

State of Oklahoma
Caddo Co.
IN THE DISTRICT COURT OF CADDO COUNTY
STATE OF OKLAHOMA

FILED

AUG 23 2021

SUGAR CREEK AMBULANCE)
SERVICE DISTRICT,)
)
Plaintiff,)
)
v.)
)
TOWN OF HINTON, OKLAHOMA)
)
Defendant.)

At _____ O'clock _____ M.
PATTI BARGER, Court Clerk
By Carla M. [Signature] Deputy

Case No. CV-2021-44

TOWN OF HINTON'S ANSWER AND COUNTERCLAIM

In answer to Plaintiff's Petition, the Town of Hinton, Oklahoma states:

1. Hinton denies the first sentence of Paragraph 1. Hinton admits the Sugar Creek Ambulance Service District is comprised of the Binger-Oney, Lookeba-Sickles, and Hinton school districts.
2. In response to Paragraph 2, Hinton admits it is a municipal corporation located in Caddo County, Oklahoma. Hinton denies the municipality is "included" in the Sugar Creek Ambulance District.
3. The statement in Paragraph 3 is admitted.
4. Hinton denies Plaintiff's Paragraph 4 as stated. Since 2003, the Sugar Creek Ambulance District has provided ambulance services throughout the District. The Sugar Creek Ambulance District does not provide ambulance services to the Town of Hinton.
5. Paragraph 5 presumes and is premised on inaccurate facts and conclusions of law. Paragraph 5 is therefore denied.

6. Regarding Paragraph 6, Hinton admits that Oklahoma law requires the Sugar Creek Ambulance District to be operated by a Board of Trustees. Hinton denies that Plaintiff is governed by a Board of Trustees as required by Oklahoma law.

7. The statement in Paragraph 7 is a legal conclusion to which no response is required.

8. Hinton denies the statement in Paragraph 8.

9. Hinton admits Ordinance 2020-08 was duly enacted by the Town of Hinton's Board of Trustees. The Ordinance speaks for itself.

10. Hinton denies the statement in Paragraph 10.

11. Hinton admits Plaintiff claims to have passed the regulation referenced in Paragraph 11 of the Petition. Hinton denies the regulation was properly approved, is valid, or is of any force or effect.

12. Regarding Paragraph 12, the referenced document speaks for itself insofar as its contents. Hinton denies Plaintiff's allegations regarding the purported legal effect of the document.

13. Hinton admits that the document attached to Plaintiff's Petition as Exhibit 2 bears the Caddo County Clerk's file stamp as indicated.

14. Hinton is without knowledge concerning the allegation set forth in Paragraph 14 of the Petition and therefore denies same.

15. Concerning Paragraph 15, Hinton admits the Town of Hinton was not providing ambulance services to its citizens on August 27, 2020 and was not licensed by the Oklahoma State Department of Health to do so. Hinton denies the implication that

Plaintiff is legally empowered or authorized to permit or restrict ambulance service within the Town of Hinton.

16. Hinton admits the statement in Paragraph 16.

17. Hinton denies the statement in Paragraph 17.

18. Hinton admits the statement in Paragraph 18.

19. Hinton denies Plaintiff is entitled to declaratory relief as requested in Paragraph 19.

20. Hinton denies the statement in Paragraph 20.

21. Plaintiff's Paragraph 21 is an incorrect statement of the law which requires no response from Hinton.

22. Paragraph 22 presumes and is premised on inaccurate facts and conclusions of law. Paragraph 22 is therefore denied.

23. The statements contained in Paragraph 23 are erroneous conclusions of law which require no response from Hinton and are therefore denied.

24. Hinton denies the statement in Paragraph 24.

25. Hinton denies the statement in Paragraph 25.

26. Hinton admits it is evaluating and considering contracting for ambulance services to serve the Town of Hinton, as permitted by Oklahoma law and under licensing granted by the Oklahoma State Department of Health. All other allegations of Paragraph 26 are denied.

