

CAUSE NO. D-184,425

BEAUMONT HERITAGE SOCIETY	§	IN THE DISTRICT COURT OF
AND EDDIE ESTILETTE	§	
	§	
	§	
VS.	§	
	§	JEFFERSON COUNTY, TEXAS
DR. CARROL THOMAS,	§	
BEAUMONT INDEPENDENT	§	
SCHOOL DISTRICT, WOODROW	§	
REECE AND PARSONS	§	
COMMERCIAL TECHNOLOGY	§	
GROUP, INC.	§	58th JUDICIAL DISTRICT

ORDER GRANTING BEAUMONT HERITAGE SOCIETY AND EDDIE ESTILETTE TEMPORARY INJUNCTION

On July 28, 2009, came on to be heard Plaintiff's Application for Temporary Injunctive relief. A full 4 day evidentiary hearing was conducted on July 28, 2009 through July 31, 2009. After hearing the evidence and arguments of counsel, the Court finds that the evidence establishes that the Board of Directors of the Beaumont Heritage Society and Eddie Estilette are resident taxpayers of the Beaumont Independent School District and the rule is settled in our State that a resident taxpayer in a governmental district is entitled to bring a suit to enjoin the public officials from expending public funds illegally. *Lawler v. Castroville Rural High School Dist.*, 233 S.W.2d 613, 616 (Tex.Civ.App.---San Antonio 1950, writ ref'd); *Hill v. Stone*, 421 U.S. 289, 95 S.Ct. 1637, 44 L.Ed.2d 172 (1975).

The Court finds that Plaintiffs claims may be reasonably construed as alleging that after the bond election was ordered by the Beaumont Independent School District on August 30, 2007, but before it was held, Defendant's stated and pledged to the voters that if the bond issue carried, that the South Park school building would not be demolished and that this statement was intended

by Defendants to cause, and did cause, the bond election to carry; that thereafter Defendants arbitrarily abandoned this promise to the voters and have proceeded to take steps to insure the demolition of the South Park school building.

It is the rule that where the voters have voted bonds relying on a prior order or pledge of the governing board that the proceeds would be used on a certain project "the governing body must not 'arbitrarily ignore or repudiate such order or pledge,'" *Hudson v. San Antonio Independent School District*, 127 Tex. 517, 95 S.W.2d 673, 675 (1936).

In this case, the Court finds that the Defendants, through their agents and representatives, caused statements to be disseminated to the electorate in a pamphlet published in a local newspaper that expressly stated that if the 2007 bond passed, that the old South Park building would not be demolished. If a governmental entity induces the voters to approve a bond issue by making certain representations about the issue, it is bound by those representations.

The Court recognizes that there is one case containing a different opinion in *Davis v. Duncanville Independent School District*, 701 S.W.2d 15 (Tex. App.-Dallas 1985, writ dismissed w.o.j.) but does not believe the case to be authoritative. The Defendants argue that a governmental entity is bound only by an order or a resolution adopted at a properly convened meeting. The Court has no quarrel with this general proposition. However, a body of law has developed that expressly relates to circumstances like the one before us. Certainly, it is the rule that a governmental body cannot be held to a contract unless the action is an "official" one, regularly enacted at a properly convened meeting. However, the voter reliance cases employ a theory akin to estoppel. Deception may not be perpetrated upon the voters; the electorate may not be misled as to the intended purpose of the bond issue being voted upon.

In the case before us, the Defendants "acquiesced" in the making of specific representations as part of a program to convince the voters that the bonds should be approved. As a matter of good conscience, the Board cannot be

permitted to substantially deviate from its representations without working a deception upon the voters. Consistent with the principles of estoppel, we should not require affirmative action by the District, official or otherwise; we can and should declare that which it may not do. The purpose of the rule requiring that governmental actions be adopted at a duly convened meeting is the preservation of the deliberative process. Each member of the governing body is given an opportunity to contribute his "experience, counsel, and judgment." *Webster v. Texas & Pacific Motor Transport*, 140 Tex. 131, 166 S.W.2d 75, 77. The goal of judicious deliberation is in no way advanced by applying the rule to the situation before us. Indeed, in a situation where the Defendants allowed public representations to be made in a manner which implied that the District itself would stand by the representations, the orderly conduct of governmental affairs demands that the District be held to the statements. The policy of this State is clear:

In the matter of bond issues authorized by the vote of the citizenship affected, in the submission of the proposition the law encourages rather than frowns upon, a full and definite statement of their purpose. *Moore v. Coffman*, 109 Tex. 93, 200 S.W. 374 (1918).

Counsel for both BISD and Beaumont Heritage Society and Eddie Estilette in closing arguments stated they had additional witnesses that would help establish the facts in this case but were unable to produce them because they were unavailable or limited or limited by time due to the length of the hearing. A temporary injunction to allow further evidence to be fleshed out will be a very small incursion upon the powers of the Defendants to conduct school affairs according to its own best judgment and will not substantially delay the construction of a new school at the South Park location whereas to deny the requested injunctive relief will cause the Plaintiffs to suffer immediate and irreparable injury, for which there is no adequate remedy at law.

The Court finds that the harm to Plaintiffs is imminent because demolition contractors are currently preparing to tear down the South Park building and ancillary buildings and there is no adequate remedy at law which will give Plaintiffs complete, final and equal relief because demolition contractors are destroying the very rest of this controversy.

Accordingly, it is ORDERED, that Defendants, BEAUMONT INDEPENDENT SCHOOL DISTRICT, DR. CARROL THOMAS, WOODROW REECE, Defendants herein, and all of Defendant's officers, agents, servants, employees, agents, servants, contractors, successors and assigns, and attorneys are ORDERED to continue to cease and desist from demolishing the South Park Middle School Main Building and ancillary buildings at 4500 Highland Avenue, Beaumont, Texas from the date of entry of this order.

The trial on the merits and the permanent injunction hearing will be set on September 21, 2009 at 9:00 a.m. A continuation of the bond set for the TRO will be carried along with this trial and injunction hearing.

SIGNED and ENTERED on the 3<sup>rd</sup> day of August 2009.

  
JUDGE PRESIDING