HUTZEL, ET AL. v. CITY OF NORMAN

2026 OK 77

Case Number: 124094

Decided: 10/27/2026

THE SUPREME COURT OF THE STATE OF OKLAHOMA

Cite as: 2026 OK 77, __ P.3d __

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DIANNA LYNN HUTZEL, WILLIAM HARVEY COKER, and TERESA SUZANNE BORUM, Plaintiffs/Appellants,

vs.

CITY OF NORMAN, an Oklahoma municipal corporation, Defendant/Appellee.

ON APPEAL FROM THE DISTRICT COURT OF CLEVELAND COUNTY

Honorable Michael Tupper, District Judge

¶0 Residents appeal from the dismissal of their petition claiming City violated the Oklahoma Constitution when it declared that a bond issue to fund a municipal homeless shelter passed by a majority vote. Residents also appeal the denial of a preliminary injunction barring City from issuing the bonds. This court retained the appeal. An exclusively city-owned "homeless shelter community facility" is a public utility as that term is used in Okla. Const. Art. 10, § 27. We affirm.

DISTRICT COURT'S JUDGMENT AFFIRMED.

Stephen Jones, William Jewell, Jones, Otjen & Jewell, Enid, Oklahoma, for Plaintiffs/Appellants.

Gregory M. Failing, GMF Legal Services, PLLC, Noble, Oklahoma, for Plaintiffs/Appellants.

Ryan Riddell, Ricky J. Knighton, II, Kathryn L. Walker, Norman, Oklahoma, for Defendant/Appellee.

Winchester, J:

¶1 Today we consider whether a city-owned "homeless shelter community facility" is a public utility, as that term is used in Art. 10, § 27, of the Oklahoma Constitution, which allows cities to issue bonds to fund public utilities with the approval of a simple majority of voters. Defendant/Appellee the City of Norman (City) held an election to decide whether to issue tax-supported bonds to build a shelter and the proposition was approved by 54.25% of the votes cast. Plaintiffs/Appellants Diana Lynn Hutzel, William Harvey Coker, and Teresa Suzanne Borum (Residents) then sought a judgment declaring that the shelter was not a public utility and therefore required approval by a 60% super-majority to pass, pursuant to Art. 10, § 26, of the Oklahoma Constitution. City responded with a motion to dismiss, which the trial court granted following a hearing.

¶2 Oklahoma authority does not support Residents' contention that only traditional infrastructure projects are public utilities under Section 27. Oklahoma cases have broadly interpreted "public utility" as used in Section 27 to include any city-owned property for public use or public benefit. On *de novo* review, we find the shelter is a public

utility under Section 27 as a matter of law and City properly determined the proposition had passed with a simple majority vote. We therefore affirm the trial court's order dismissing Residents' petition.

FACTS AND PROCEDURAL HISTORY

¶3 The facts are undisputed. By Ordinance O-2526-36, the Norman City Council called an election to be held April 7, 2026, for approval or rejection of issuing $8,000,000 in general obligation bonds to fund a municipal homeless shelter. Paragraph (i) of the ordinance described the project:

> Homeless Shelter Community Facilities: To provide funds for the purpose of acquiring, constructing, reconstructing, expanding, repairing, which may also include improving, renovating, acquiring and equipping a community facility to be exclusively owned by the City.

According to Section 1 of the ordinance, the question to be submitted to voters was:

> PROPOSITION 5
>
> Homeless Shelter Community Facility Bond Project
>
> Shall the City of Norman, State of Oklahoma, incur an indebtedness by issuing its general obligation bonds in the sum of Eight Million Dollars ($8,000,000) to provide funds for the purpose of acquiring, constructing, reconstructing, expanding, repairing, which may also include improving, renovating, acquiring and equipping a community facility, to be owned exclusively by said City, to be completed with or without the use of other funds, and levy and collect an annual tax, in addition to all other taxes, upon all taxable property in said City sufficient to pay the interest on said bonds as it falls due, and also to constitute a sinking fund for the payment of the principal thereof when due, said bonds to be competitively sold and bear interest at the lowest rate not to exceed the rate of ten percentum (10%) per annum, payable semi-annually and to become due serially within twenty (20) years from their date?

The ordinance further provided: ". . . power is granted to City by Okla. Const. Art. 10, § 27 and law of the State of Oklahoma, to issue bonds to provide funds for such purposes, ..." The election results showed 54.25% of voters approved the bond issue. [1] City posted a resolution to issue the bonds on its Council's April 16, 2026, agenda.