27. Hinton denies the statement in Paragraph 27.

28. Hinton denies the statement in Paragraph 28.

29. Hinton hereby denies every factual allegation made by Plaintiff which is not specifically admitted above.

30. Hinton does not, by responding to Plaintiff's factual allegations and/or conclusions of law, admit the truthfulness, accuracy, or relevance of such allegations or conclusions.

The Town of Hinton prays for judgment denying all relief sought by Plaintiff, awarding Hinton all costs and attorney fees incurred in the defense of this action, and granting Hinton all additional legal and equipment relief to which it may be entitled.

Affirmative Defenses

By alleging the matters set forth below under the heading "Affirmative Defenses," the Town of Hinton does not allege or admit that it bears the burden of proof or burden of persuasion with respect to any matter. Hinton asserts the following affirmative defenses to Plaintiff's claims:

1. Plaintiff has failed to state a claim against Hinton for which relief may be granted.
2. Plaintiff lacks standing to bring the claims set forth in its Petition.
3. Plaintiff is without a properly appointed and acting Board of Trustees and is therefore powerless to act.
4. Plaintiff, having no trustees appointed as required by the Oklahoma Constitution, is without authority and without standing to bring this action.
5. Plaintiff does not approach the Court with clean hands and is therefore not entitled to the equitable relief it seeks.

6. Defendant reserves the right to assert such additional affirmative defenses as are appropriate based on the facts and evidence revealed during discovery.

Counterclaim and Request for Declaratory Judgment

For its claims against Plaintiff, the Town of Hinton states:

1. Plaintiff is a public body, authorized and established under the provisions of Oklahoma Constitution Article 10, § 9C (“Section 9C”).
2. The Sugar Creek Ambulance Services District (the “District”) is comprised of the Hinton, Lookeba-Sickles, and Binger-Oney school districts.
3. The Hinton School District includes territory in Blaine, Caddo, and Canadian Counties.
4. The Lookeba-Sickles School District includes territory in Caddo and Canadian Counties.
5. The Binger-Oney School District is entirely contained in Caddo County.
6. Plaintiff’s purpose is to provide emergency ambulance service to individuals located within the District.
7. Plaintiff must have a board of trustees composed of not less than five members.
8. Plaintiff’s board of trustees must be chosen jointly by the Blaine, Caddo, and Canadian County Commissioners.
9. Plaintiff’s board of trustees must include at least one individual from each county or part thereof which is included in the Sugar Creek Ambulance Services District.

10. At the first meeting of the original members of Plaintiff's board of trustees, the trustees were required to draw lots to determine each trustee's length of term in office, with terms ranging from one to five years each.

11. Each year, the Blaine, Caddo, and Canadian County Commissioners must appoint one or more successor trustees to succeed the members of the board of trustees whose terms have expired.

12. Successor trustees are to serve five year terms.

13. On February 24, 2003, the Caddo County Commissioners voted to appoint Keith Gardner, Charles Kendrick, JC Carroll, and Bill Sparks to serve as Plaintiff's trustees.

14. On February 1, 2021, the Caddo County Commissioners voted to appoint the following individuals for the specified terms as Plaintiff's trustees:

- a. Keith Gardner, two years;
- b. Gary King, three years;
- c. Patti Sharry, one year;
- d. Randy House, five years; and
- e. Chuck Morgan, four years.

15. The Caddo County Commissioners have not voted to appoint Plaintiff's trustees at any time other than on February 24, 2003 and February 1, 2021.

16. At no time has any individual holding himself/herself out as Plaintiff's trustee been jointly appointed by the Blaine County Commissioners, Caddo County Commissioners, and Canadian County Commissioners.

17. At no time has any individual holding himself/herself out as Plaintiff's trustee been a citizen of Blaine County.

18. At no time has Plaintiff had a board of trustees appointed as required by Section 9C.

19. Keith Gardner, Gary King, Patti Sharry, Randy House, and Charles Morgan, Jr. a/k/a Chuck Morgan have each held themselves out as trustees of Plaintiff and continue to do so.

20. Keith Gardner, Gary King, Patti Sharry, Randy House, and Charles Morgan, Jr. a/k/a Chuck Morgan have each exercised authority and control over Plaintiff's assets and continue to do so.

