

**ORAL ARGUMENT – 9-6-00**  
**99-1100**  
**GILBERT V. EL PASO COUNTY HOSPITAL DISTRICT**

**This is another bad tape due to problems with John's machine. It was  
hard to hear the answers from the lawyers.**

MOBBS: This case presents a straightforward question of statutory interpretation.

HECHT: It certainly is not an easy one.

MOBBS: The taxation law requires taxing units to disclose to the taxpayers their unencumbered balance of general funds. The CA held that this requirement was limited to disclosing that portion of the general fund which had been derived from tax revenues. And petitioners who are taxpaying property owners in El Paso county assert that this limitation \_\_\_\_\_ from the language of the statute, from the history of the statute or most importantly from the purpose of the statute.

GONZALES: What about the comptroller's guidelines?

MOBBS: The statute authorizes the comptroller to prescribe the form of disclosure, not the substance of its function.

HECHT: Well it says, Shall disclose it on the form set out by the comptroller.

MOBBS: Shall disclose to the property owners in the form prescribed by the comptroller six specific types of information.

HECHT: Well it's not on the form. So what did they write in the margin?

MOBBS: Well the instructions accompanying the forms say you can add additional columns if you have to. The form describes the fund and the type of property tax fund. Property taxes are deposited into the general fund of the taxing unit. Other sources of revenue are also deposited in the same fund. The deposit of other types of revenue in that general fund doesn't necessarily cause that fund to lose its character as a type of property tax fund. And so the fact that there are additional balances in there that may not have come from property tax revenue doesn't mean the general fund is not a type of property tax fund, and doesn't necessarily mean that the forms, the description of the funds \_\_\_\_\_ property tax fund limits the disclosure of the balance of that fund to the portion of the balance drawn from property tax revenues.

HECHT: Do you know what other hospitals are doing? What have they been doing since 1992, because that's how long the forms have been out?

MOBBS: There is nothing in the record. The Tarrant County Hospital District filed an amicus brief in the CA saying we do it the same way as the El Paso Hospital District has historically done it. My understanding is that there are other taxing entities which do it the other way, and read the statute the way the petitioner did.

HECHT: Why did the comptroller change the form?

MOBBS: No answer to that. It wasn't changed by \_\_\_\_\_ a formal regulation or a rule that was proposed and the \_\_\_\_\_ was changed. From 1982 through 1987 or 1988 there was no limitations \_\_\_\_\_ property tax fund. The general fund balances was enacted in 1981. For some reason they started using that language \_\_\_\_\_ property tax fund. Again not necessarily to limit the disclosure to that portion of the fund balance from the property taxes, but started using that language.

HECHT: Respondents say that if they have to disclose dispro funds voters will vote against a tax increase, then they will lose the funds, then they will go broke. What's the answer to that?

MOBBS: Under §26.04, its a notice provision. It doesn't directly affect the tax rate. It doesn't affect whether or not a roll back election occurs. But it does disclose to the taxpayers that information that the legislature believed taxpayers would find relevant to deciding whether or not to petition for a tax rate rollback election. If dispro funds, cafeteria revenue, patient revenue and parking lot revenue are included in the general fund balance it has to be disclosed consistent with the plain language of the statute, then there is going to be a higher number in that blank. And a taxpayer might conceivably look at that and say, Well they've got all these millions of dollars sitting there, they don't need to raise my taxes. And in that case, a petition for a rollback of any tax increase to the rollback rate. I think it's 8% in excess of the effective tax rate.

GONZALES: Do you happen to know whether or not before 1992 did the district lists all sources of revenue?

MOBBS: I don't know.

GONZALES: And so you wouldn't know whether or not if prior to 1992 they were listing all sorts of revenues, there were problems with dispro funds?

MOBBS: I think the dispro funds are relatively new developments. I don't think that would have been a problem at that time. But the case is not about dispro fund per se. It's about all funds and all sources of cafeteria revenues for purposes of applying §26.04. Section 26.04(e)(2) just

says, disclose your general fund balance, or your estimated maintenance and operations for general fund balance at the end of the fiscal year that's not encumbered by corresponding existing debt obligation. The legislature could very easily have said, Disclose your unspent taxes, disclose your remaining balance of tax accumulated in prior years. But instead they used the broader term "maintenance and operation" fund balance or general fund balance. And I think that's a significant distinction in the legislative language. If they intended that taxing units disclose only the amount of taxes \_\_\_\_\_ left over, that would have been a very good thing to statute. The general fund balance does not at least seem to mean unspent tax \_\_\_\_\_ write in.

In setting the tax rate, the appropriate consideration for the governmental entity and the governing board is not whether or not we spend all of our past taxes, but what are our financial needs for the coming year, what do we project our expenses to be, what do we project our revenue will be from all sources, how much money do we have left over from last year, and how do we need to make up by additional taxes. And in evaluating post-tax rate increase, the rolling question for a taxpayer is not whether or not the taxing unit had spent all of the tax money for the past years, but how much money it has left regardless of the source of that money.