¶4 On April 14, 2026, Residents filed a Petition for Declaratory Judgment and Injunctive Relief. [2] Residents did not challenge City's authority to create a shelter, but they disputed that the shelter was a public utility subject to Okla. Const. Art. 10, § 27. Residents argued that Proposition 5 was instead subject to Okla. Const. Art. 10, § 26, which requires bond issues to be approved by at least 60% of the votes cast. Residents sought judgment declaring that the shelter was not a public utility and that the bond issue failed because it did not receive 60% approval. Residents attached the certified results of the bond election, the Norman City Council meeting agenda for April 14, 2026, which included resolutions directing the sale of bonds, and Ordinance No. O-2526-36.

¶5 City responded with a motion to dismiss. City asserted that to be considered a public utility under Section 27, a facility must be publicly owned and advance the health, safety, or general welfare of the public. City cited cases finding a convention hall, [3] park, [4] fire department, [5] street cleaning equipment, [6] town hall and jail, [7] cemetery, [8] airport, [9] history collection for a public museum, [10] library, [11] and parking lot [12] were public utilities under Section 27. City also averred that where voters have approved a project, courts must give their determination of a public use a fair and reasonable construction. [13] City made similar arguments in its response to Residents' motion for a temporary restraining order and temporary injunction. [14]

¶6 Residents countered that this case presented a novel question of first impression, arguing Oklahoma courts had not extended application of Section 27 to a "welfare-conditioned social service facility," and that City's broad reading of Section 27 would effectively nullify Section 26. Residents also contended that City's acknowledgement that it could have sought approval for the bond under Okla. Const. Art. 10, § 35, presented another question of law preventing dismissal.

¶7 City replied that the fact the bond could have been sought under Section 27 or Section 35 did not support Residents' claim that the bond required 60% approval under Section 26. City further noted that *Barnes*, *supra*, had included "almshouses" in its list of public utilities potentially embraced by Section 27. [15] City lastly asserted that nothing in Section 27 requires that a public utility serve all the public or allow unconditional use.

¶8 Following a hearing, held April 29, 2026, the trial court found the shelter was a public utility and therefore dismissed Residents' petition and denied their request for an injunction. Residents appeal.

STANDARD OF REVIEW

¶9 It is settled that motions to dismiss are viewed with disfavor. *May v. Mid-Century Ins. Co*., 2006 OK 100, ¶ 10, 151 P.3d 132. In considering a motion to dismiss, the court must take as true all of the challenged pleading's allegations together with all reasonable inferences that may be drawn from them. *Id*. Dismissal is appropriate only for lack of any cognizable legal theory to support the claim or for insufficient facts under a cognizable theory. *Id*. [16] We review the dismissal of a petition *de novo. Lockhart v. Loosen*, 1997 OK 103¶ 4, 943 P.2d 1074. We likewise review questions of law *de novo*. *Fanning v. Brown*, 2004 OK 7, ¶ 8, 85 P.3d 841. Under this standard, we have plenary, independent, and non-deferential authority to review the trial court's legal ruling. *Id*. The essential question of law presented is whether a city-owned homeless shelter and community facility is a public utility subject to approval under Okla. Const. Art. 10, § 27. "(T)he question whether the use is a public use [under Section 27] is always ultimately a question for judicial determination; but, where the legislative judgment has been declared as to whether a given use is a public use, that judgment will not be overturned by the courts, unless it is clearly apparent that the same is without reasonable foundation." *Barnes*, *supra*, 1908 OK 191at¶ 15.

DISCUSSION

¶10 Article 10 of the Oklahoma Constitution is devoted to public revenue and taxation; the sections at issue here address voter approval of indebtedness. Residents contend the bond issue was governed by Okla. Const. Art. 10, § 26, which bars any political subdivision from becoming indebted for any purpose, in amounts exceeding revenues but not exceeding 5% of the value of taxable property therein, without the approval of 60% of the votes cast. City contends the bond issue was governed by Okla. Const. Art. 10, § 27, as stated in the ordinance calling the election. That section allows cities or towns to become indebted in amounts greater than allowed by Section 26 to fund city-owned public utilities, upon the approval of a simple majority of voters. [17]

¶11 Section 27 is a self-executing "grant of power to the people of the municipalities of the state and not a limitation upon the Legislature." *State v. Millar*, 1908 OK 124, ¶ 31, 21 Okla. 448, 96 P. 747; *Shawnee*, *supra*, 1959 OK 64at¶ 11.

> The evident object and purpose of section 27, *supra*, is primarily to empower the incorporated cities and towns of this state by a majority of the qualified taxpaying voters voting at an election held for such purpose to become indebted in a larger amount than that specified in section 26, for the purpose of purchasing or constructing public utilities or for repairing the same, to be owned exclusively by such municipalities, and it is the duty of the court, if possible, to so construe the provision as to carry out its purpose. The construction of a constitutional provision must not be so strict or technical as to defeat the evident object and purpose of its adoption.