21. Plaintiff's assets and funding have been and continue to be utilized to render ambulance service to persons outside the District.

22. Plaintiff has not charged persons to whom ambulance service was rendered outside the District an amount equal to the actual cost of the service.

23. Plaintiff's assets and funding have been and continue to be utilized to render non-emergency ambulance service.

I. Plaintiff has never had a board of trustees as required by the Oklahoma Constitution.

24. None of the individuals holding themselves out as a trustee of Plaintiff is or has been authorized to act on behalf of Plaintiff.

25. Each of the individuals holding themselves out as a trustee of Plaintiff knowingly, intentionally, and willfully exercised power and authority over Plaintiff's business, Plaintiff's assets, and the public funds in Plaintiff's possession.

26. The individuals holding themselves out as Plaintiff's trustees they were not legally empowered or qualified to exercise power and authority over Plaintiff's business, assets, or the public funds in Plaintiff's possession.

27. The actions taken by the individuals holding themselves out as Plaintiff's trustees were unauthorized, ineffective, and of no force and effect.

28. The actions taken by or on behalf of Plaintiff when Plaintiff did not have five trustees jointly appointed by the Blaine, Caddo, and Canadian County Commissioners were unauthorized, ineffective, and of no force and effect.

II. Plaintiff breached its duties to utilize its assets for only public purposes and to provide emergency ambulance services to individuals located within the District.

29. Plaintiff contracted with a private for-profit company to provide emergency ambulance services to the District without open and competitive bidding.

30. Plaintiff and the individuals acting as Plaintiff's trustees intentionally and purposefully permitted the provider with which Plaintiff contracted to utilize Plaintiff's assets for private profit and in service to individuals outside the District.

31. Plaintiff and the individuals holding themselves out as Plaintiff's trustees intentionally and purposefully permitted the provider with which Plaintiff contracted to utilize Plaintiff's assets for private profit and in service to non-emergency needs.

32. Plaintiff and the individuals holding themselves out as Plaintiff's trustees intentionally and purposefully permitted Plaintiff's assets to be used by Plaintiff's contractor for other than public purposes.

33. Plaintiff and the individuals holding themselves out as Plaintiff's trustees failed and refused to supervise the provider with which Plaintiff contracted and to require the provider to perform as required by the contract to which the provider agreed.

34. Plaintiff and the individuals holding themselves out as Plaintiff's trustees purchased vehicles and other equipment without open and competitive bidding.

35. Plaintiff and the individuals holding themselves out as Plaintiff's trustees purchased supplies without open and competitive bidding.

36. Plaintiff and the individuals holding themselves out as Plaintiff's trustees failed and refused to comply with the purchasing policies and requirements imposed by Oklahoma law.

37. The actions and omissions of Plaintiff and the individuals holding themselves out as Plaintiff's trustees constitute breach of the duties enjoined upon Plaintiff by the laws of the State of Oklahoma as well as breach of the public trust.

III. Plaintiff willfully violated the Oklahoma Open Records Act.

38. Plaintiff and the individuals holding themselves out as Plaintiff's trustees have failed to maintain and secure Plaintiff's records as required by the Oklahoma Open Records Act.

39. Plaintiff and the individuals holding themselves out as Plaintiff's trustees failed to make Plaintiff's records available for public inspection and copying as required by the Oklahoma Open Records Act.

40. Plaintiff does not have regular business hours of at least 30 hours per week.

41. Plaintiff and the individuals holding themselves out as Plaintiff's trustees failed and refused to post written notice at Plaintiff's principal office and with the Caddo

County Clerk which designates the days of the week when Plaintiff's records are available for inspection and copying, provides contact information for the individual in charge of the records, and describes the procedures for obtaining access to the records at least two days per week, all as required by the Oklahoma Open Records Act.