One of the problems with the CA's analysis is that it permits taxing units to manipulate their disclosures in the form just by the bookkeeping method that they choose. In its internal accounting a hospital district or other taxing entity can decide to allocate its expenditures first towards tax revenue, or first towards other sources of revenue and \_\_\_\_\_ a tax revenue, or really proportionally or anywhere in between. So if you would hypothesize two taxing entities in the same position that the El Paso County Hospital District having revenue in excess of expenses, but tax revenue that's less than expenses, then if one of them allocates its expenses first towards tax revenue, and the other allocates its expenses first towards other sources of revenue, then under the CA's interpretation of the statute the one that allocates the expenses first towards tax revenue will disclose zero fund balance. The one that allocates expenses first towards other revenue will each year disclose an increasing general fund balance even though they have the same amount of money in their general fund, and the same amount of money on hand.

As a taxpayer you shouldn't have to investigate the bookkeeping method used by your taxing units in order to understand their truth and taxation disclosures. And the taxing unit likewise shouldn't be able to manipulate those disclosures just by the bookkeeping method it chooses and \_\_\_\_\_ expenditures.

The statute only authorizes the comptroller to prescribe the form of the disclosure, not the substance of the disclosure. The statute is very clear on the types of information that must be disclosed.

HECHT: The CA in essence held that you have to read this statute to ensure voters the kind of information that they need and ought to rely on in order to decide whether to vote for an increase or a rollback.

MOBBS: I think that's the purpose of the statute. I wouldn't agree that that's how the CA read it.

HECHT: And they say that's how the hospital's disclosure serves that purpose, because if you think from looking at this surplus that you could rollback taxes, all you are going to end up with is either a defunct hospital or more taxes, which you said might happen.

MOBBS: It might happen. But that's the decision the taxpayers are entitled to make.

HECHT: Why isn't the CA right that the information that the hospital has given is not misleading in that regard?

MOBBS: If the information that the hospital is giving is disclosing a zero fund balance, even though it has a very large general fund balance, that's what makes it misleading. Whether or not the taxpayers will decide to not contest a tax increase or a petition for a rate rollback, should be based on the general fund balance maintained by the taxing unit, just as the statute says. The taxpayers don't care whether the money came from last year's taxes or the past 10 years taxes, or disprop funds or from the cafeteria. It doesn't matter in deciding whether or not the taxes should be increased to pay next year's bills. All that matters is the money is there and there's no restriction on its use. It's unencumbered by existing debt obligation.

HANKINSON: The balance of the tax revenues that are on hand using the hospital district's interpretation have absolutely nothing to do with calculating the effect of tax rate or the rollback rate. Isn't that correct?

MOBBS: That is correct.

HANKINSON: So basically for purposes the CA discussed, this is a statute designed to allow taxpayers to know what the effective tax rate is and to make a determination whether to petition for a rollback or not. The way the CA interpreted the statute is really meaningless with respect to that determination. Is that correct? They seem to imply that knowing the property tax revenue had something to do with effective tax rates and rollback rates, but that's not the case.

MOBBS: The balance of unspent property taxes has nothing to do with calculating the effective tax rate \_\_\_\_\_ any other \_\_\_\_\_. The real question is what should the taxpayers be told in deciding whether or not they want to petition for a tax rate rollback. The CA seemed to believe that taxpayers should only be told under the language of the statute whether or not the previous years' tax revenues and all they spent. In fact, the petitioners contend that the relevant question is, was the general fund balanced, not was the balance of funds that were allocated in your internal accounting to property taxes.

I would like to turn briefly to the good faith issue, which the respondents have

asserted in the alternative basis for affirmance. This suit was brought both under the declaratory judgment's act and under §26.04(g) of the tax code. The latter provision allows taxpayers to seek an injunction against a responsible person within a taxing unit who has failed to comply with the statute where that failure to comply was not in good faith. So if this court were to address the good faith issue and determine that the TC's decision on that issue was erroneous, that would be grounds for affirming the CA's reversal of the injunction. It would not be grounds for affirming the CA's reversing the declaratory judgment. So I want to make that distinction right out that it's only the basis for partial affirmance, not affirmance of the entire CA judgment.

HANKINSON: Was standing also an issue raised in the CA?

MOBBS: Standing was an issue raised in the CA, but not in the TC here.

HANKINSON: And it was not decided in the CA?

MOBBS: It was not decided.

ABBOTT: If we decide under the declaratory judgment we don't need to get into the good faith?