Millar, supra, 1908 OK 124at¶ 25. By its terms, the essential requirements for a bond issue under Section 27 are that the project be a public utility and be exclusively owned by the city. The ordinance and Proposition 5 stated the shelter would be exclusively owned by City; the parties dispute whether the remaining requirement, that the indebtedness be incurred for a public utility, has been met.

¶12 In their petition, Residents asserted the bond issue sought approval for indebtedness "for the construction of a city-owned permanent homeless shelter and resource center." Residents further alleged the shelter "is a public welfare and social-service facility providing housing, case management, and support services to a specific segment of the population experiencing homelessness. . . . It does not provide infrastructure services to the

general public; it does not generate revenue through user fees in the manner of a utility; and it is not analogous to the categories of facilities Oklahoma courts have recognized under § 27." In its response to City's motion to dismiss, Residents averred "access is conditioned on a specific welfare criterion: the absence of stable housing. It is not open to the general public--it serves a defined subset of the population identified by circumstances beyond their control. This is a means-tested, status-based eligibility requirement of precisely the kind that distinguishes social-welfare facilities from public utilities." For purposes of this decision, we take these factual allegations as true.

¶13 Residents contend "public utility" means universal infrastructure services, such as water, electricity, or gas, unconditionally available to the general public, [18] but since statehood this court has repeatedly held that, for purposes of Section 27, public utility generally means public use or public benefit. In *Millar*, *supra*, 1908 OK 124, at ¶¶ 35-37, this court first considered the meaning of public utility as used in Section 27:

> There is a dearth of authority on what it takes to constitute a public utility. It is held in *Valley City Salt Co. v. Brown*, 7 W. Va. 191, that the expression "public utility" is synonymous with "public use."
>
> In *Aldridge v. Tuscumbia, C. & D. R. R. Co*., 2 Stew. & P. (Ala.) 199, 23 Am. Dec. 307, Mr. Chief Justice Lipscomb says: "Whatever is beneficially employed for the community is of public use."
>
> In *Olmstead v. Camp*, 33 Conn. 532, 89 Am. Dec. 221, Mr. Justice McCurdy, speaking for the court, says: "One of the most common meanings of the word 'use,' as defined by Webster, is 'usefulness, utility, advantage, productive of benefit.' 'Public use' may therefore well mean public usefulness, utility, or advantage, or what is productive of general benefit."

Millar involved a bond issue to fund a sewer system, a project plainly within the "traditional infrastructure" meaning urged by Residents, and this court agreed it was a public utility. *Id*. at ¶ 38. However, the same year, in *Barnes*, *supra*, this court held that a project outside of traditional infrastructure was a public utility subject to Section 27.

¶14 In *Barnes*, the plaintiffs opposed a bond issue to fund a convention hall on the ground that it was not a public utility. Recognizing that public utility meant public use, this court looked to definitions of public use that had emerged in eminent domain decisions. *Barnes* noted two views had emerged on what constitutes public use: " (o)ne is that a use to be a public use must be a use, or right of use, on the part of the public *or some limited portion of it*; and the other is that it must be a public benefit utility, or advantage." 1908 OK 191at ¶ 4 (emphasis added). [19]

¶15 In considering whether a convention hall was a public use, the *Barnes* court cataloged various types of public uses, explaining: "(w)e know of no case in which the question of whether a convention hall is a public use has been determined, but courthouses, jails, schoolhouses, city halls, public markets, *almshouses*, public parks, boulevards, commons or pleasure grounds, and places of historic interest are examples of uses that have been declared by the courts to be 'public uses.'" *Barnes*, 1908 OK 191, at ¶16 (emphasis added), citing 2 Abbott's Municipal Corporations, pp. 1828--1830. A homeless shelter is a modern analog to an almshouse. [20] Public housing has been held to be a public use for which governments may acquire property by eminent domain. See *Housing Auth. of City of Dallas v. Higginbotham*, 135 Tex. 158, 165, 143 S.W.2d 79, 83 (1940), and cases cited therein. The Oklahoma Housing Authorities Act provides, in pertinent part: "the providing of safe and sanitary dwelling accommodations and maintaining a wholesome living environment for persons of low income are charitable and *public uses and purposes for which public money may be spent* . . . ." 63 O.S. § 1053(e) (emphasis supplied).

