

AGENDA ITEM 14

Consider setting bid date for East Williamson County Event Center, Phase 1.

Moved: **Commissioner Limmer**

Seconded: **Commissioner Hays**

Motion: To approve the setting the date of May 22, 2003, at 2:00 p.m. at offices of FT Woods to receive bids for the East Williamson County Event Center.

Vote: **4 - 0**

AGENDA ITEM 15

Discuss and take appropriate action on notifying our State Representative and State Senator that we are in opposition to SB 1017 and HB1898.

Moved: **Commissioner Boatright**

Seconded: **Commissioner Limmer**

Motion: To approve notifying our State Representative and State Senator that we are in opposition to SB 1017 and HB 1898.

Vote: **4 - 0**

< Attachment >



SAMUEL T. BISCOE

COUNTY JUDGE

TRAVIS COUNTY ADMINISTRATION BUILDING
P.O. BOX 1748 ROOM 520
AUSTIN, TEXAS 78767
(512) 854-9555

April 10, 2003

TO: County Judges
State of Texas

FROM: Samuel T. Biscoe
Travis County Judge

RE: Legislative Intention to Waive Governmental Immunity

Dear Judge:

Enclosed is a copy of comments I have sent the sponsors of two bills designed to waive the limited immunity from suit for claims under contract that counties have enjoyed for almost 200 years. I believe this is a **BAD** thing. If you agree, please have your court adopt a resolution in opposition and send it to all members of your legislative delegation and the sponsors of these bills. If you prefer, a letter will serve the same purpose. Time is of the essence, as these bills are moving fast.

Sincerely,

A handwritten signature in cursive script that reads "Samuel T. Biscoe".

Samuel T. Biscoe
Travis County Judge

cc: Travis County Commissioners Court

**SAMUEL T. BISCOE**

COUNTY JUDGE

TRAVIS COUNTY ADMINISTRATION BUILDING
P.O. BOX 1748 ROOM 520
AUSTIN, TEXAS 78767
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April 10, 2003

TO: Honorable Jeff Wentworth, Senator
Honorable Joe Nixon, Representative, District 133
Chair, Civil Practices

FROM: Samuel T. Biscoe *STB*
Travis County Judge

REGARDING: SB 1017 and HB 1898
Waver of Governmental Immunity From Suit for Claims Under
Contract for Texas Counties

On Tuesday, April 8, 2003, the Travis County Commissioners Court voted unanimously to oppose SB 1017 and HB 898. This memo is to (1) give the reasons for this opposition; and (2) request that I be given an opportunity to appear before you before the next formal action on these bills.

Pelzel v. Travis County. I have been advised that the Plaintiff in this case seeks legislative relief from an adverse judgment by the Texas Supreme Court, Travis County v. Pelzel, SW3d (246 Tch 2002). This plaintiff has had more than "her day in court" and has received all of the relief to which she is entitled. Here are the facts:

1. contract amount: \$414,164.80
2. amount paid her under the contract \$408.664 (\$5,500 withheld - based on liquidated damages of \$250 per day).
3. amount in disagreement \$5,500
4. reason for disagreement - liquidated damages for exceeding schedule: 21 days beyond contractual substantial completion date
5. there were numerous efforts to resolve differences prior to litigation, including the following:
 - a. discussion of case with various members of the court individually and other professional staff, including the architect
 - b. negotiations with subcommittee of the court appointed to work with Plaintiffs, Judge Biscoe and Commissioner Gomez

- c. mediation before a third party mediator, Judge Biscoe and county attorney
- d. offer by county to settle: split down the middle \$6,000 (by that time the claim had grown to \$12,000)
- e. amount plaintiff sued for: over \$136,000
- f. county spent at least \$55,000 defending this case.

Flour Daniel v. Travis County This case was argued before the U.S. Fifth Circuit Court of Appeals on Monday, April 7, 2003. If the Court follows Pelzel, governmental immunity should apply.