42. On or about October 21, 2020, the Town of Hinton asked to inspect, review, and copy certain of Plaintiff's records. *See Exhibit A.*

43. Gary King denied Hinton's request to inspect, review, and copy Plaintiff's records. *See Exhibit B.*

44. Upon information and belief, the Caddo County District Attorney advised Plaintiff and the individuals holding themselves out as Plaintiff's trustees that their refusal to permit Hinton access to its records was wrongful and, further, advised them to permit Hinton access to the requested records.

45. As of August 24, 2021, neither Gary King nor Plaintiff has made the requested records available for inspection.

IV. Plaintiff violated the Oklahoma Open Meeting Act.

46. The individuals holding themselves out as Plaintiff's trustees have routinely and repeatedly held meetings in violation of the Oklahoma Open Meeting Act, 51 O.S. § 301, et seq.

47. The individuals holding themselves out as Plaintiff's trustees failed and refused to give notice of the regularly scheduled meetings of the public body by December 15 of each year as required by 51 O.S. § 311.

48. The individuals holding themselves out as Plaintiff's trustees have held meetings, characterized as both regular and special meetings, without providing advance notice as required by 51 O.S. § 311.

49. The individuals holding themselves out as Plaintiff's trustees have held meetings, characterized as both regular and special meetings, without displaying notice and agendas as required by 51 O.S. § 311.

50. The individuals holding themselves out as Plaintiff's trustees have discussed Plaintiff's business, and made decisions on Plaintiff's behalf, when the business was not identified on a meeting agenda as required by 51 O.S. § 311.

V. Prayer for Relief.

51. There is an actual controversy between and among the parties concerning the facts and allegations set forth in Hinton's Counterclaim. Hinton therefore requests the Court enter an order pursuant to 12 O.S. §§ 1651, et seq.:

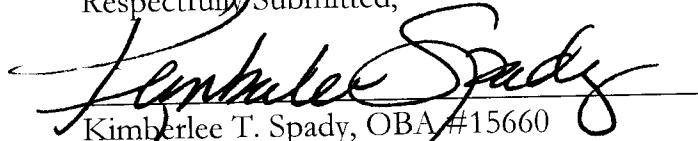
- A. Declaring all offices of trustee of Plaintiff vacant;
- B. Declaring all actions taken by Plaintiff void and of no effect;
- C. Declaring that Plaintiff and the individuals holding themselves out as Plaintiff's trustees approved and permitted the use of Plaintiff's assets improperly, for other than public purposes;
- D. Declaring that Plaintiff and the individuals holding themselves out as Plaintiff's trustees spent and obligated public funds without open and competitive bidding when competitive bidding was required;
- E. Declaring that Plaintiff and the individuals holding themselves out as Plaintiff's trustees spent public funds without complying with applicable purchasing policies and requirements;
- F. Declaring that Plaintiff and the individuals holding themselves out as Plaintiff's trustees violated the Oklahoma Open Meeting Act;

G. Declaring that Plaintiff and the individuals holding themselves out as Plaintiff's trustees violated the Oklahoma Open Records Act.

52. Defendant Town of Hinton prays for judgment against Plaintiff for willful violations of the Oklahoma Open Meeting Act and the Oklahoma Open Records Act, including all costs and attorney fees incurred in this action.

53. Defendant further prays for judgment in its favor and against Plaintiff for such relief and in such amounts as is appropriate under the facts and circumstances and as required or authorized at law or in equity.

Respectfully Submitted,



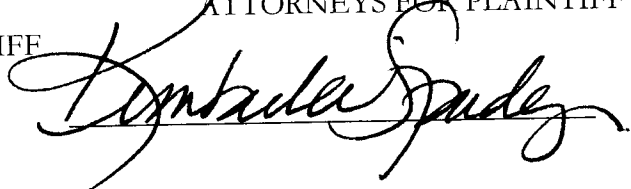
Kimberlee T. Spady, OBA #15660
406 N. Broadway, Suite D
Post Office Box 433
Hinton, Oklahoma 73047
(405)542-6056
Kim@SpadyLaw.com
Attorney for Defendant Town of Hinton

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was delivered via U.S. Mail on August 23, 2021 to:

Pat O'Hara, OBA #14881
Patrick O'Hara, Jr., OBA #16708
W. Jason Hartwig, OBA #22584
Tisdal & O'Hara, PLLC
13808 Wireless Way
Oklahoma City, OK 73134
ATTORNEYS FOR PLAINTIFF

Mart Tisdal, OBA #9032
Tisdal & O'Hara, PLLC
P.O. Box 1387
814 Frisco Avenue
Clinton, OK 73601-1387
ATTORNEYS FOR PLAINTIFF



ALWAYS GROWING

ALWAYS PROSPERING

HINTON

Phone: (405) 542-3253
PO Box 159

Hintonok.com

123 East Main Street
Hinton, OK 73047

October 21, 2020

Sugar Creek Emergency Medical Services District
Keith Gardner, President
Carol Price, Secretary/Clerk
Post Office Box A
Binger, Oklahoma 73009

Via Email: CPrice@binger-oney.k12.ok.us

Sugar Creek Emergency Medical Services District
Attn: Carol Price, Secretary/Clerk

Re: Agreements for Ambulance/Emergency Medical Services

Dear Ms. Price:

I, on behalf of the Town of Hinton, seek to review and copy certain books, documents, and records of the Sugar Creek Emergency Medical Services District/Sugar Creek Ambulance District (the District). The specific records and documents requested are:

1. Minutes of all meetings since April 1, 2020. This request is not limited to minutes which have been formally approved by the Board. Tentative or draft minutes should be made available.
2. Records of every receipt of funds since April 1, 2020.
3. Records of every expenditure of funds since April 1, 2020.
4. All agreements, contracts, memoranda of understanding, or similar documents concerning any business or activity in which the District is involved or engaged and which was submitted to, considered by, or approved by the District Board of Trustees *or* any member of the District Board of Trustees since April 1, 2020.

This request is made pursuant to the Oklahoma Open Records Act, which requires that *all* of the District's records be open to any person for inspection, copying, or mechanical reproduction during regular business hours. 51 O.S. § 24A.5. We understand the District does not have regular business hours of at least 30 hours per week. In such case, the District is required to post a written notice at its principal office and with the Caddo County Clerk designating the days of the week when records are available for inspection and copying and describing in detail the procedures for obtaining access to the records at least two days of the week. 51 O.S. § 24A.6.

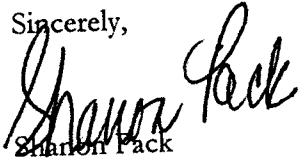
The District has not posted or filed the required notice. When we've inquired as to the availability of records in the past, we were advised that some of the records are in Ms. Price's home and others are in a safety deposit box. None are readily available for inspection.

Exhibit A

Sugar Creek Ambulance Service District
October 21, 2020
Page 2 of 2

I can be available at your convenience to inspect and copy the requested records on Thursday October 22, Tuesday October 27, Wednesday October 28, Thursday October 29, or Friday October 30. Please let me know what date, time, and location work with your schedule.

Sincerely,

A handwritten signature in cursive script that reads "Shannon Pack".

Shannon Pack
Town Administrator

cc: Caddo County Board of Commissioners
(via email to Caddo County Clerk: Caddopa@outlook.com)

Jason Hicks, District Attorney

Board of Trustees, Town of Hinton

October 30, 2020

Via email Hintonok.com
Sharon Pack, Town Administrator
Town of Hinton, Oklahoma
123 East Main Street
Hinton, Oklahoma 73047

Dear Mr. Pack:

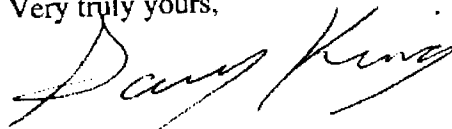
We are in receipt of your request under the Oklahoma Open Records Act dated October 21, 2020.

Please be advised that Sugar Creek Emergency Medical Services District (the "District") is currently being audited by the Oklahoma State Auditor and Inspector. Therefore, the records you have requested are not currently available for inspection.

As soon as the audit is complete, the District will make all non-exempt records you have requested available for your inspection.

Should you have any questions, please contact us.

Very truly yours,



Gary King

Exhibit B