¶16 Residents argue that a homeless shelter cannot be a public use because it serves a limited segment of the public and access is conditioned on lack of housing. None of the cases interpreting Section 27 require that public access be unlimited. As quoted above, *Barnes* recognized that a public use may be a use or right to use by "some

limited portion of" the public. Examples of public utilities serving limited portions of the public include municipal hospitals, jails, and fire departments, all of which provide service to the public conditioned on need. [21]

¶17 *City of Shawnee, supra,* elaborated that "since it has been held that public utility and public use are synonymous, and that usually or generally whatever is beneficially employed for the community is of public use, we are of the opinion that the taxpaying voters of a municipality have some qualification to determine [what] would be a public use and benefit, and when they have so determined by their vote, the court should give a fair and just construction and decision as to what constitutes a public utility. . . ." *Id*. at ¶ 13. [22] Indeed, the only Oklahoma decisions that have held something is *not* a public utility under Section 27 involve streets and lateral sewer lines, and those findings were based not on public use but on a lack of exclusive city ownership. [23]

¶18 In its motion to dismiss, City asserted a permanent homeless shelter "provides emergency housing, mitigates public health and safety risks associated with unsheltered populations, and reduces demands on municipal services." The shelter at issue here, as described by the parties, is a shelter and community facility exclusively owned by City that fosters public safety, health, comfort, and public control for the use of some portion of the public depending on need. The shelter is beneficially employed for the welfare of the community. Taking Residents' allegations in the light most favorable to them, we find the shelter is a public utility for purposes of Section 27 as a matter of law.

¶19 Residents next argue the trial court erred in ignoring what Residents describe as City's "concession that [Art. 10] § 35 (as implemented by 62 O.S. § 802(5)(h)) was specifically designed to authorize bonds for 'shelters for homeless or abused persons,' thereby demonstrating that § 27 is not the constitutionally intended pathway for this project." [24] City asserted below that it also could have submitted the bond issue under Section 35. Section 35 allows municipalities to seek voter approval for economic or community development "as may be defined by law." The Legislature later passed the Municipal and County Economic and Community Development Bonds Act (the Act) to establish terms regarding the purposes for which bonds may be issued under Section 35. 62 O.S. §§ 800-804. One of the qualified purposes listed in the Act is "community facilities including parks, senior citizens centers, shelters for homeless or abused persons, and juvenile centers." 62 O.S. § 802(5)(h). Residents contend this shows that the bond issue challenged here could *only* be submitted under Section 35.

¶20 This argument lacks merit for two related reasons. First, the long list of qualified projects named in the Act includes several types of projects or programs that have expressly been held to be public utilities under Section 27. [25] Under Residents' reasoning, these projects could only be submitted to voters under Section 35, which would make Section 27 superfluous. Second, this court has previously held that Sections 27 and 35 are not exclusive and cities may submit bond issues to voters under either section if both apply. See *Sublette v. City of Tulsa*, 1965 OK 78, ¶ 62, 405 P.2d 185, which explained:

> Admittedly, adoption of Sec. 35 did not repeal Sec. 27. . . . (T)he clear intent of the people in adopting Sec. 35 was simply to supply an additional means for financing the type of public endeavor contemplated. It is not required that a proposed utility be financed under the constitutional plan permitted under Sec. 35. The same result could be achieved under Sec. 27. . . . And, where properly submitted for approval of the people, a city may resort to either plan of financing now permitted under Const., Art. X, Secs. 27 and 35.

CONCLUSION

¶21 We have found no support for Residents' argument that the bond issue they challenge is not a public utility subject to Section 27. Residents' argument would require this court to abandon more than a century of authority holding that public utility, as used in Section 27, is synonymous with public use or public benefit. The shelter, as described by Residents, aligns with this court's prior descriptions of public utilities as city-owned projects for use or benefit of the public or some limited portion of the public. We are bound to give a fair and just construction to what City and voters have declared to be a public utility. Residents have not demonstrated any cognizable legal theory to support their claim that the bond issue in this case required 60% approval. Accordingly, we affirm the trial court's order dismissing Residents' petition. [26]

DISTRICT COURT'S JUDGMENT AFFIRMED.

CONCUR: Winchester, Edmondson, Combs, Gurich, Darby and Jett, JJ.

CONCUR IN RESULT: Kuehn, V.C.J. (By Separate Writing), and Kane, J.

DISSENT: Rowe, C.J.

KUEHN, V.C.J., CONCURRING IN RESULT:

¶1 I write separately to address where I differ from the Majority. I do not disagree with the Majority's overall analysis of what constitutes a "public utility" and the authority it relies on. However, I would first ask which section of Article X applies: Section 27 or Section 35. Section 35 has changed significantly since its adoption, and now clearly enumerates the types of projects carried out under its purview. Section 35 is therefore the appropriate constitutional provision for the municipality of Norman to use for this project. However, as the voting requirement would be satisfied under either section, the outcome of the case would not change.

¶2 Originally, Section 27 was the only constitutional provision available to municipalities that wanted to issue bonds to finance public works; the provision was limited to "the purpose of purchasing or constructing public utilities, or for repairing the same." Okla. Const. art. X § 27. Consequently, a body of caselaw arose that expanded the definition of "public utilities" to include a variety of important public works projects.