Here are the relevant facts:

1. Contract amount - \$4.1 million
2. Travis County paid contractor \$5.3 million before litigation
3. Contractor wanted approximately 2.8 million more, or \$8.1 total.
4. Disagreement: contractor went more than three years over schedule and spent \$20 to \$25 million over budget
5. County spent well over \$1 million (excluding attorneys' fees) defending this case.

Reasons

Governmental immunity is imbedded in Texas Common Law and can be traced back as early as the 1800s, almost two centuries ago. Although Travis County enters into hundreds of contracts annually for numerous projects -- transportation, building improvements and construction, purchasing and for numerous other goods and services, we invoke governmental immunity only occasionally. Frankly, government immunity is saved for cases like these two. These two cases reveal contractors that utilized creative maneuvers and trickery to claim entitlement to compensation far in excess of the contract price, and then were absolutely unwilling to settle short of their demands. In the vast majority of cases, Travis County sits with the claimants and irons out differences. Additionally, mediation is readily available and resolves an overwhelming majority of cases.

Without this immunity, more contractors will file lawsuits to resolve contract disputes, which typically cost substantial dollars in court costs, expert and other fees, legal counsel, etc., even if you prevail. For example, Travis County spent in excess of \$55,000 in Pelzel, a \$5,500 dispute, and more than \$1 million to defend in Flour Daniel. Governmental immunity's purpose is to protect the tax paying public from the types of cases that are discussed above.

Remember: contractors have the right not to bid on contracts with the county. No one forces them into these contracts. If governmental immunity from suit is waived, counties should not be required to award construction contracts to the low bidder by the

County Purchasing Act. Greater flexibility would enable counties to avoid contractors known to be contentious, litigious and unreasonable.

Finally, urban counties can usually pay these outrageous demands. But what about smaller counties with smaller budgets and more limited resources? These bills do much more than ensure justice for a handful of greedy contractors. They open doors to outrageous demands that historically have been tempered by a governmental immunity that promoted dispute resolution instead of litigation.

AGENDA ITEM 16

Consider and take appropriate action on the amended Interlocal Agreement and Resolution for the CUC Integrated Justice Information System (IJIS) Project.

Moved: **Commissioner Hays**

Seconded: **Judge Doerfler**

Motion: To approve participation in the amended Interlocal Agreement and Resolution for the CUC Integrated Justice Information System (IJIS) Project.

Vote: **4 - 0**

< Attachment >

STATE OF TEXAS	§ § §	INTERLOCAL AGREEMENT FOR COORDINATED INTEGRATED JUSTICE SYSTEM
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WHEREAS, the County of Bexar, the County of Collin, the County of Dallas, the County of Galveston, the County of Harris, the County of Tarrant, and the County of Travis (collectively "the Counties" or individually, a "County") desire to join together to explore the desirability and feasibility of jointly procuring an integrated justice system; and

WHEREAS, the Texas Conference of Urban Counties, Inc., ("the CUC") is a nonprofit corporation created and operated to provide governmental functions and services on behalf of its members; and

WHEREAS, the Counties desire to contract with the CUC to procure a requirements definition; data dictionary, and an XML tagging system for an integrated justice system, and to provide administrative and other services necessary to accomplish the Scope of Work; and

WHEREAS, the CUC desires to procure those items on behalf of the Counties; and

WHEREAS, the Commissioners Court finds that the services to be performed by the CUC and the services contracted by CUC with the project manager and the vendors constitute professional services under Section 262.024, Local Government Code; and

WHEREAS, Each of the Counties finds that its payments for services performed pursuant to this agreement may be made from current revenues that are readily available only for payments that are due this fiscal year; and

WHEREAS, the Counties and the CUC each find that the amount paid for the services performed under this agreement fairly compensates the performing party.

NOW, THEREFORE, THIS AGREEMENT (the "Agreement") is hereby made and entered into individually by the Texas Counties of Bexar, Collin, Dallas, Galveston, Harris, Tarrant and Travis and the Texas Conference of Urban Counties, Inc., upon and for the mutual consideration stated herein: