas competes with the City of Texarkana, Texas for services of civil service employees, and has lost both prospective and existing employees to the City of Texarkana, Texas.

15. In an effort to attract and retain police officers, the City of Texarkana, Arkansas passed an ordinance providing for the levy of a one-fourth of one percent (.25%) sales and use tax within the City.

16. The stated purpose of the Ordinance was for "salary increases, and maintaining salary parity between the Police Departments of Texarkana, Arkansas, and Texarkana, Texas."

17. Ordinance K-554 ended with the acknowledgement "that there is a great need to establish a stable source of revenue to finance vital municipal services in order to promote and protect the health, safety, and welfare of the City and its inhabitants."

18. Ordinance K-554 established the framework for collection of funds to be used by the City to subsidize the police department's payroll related increases over time.

19. The funds collected from the 0.25% sales and use tax were not intended to bolster the City's overall finances.

20. As currently administered, there is no mechanism in place to accurately account for the funds use.

21. Upon information and belief, Plaintiffs believe that the City has used the parity funds for purposes other than those explicitly passed by the electors.

22. The City appears to take the position that parity means any payroll related increase since the Special Election held January 9, 1996.<sup>1</sup>

23. Merriam-Webster defines parity as the quality or state of being equal or equivalent.

24. Had the funds collected from the special sales and use tax been set aside and used only to fund the salary increases and associated expenses, the amount set aside would have increased and decreased over time. Since the passage of Ordinance K-544, Plaintiffs believe the increases would have exceeded the decreases such that a surplus should exist.<sup>2</sup>

25. Based on the City's numbers as presented by Ms. Henderson at the December 19, 2016, Board of Directors Meeting, the special sales and use tax collections for 2017 totaled \$2.26 million. The amount of salary increases required to maintain parity as calculated by the City totaled only \$650,000. This results in an approximate \$1.61 million surplus to be set aside for the future increases. Yet, the City contends that it cannot afford "parity" or salary increases for 2017.

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<sup>1</sup> The minutes reflect that in a response to a question from Mayor Bell, City Finance Director, TyRhonda Henderson stated that the special sales and use tax collected was \$2.26 million. In addition, Ms. Henderson indicated that in order to meet parity for 2017, it would require \$3.1 million. According to the City's most recent Comprehensive Annual Financial Report, this represents 48.8% of the entire amount expended for the police department.

<sup>2</sup> Ms. Henderson also indicated that the "cost of the increase alone was \$650,000."

26. The City's position appears to shift the payroll related expenses associated with the police department and ignores the City's portion of the responsibility of maintaining a police department.

#### **V. Annual Adjustments**

27. Beginning in 1998, the City began adopting an annual resolution to adjust salaries to a revised salary schedule effective October of each year. Resolution 4208 was adopted September 21, 1998. Resolution 4385 was adopted September 20, 1999. Resolution 4561 was adopted September 18, 2000. Resolution 4707 was adopted September 17, 2001. Resolution 4979 was adopted October 9, 2003.

28. On April 17, 2006, Resolution 5304, which contained a written proposal for submission to the Police Association was passed. The proposal appears to have attempted to define parity and base pay.

29. The City passed Resolution No. 2016-82 on December 19, 2016. The purpose of the resolution was to amend the year end 2017 budget. The resolution indicated that an agreement had been reached that provided for a 4% increase towards parity beginning January 2017 for all civil service positions receiving an increase of 4% or more. For those civil service positions receiving less than a 4% increase, full parity would be met in January 2017.

30. As of the date of the filing of this Petition, parity, even according to the definition used by the City, has not been met.

#### **Unintended Consequences**

31. In addition to not receiving timely adjustments to their compensation, police officers have also been damaged in other, not so obvious ways.

32. Social security benefits are a function of gross wages.

33. The police officers' gross wages have been understated, which directly affects the amount of social security benefits retiring officers can draw.

### Relief Sought

32. Plaintiffs request that this Court enter an Order declaring that parity is the periodic increase of salaries to be reset on an annual basis.

33. Plaintiffs request that this Court enter an Order declaring that funds collected from the special sales and use tax be set aside and accounted for separately by the City.

34. In turn, Plaintiffs request that this Court issue a writ of mandamus to Dr. Kenny Haskin directing him to pay all amounts due to current and prior police officers as required in Ordinance K-554 and as defined by the Court.

35. Plaintiffs request that this Court retain jurisdiction over this matter for the purposes of receiving reports and information concerning the administration of the collection of the tax and payment of the funds or resolving disputes between the parties of this action.

36. In the alternative, in the event this Court determines the Ordinance is unconstitutional or otherwise invalid, for whatever reason, Plaintiffs request that this Court enter an Order prohibiting the collection of the additional sales tax and initiating the creation of a framework to establish a process for the refunding of the tax previously collected.

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter judgment in their favor on their Petition in its entirety and against Defendants;
2. Declare that the Ordinance, as passed by the electors, means the special sales and use tax set aside is for the periodic incremental salary increases of the TAPD;

3. Award Plaintiffs all relief allowed by law and equity, including but not limited to declaratory, preliminary and permanent injunctive relief;

4. Retain jurisdiction over this matter for the purposes of receiving reports and information concerning the administration of the collection of the tax and payment of the funds and resolving disputes between the parties of this action

5. Award Plaintiffs' attorneys' fees and costs; and,

6. Award any other relief the Court deems proper.

Respectfully submitted,

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*Attorneys for Plaintiffs*

## EXHIBIT A

### Plaintiffs

- John Warmack
- Kenny Heady;
- Bernadette Wooten;
- Annes Thao;
- Andrew Cigainero;
- Linda Darlene Cigainero;
- Tiffany Neely;
- Justin Lovelis;
- Ronald Hudson;
- Charles Bateman;
- Clifton Dixon;
- Stephen Dagostino;
- Samantha Quillin;
- Jennifer Golden;
- Billy Golden;
- Billy McAdams;
- Mary McAdams;
- Ray Angle;
- Amanda Anderson;
- Curtis Shamsie;
- Buddy Vaughn;
- Tad Cree;
- David Haak;
- Debbie Haak;
- Ken Cowling;
- Phil Bocox;
- Don Nix;
- Bill Cook;
- Paula Cook;
- Billy Jones;
- Diane Jones;
- Wendell Warner;
- Mary Warner;
- Lantz Lurry;
- Dianna Lurry;
- James (Bo) F. Coe;

- Deloris Coe;
- Chad Williamson;
- Holly Williamson;
- Joe Langley;
- Shondra Langley;
- John Cox;
- Becky Cox;
- Carol Howell;
- Wallace Ghoulson;
- Lucy Strickland;
- Mary Lumpkin;
- Rodney Joe Fowler;
- Shawn Beasley;
- Kim Beasley;
- Robert Steffey;
- Donna Stroope;
- Kerri Stroope;
- Jerry Shipp;
- Cindy Marshall;
- Joseph Montoya;
- Randi Howell;
- James Mike Jones;
- Donald L. Duncan;
- Robert Max Elrod;
- Sherry Villa;
- Kathleen Honeycutt;
- Paula Woolery;
- Joe Narrens;
- Troy Neimeyer;
- Charles Beth;
- Janice Beth;
- Glen Cowley;
- Edith Cowley;
- Janet Jones;
- Greg Gallagher;
- Suzie Davis;
- Kenneth Davis;
- Sarah Page;
- Brenda Ashby;

- Michelle Harris;
- Melvin Megason;
- Brandi Diane Vickers;
- Cynthia Gunn;
- Keith Bullard;
- Lance Wayne Sisco; and,
- Roger Booth.