¶3 In 1962, Section 35 was adopted "to provide method and means of securing and developing industry within or near cities and counties which chose to act." State Question No. 404, Legislative Referendum No. 133. Section 35 gave municipalities another path to develop industry and construct public utilities apart from Section 27. Although Section 35 authorized municipalities, with voter approval, to issue bonds to secure and develop industry, it did not provide for enabling legislation so caselaw seldom distinguished between Sections 27 and 35 when reviewing specific public works bond issues.

¶4 The Majority relies on *Sublett v. City of Tulsa* for the argument that Section 27 and Section 35 are not mutually exclusive. 1965 OK 78, 405 P.2d 185. The Court in *Sublett* stated that "where properly submitted for approval of the people, a city may resort to either plan of financing now permitted under Const., art. X, Secs. 27 and 35." *Id.* at ¶ 62, 405 P.2d at 202. However, Section 35 has been amended twice since this Court's decision in *Sublett*. Those amendments form the core of my analysis.

¶5 The Legislature subsequently gained the power to enact laws to carry out the purpose of Section 35. In 1990, the People amended Section 35 to give the Legislature the power to enact laws setting the overall requirements and financing necessary to issue the bonds. In response to that amendment, the Legislature enacted the "Municipal and County Industrial Development Bonds Act." 62 O.S.1991 §§ 800--804. This 1991 Act established the terms for issuance of bonds pursuant to Section 35. 62 O.S.1991, §§ 801-804.

¶6 In 2002, Oklahoma voters approved an amendment to Section 35 that replaced the prior language with the language still in place ("2002 Amendment"). The current version of Section 35 states that bonds may be issued "for economic development or community development purposes, *as may be defined by law*." Okla Const. art. X, § 35(a) (emphasis added). This both expanded the scope of Section 35 from industrial development and encouraged the Legislature to more particularly describe that scope. Subsequently, in 2003, the Legislature significantly amended the 1991 Act ("2003 Act"). This 2003 Act defined the various projects to be carried out under Section 35. Under Title 62, Section 802(5)(h), [1] "shelters for homeless or abused persons" are enumerated as a "[q]ualified economic or community development purpose." [2]

¶7 The Court decided *Sublett* in 1965, long before the People amended Section 35 and the Legislature enacted the Municipal and County Economic and Community Development Act. While the Court's reasoning was sound at the time, the Legislature has subsequently specified exactly which projects fall within the scope of Section 35.

Where the Legislature provides specific guidance on which projects qualify for a certain constitutional provision, that provision should be used. Furthermore, the people have amended Section 35 twice since the Court interpreted its original language and purpose. Tracing the history of both Section 35 and the Act makes the intent clear. Through the 2002 Amendment and the 2003 Act, the People and Legislature have each signaled that projects enumerated under Title 62 Section 802, including homeless shelters, should be carried out pursuant to Section 35 rather than Section 27.

¶8 That said, the prior cases interpreting what constitutes a "public utility" under either of Sections 27 or 35 remain sound and settled law. Those cases were decided before the amendments to Section 35 and the legislative definitions in Title 62, Section 802. The Court was simply working with what it had. In addition, the guidelines this Court has set out for classifying something as a "public utility" remain in effect. I do not suggest that any of the previous classifications of what constitutes a "public utility" are invalid. I merely suggest that the question of what constitutes a "public utility" need not be reached if the project is clearly enumerated under Section 802 of the Municipal and County Economic and Community Development Act.

¶9 However, the outcome of this case would not change, as the voting requirements would be satisfied under either constitutional provision. Section 27 provides that any incorporated city or town may become indebted to construct public utilities subject to approval "by a majority of the voters of such city or town." Okla. Const. art. X § 27. Section 35 provides that projects must be approved "by and with the consent of the majority of the registered voters of said municipality or county." Okla. Const. art. X § 35(a). The City of Norman would satisfy either provision, as the record shows 54.25% of the votes cast approved the proposition. As a result, I agree with the outcome. However, going forward, any county or municipality that wants to fund any kind of public works project needs to understand the differences between the current versions of Sections 27 and 35, and use the one designed for its project.

FOOTNOTES

Winchester, J:

[1] Residents do not challenge the manner of calling or conducting the election.

[2] On the same day, Residents also filed a Motion for Temporary Restraining Order and Preliminary Injunction and Brief in Support, along with affidavits from each of the named plaintiffs supporting their claims of standing. Residents averred they are adult residents and property owners in Norman. Residents asserted that because the bond issue would be paid by ad valorem taxes, they had a direct, particular, and concrete financial injury resulting from the bond approval. Resident taxpayers have standing to challenge an alleged illegal expenditure of public funds. *Town of Afton v. Gill*, 1916 OK 393, ¶ 13, 156 P. 658, 57 Okla. 36.

[3] *State ex rel. Manhattan Const. Co. v. Barnes*, 1908 OK 191, 97 P. 997, 22 Okla. 191.

[4] *Barnes v. Hill*, 1909 OK 29, 99 P. 927, 23 Okla. 207; *Schmoldt v. Oklahoma City*, 1930 OK 394, 291 P. 119, 144 Okla. 208.

[5] *Oklahoma City v. State, ex rel. Edwards*, 1911 OK 180, 115 P. 1108, 28 Okla. 780; *Town of Nichols Hills v. Williamson*, 1958 OK 77, ¶ 6, 323 P.2d 733(The challenged proposition sought to approve a bond "for the purpose of enlarging and improving the Fire Department . . ., to be owned exclusively by said town". This court held "In our opinion a municipal Fire Department, though more comprehensive than a 'public fire station', is likewise a 'public utility'.").

[6] *Edwards*, *supra,* 1911 OK 180.

[7] *McDougald v. Incorporated Town of Broken Bow*, 1918 OK 709, 176 P. 959, 71 Okla. 231.

[8] *Denton v. City of Sapulpa*, 1920 OK 184, 189 P. 532, 78 Okla. 178.

[9] *Price v. Storms*, 1942 OK 334, 130 P.2d 523, 191 Okla. 410.

[10] *City of Tulsa v. Williamson*, 1954 OK 290, 276 P.2d 209.

[11] *Bekins v. City of Tulsa*, 1956 OK 209, 299 P.2d 792("(T)here is no question but that the contents of the library involved belong to and are owned exclusively by the City of Tulsa. Nor can there be any doubt but that it is maintained by said City for 'public use.'").

[12] *City of Shawnee v. Williamson*, 1959 OK 64, 338 P.2d 355.

[13] *Shawnee*, *supra*, 1959 OK 64at¶ 11.

[14] City attached to this response a 2011 ordinance calling an election, under Section 27, to approve a bond issue to fund an animal shelter and Bond Commissioner's opinion approving the bonds therefor. The Attorney General is the ex officio Bond Commissioner charged with certifying bonds issued by political subdivisions. 62 O.S. §§ 11-14; *Arthur v. City of Stillwater*, 1980 OK 64, ¶ 17, 611 P.2d 637. In its reply to Residents' response to the motion to dismiss, City averred that it was not relying on that bond opinion in its motion to dismiss and the trial court's order does not suggest it relied on the bond opinion in its order.

[15] City further noted Okla. Const. Art. 6, §28, (repealed) referenced publicly supported almshouses.

[16] City did not attach evidentiary materials in support of its motion to dismiss and it affirmed it was not relying on the exhibits attached to its response to the motion for temporary restraining order. Accordingly, the motion to dismiss was not treated as a motion for summary judgment. See 12 O.S. §2012(B)(6); *Gaylord Entertainment Co. v. Thompson*, 1998 OK 30, ¶ 4, n. 10, 958 P.2d 128, citing *Cortec Industries, Inc. v. Sum Holding L.P.*, 949 F.2d 42, 47 (2d Cir.1991).

[17] The Constitutional provisions at issue in this case are Sections 26, 27, and 35, all in Article 10. We address Section 35 below, at n. 24.

Okla. Const. Art. 10, § 26 provides, in pertinent part:

> § 26. Indebtedness of political subdivisions--Assent of voters--Annual tax--Computation of amount of indebtedness
>
> a)Except as herein otherwise provided, no county, city, town, township, school district, or other political corporation, or subdivision of the state, shall be allowed to become indebted, in any manner, or for any purpose, to an amount exceeding, in any year, the income and revenue provided for such year without the assent of three-fifths of the voters thereof, voting at an election, to be held for that purpose, nor, in cases requiring such assent, shall any indebtedness be allowed to be incurred to an amount, including existing indebtedness, in the aggregate exceeding five percent (5%) of the valuation of the taxable property therein, to be ascertained from the last assessment for state and county purposes previous to the incurring of such indebtedness: . . . Provided, further, that any county, city, town, school district, or other political corporation, or subdivision of the state, incurring any indebtedness requiring the assent of the voters as aforesaid, shall, before or at the time of doing so, provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty-five (25) years from the time of contracting the same, ...
>
> Okla. Const. Art. 10, § 27 provides:
>
> § 27. Indebtedness for purchase, construction or repair of public utilities

> Any incorporated city or town in this state may, by a majority of the voters of such city or town, voting at an election to be held for that purpose, be allowed to become indebted in a larger amount than that specified in Section 26, for the purpose of purchasing or constructing public utilities, or for repairing the same, to be owned exclusively by such city or town, or for the purpose of constructing, reconstructing, improving or repairing streets or bridges. Provided, that any such city or town incurring any such indebtedness requiring the assent of the voters as aforesaid, shall have the power to provide for, and, before or at the time of incurring such indebtedness, shall provide for the collection of an annual tax in addition to the other taxes provided for by this Constitution, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty-five years from the time of contracting the same.

Additionally, in their petition, Residents urged that the language in the ordinance referenced general obligation bonds, an annual tax levy, and a sinking fund, which Residents contended were hallmarks of Section 26, but Sections 26 and 27 both refer to annual tax levies and sinking funds; neither references general obligation bonds. Use of these terms does not make the bond issue challenged here subject to Section 26.

[18] Residents cite 25 O.S. § 1, which provides that words in a statute are to be understood in their ordinary sense.

[19] *Barnes* noted a treatise described these views as: 1) "it is necessary that the public should in some way use, or be entitled to use or enjoy, the property taken" and 2) "the property taken was so employed as to inure in any way to the public benefit or advantage." *Id*. at ¶ 8 (citing 1 Lewis, Eminent Domain, p. 417). The court indicated that Lewis had found the first of these views was "correct" and that Lewis then defined public use as "the employment or application of the thing by the public, Public use means the same as use by the public." *Id*. at ¶ 9. The *Barnes* court found a convention hall satisfied either definition. *Id*. at ¶ 12. Residents contend the trial court failed to give appropriate weight to the first view based on Residents' contention that *Barnes* cited it favorably. At most *Barnes* reported that Lewis "approv(ed) the first of these definitions as the correct one"; this court expressly declined to consider "the relative merits" of the two views.

[20] Black's Law Dictionary (12th ed. 2024) defines almshouse as "a dwelling for the poor publicly or privately supported within a city or county; a house where the poor can live without paying rent."

[21] Oklahoma cases have taken for granted that city-owned hospitals are public utilities under Section 27. See *Lewis v. City of Seminole*, 1948 OK 155, ¶ 3, 195 P.2d 267, 200 Okla. 414, and *City of Alva v. Mason*, 1931 OK 364, ¶ 11, 300 P. 784, 150 Okla. 25. See also *McDougald*, *supra*, and *Edwards*, *supra*, holding that a jail and fire department were public utilities under Section 27.

[22] *City of Shawnee* recognized that the types of projects subject to Section 27 may evolve over time:

> The ever increasing complications of modern civilization from time to time have compelled a new examination and application of the constitutional provision as to 'public utilities.' This is not to change the meaning of the Constitution to meet changing times as that would be an amending of the Constitution by judicial decree. We merely re-examine the Constitution as written, and make judicial application thereof to the new situation presented. In order to cover new applications the term 'public utility' has become somewhat synonymous with the term 'public good or public use.' The courts in other jurisdictions have consistently defined 'public use' to mean public utility, advantage, or what is productive of public benefit.

1959 OK 64, at ¶ 8.

[23] *Coleman v. Frame*, 1910 OK 128, ¶ 12, 109 P. 928, 26 Okla. 193. Section 27 has since been amended to add streets and roads. In *Town of Afton v. Gill*, *supra*, 1916 OK 393, this court held that while sanitary sewer main lines are a public utility subject to Section 27, lateral sewer lines, which were the subject of a code provision requiring lateral sewer lines to be paid for by abutting property owners, were not subject to Section 27.

[24] Okla. Const. Art. 10, § 35 provides:

> § 35. Municipal and county levy for securing and developing industry (a) Any incorporated town and any county may issue, by and with the consent of the majority of the registered voters of said municipality or county voting on the question at an election held for the purpose, bonds in sums provided by such majority at such election for economic development or community development purposes, as may be defined by law, within or near the said municipality or county holding the election.

[25] 62 O.S. § 802 (definitions) provides:

> * * *
>
> 5. "Qualified economic or community development purpose" means the use of bond proceeds for the acquisition, construction, development and/or equipping of the following projects or programs:
>
> * * *
>
> b. tourism facilities including recreation or entertainment facilities, theme parks, cultural and historic sites,
>
> c. sports facilities including arenas, stadiums, ballparks, and golf courses,
>
> * * *
>
> g. governmental facilities including city halls, courthouses, administration buildings, police and fire stations, county jails, detention facilities, and emergency or first response facilities,
>
> h. community facilities including parks, senior citizens centers, shelters for homeless or abused persons, and juvenile centers,
>
> i. public infrastructure facilities including highways, roads, streets, bridges, sewers, traffic control systems and devices, telecommunications systems, wastewater and water distribution and supply systems, curbing, sidewalks and any similar public improvements, gas and electric production, distribution and transmission facilities, common utility or service facilities, landscaping, parking, and water detention/retention systems,
>
> * * *
>
> k. public health facilities including but not limited to county or public hospitals, clinics, emergency medical service facilities, and county health department facilities; . . ..

[26] Because we find the trial court properly dismissed Residents' petition, we necessarily affirm the denial of their motion for an injunction.

KUEHN, V.C.J., CONCURRING IN RESULT:

[1] Section 802 has been amended twice since the 2003 Legislative Amendment. In both instances, more projects were incorporated as a "[q]ualified economic or community development purpose." *See* H.B. 1468, 2009 Okla. Sess. Law Serv. Ch. 369 (eff. July 1, 2009); S.B. 1343, 2022 Okla. Sess. Law Serv. Ch. 155 (eff. Nov. 1, 2022).

[2] Many of the enumerated projects under 62 O.S. § 802(5) were previously classified as public utilities capable of being carried out through Section 27, such as fire stations, community facilities, cultural and historical sites, etc. *See e.g. City of Tulsa v. Williamson*, 1954 OK 290, ¶ 19, 276 P.2d 209, 215 (holding a public museum was a public utility); *Oklahoma City v. State ex rel. Edwards*, 1911 OK 180, ¶ 5, 115 P. 1108, 1109-10 (holding a public fire station was a public utility); *State ex rel. Manhattan Const. Co. v. Barnes*, 1908 OK 191, ¶ 16, 97 P. 997, 1000 (holding a convention hall was considered a public utility).

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1948 OK 155, 195 P.2d 267, 200 Okla. 414,	LEWIS v. CITY OF SEMINOLE	Discussed at Length
1997 OK 103, 943 P.2d 1074, 68 OBJ 2550,	LOCKHART v. LOOSEN	Discussed
1916 OK 393, 156 P. 658, 57 Okla. 36,	TOWN OF AFTON v. GILL	Discussed at Length
1954 OK 290, 276 P.2d 209,	CITY OF TULSA v. WILLIAMSON	Discussed at Length
1956 OK 209, 299 P.2d 792,	BEKINS v. CITY OF TULSA	Discussed
1918 OK 709, 176 P. 959, 71 Okla. 231,	MCDOUGALD v. INCORPORATED TOWN OF BROKEN BOW	Discussed at Length
1958 OK 77, 323 P.2d 733,	TOWN OF NICHOLS HILLS v. WILLIAMSON	Discussed
1959 OK 64, 338 P.2d 355,	CITY OF SHAWNEE v. WILLIAMSON	Discussed at Length
1908 OK 124, 96 P. 747, 21 Okla. 448,	STATE ex rel. EDWARDS v. MILLAR	Discussed at Length
1908 OK 191, 97 P. 997, 22 Okla. 191,	STATE ex rel. MANHATTAN CONST. Co. v. BARNES	Discussed at Length
1920 OK 184, 189 P. 532, 78 Okla. 178,	DENTON v. CITY OF SAPULPA	Discussed at Length
1909 OK 29, 99 P. 927, 23 Okla. 207,	BARNES v. HILL	Discussed at Length
1965 OK 78, 405 P.2d 185,	SUBLETT v. CITY OF TULSA	Discussed at Length
1910 OK 128, 109 P. 928, 26 Okla. 193,	COLEMAN v. FRAME	Discussed at Length
1931 OK 364, 300 P. 784, 150 Okla. 25,	CITY OF ALVA et al. v. MASON et al.	Discussed at Length
2004 OK 7, 85 P.3d 841,	FANNING v. BROWN	Discussed
1930 OK 394, 291 P. 119, 144 Okla. 208,	SCHMOLDT v. CITY OF OKLAHOMA CITY	Discussed at Length
2006 OK 100, 151 P.3d 132,	MAY v. MID-CENTURY INSURANCE COMPANY	Discussed
1980 OK 64, 611 P.2d 637,	Arthur v. City of Stillwater	Discussed

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1998 OK 30, 958 P.2d 128, 69 OBJ 1404,	GAYLORD ENTERTAINMENT CO. v. THOMPSON	Discussed
1942 OK 334, 130 P.2d 523, 191 Okla. 410,	PRICE v. STORMS	Discussed at Length
1911 OK 180, 115 P. 1108, 28 Okla. 780,	OKLAHOMA CITY v. STATE ex rel. EDWARDS	Discussed at Length

Title 12. Civil Procedure

Cite	Name	Level
12 O.S. 2012,	Defenses and Objections - When and How Presented - By Pleading or Motion	Cited

Title 25. Definitions and General Provisions

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Title 62. Public Finance

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62 O.S. 800,	Short Title	Cited
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Title 63. Public Health and Safety

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63 O.S. 1053,	Finding and Declaration of Necessity	Cited