MOBBS: Correct. The petitioners contend that the respondents did not act in good faith because prior to this lawsuit there was another lawsuit involving the very same issue in El Paso Co. against the respondents. And they lost that suit. The judge in that suit determined that they were required to disclose their entire general fund balance, not just the portion allocated by the new tax revenues. They didn't appeal that judgment. Apparently the case was decided after they adopted their tax rates for 1996, and they felt like it was moot. There was a judgment against them, they didn't challenge it, and they still decided not to abide by it. They just ignored that judgment in their disclosures for \_\_\_\_\_ years.

Now they may have prior to that judgment been able to read the statute or read the form in the good faith belief that they are only required to disclose that portion of their fund \_\_\_\_\_ ought to be the tax rate. So once that judgment was entered, once the judiciary branch interpreted the law, they no longer have the discretion to say, Oh no, that's wrong.

O'NEILL: That's not briefed before us, correct?

MOBBS: That's right.

O'NEILL: There's nothing in the record before us about another judgment they didn't comply with and how that could relate to good or bad faith?

MOBBS: It's in the record. It's on page 308 of the clerk's record and defendants exhibit

2 to the reporter's record.

O'NEILL: The other judgment?

MOBBS: Yes. And that's the basis for the TC's finding that there was a lack of good faith.

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RESPONDENT

SLAVIN: I intend to focus our response on 3 main areas. First, whether the meaning of maintenance and operation balances are general funds balances that's in the statute is entitled to some plain ordinary meaning or does it have some sort of specialized meaning in the context of \_\_\_\_\_ property code? Second, is the deference, if any, to the comptroller's construction of that provision. Third, the good faith requirement of 26.04(g) to bring this kind of suit.

Some basic stipulated facts: 1) that each year a hospital district spends all its property tax revenues for maintenance and operations and debt service expenses.

ENOCH: How do we know that?

SLAVIN: Because it's stipulated by both parties.

BAKER: Is this stipulated facts or an agreed statement under rule 263?

SLAVIN: It's a stipulated fact.

BAKER: So the court had areas that it could decide fact issues?

SLAVIN: Actually, I think it's titled, Stipulated Findings of Fact. It's also stipulated when the hospital district excludes is dispro funds and medicaid proportionate share funds from its fund balances. It segregate those in an investment trust account, investments in treasury notes.

Beginning with the area of statutory construction plain meaning, I think one of the things \_\_\_\_\_ would be context. Context is what we have to look at this subprovision in relation to the entire statute. What we're dealing here with is a portion of a subsection of the subsection of section 26.04 of chapter 26 of the property code. I think that this court recently reiterated in the *Texas Worker's Comp. case v. Dell Industrial*, that we don't use disputed portions of statutes in isolation. We look at the statutory scheme where it comes from and how it impacts in that, whether or not there is an ambiguity there. We certainly have the ability under §311.023 of the Gov't Code to look at things such as former provisions and similar laws, the consequences of a particular instruction we talked about that, the objects sought to be obtained, the

administrative construction statute and even the title of the statute. Section 26.04 is titled Submission of Appraisal Rolls \_\_\_\_\_ Body Effective in Rollback Tax Rates. Section 26.04(e) is the publication and notice provision the court is focusing on generally. And actually it's 26.04(e)(2) that says, the estimated amount of interest in seeking fund balances and the estimated amount of maintenance and operation are general fund balances remaining at the end of the current fiscal year that are not encumbered with or forced upon existing debt obligation.

So in a mouth full what we're focusing on really is what did the legislature mean by maintenance and operation or general fund balances and sinking fund balances? And the CA went through a very detailed look in the contextual aspect of this to try to come up with what in the world were we trying to get to here in construing the statute. Now of course legislative intent is still the goal that we're looking for.

ENOCH: The hospital sells its services. People could go to hospitals and buy medical services. But that probably provides also indigent health care. So we anticipate the taxes will cover some of the expenses of running that hospital because the income that the hospital generates won't meet all those expenses. And so assuming that you have entities like this that serve both the private and public sector and they have income and they have expenses, then the fact that it's in the property tax code where it subsidizes this service, how are we then to read the property tax code to say - when \_\_\_\_\_ say the general fund balance, we don't mean the total in their checking account. We just mean the total in their checking account that came from only one source of revenue.

SLAVIN: There are several issues that you raised with that. One, that's what we are trying to find out: What did the legislature mean by that? It did not say, and what I believe the petitioners are asking this court to do is to rewrite the statute to say that all funds on-hand need to be reported. And if you read that statute that I just read to you, it does not say that. It talks about debt in the sinking fund balances and maintenance and operation or general fund balances.

HANKINSON: What's a general fund balance?

SLAVIN: I don't know what it means. It's not defined in that. But you know what, we do have under ch. 26 a definition of maintenance and operation.

HANKINSON: I understand. We know what M&O is, and we know what interest in sinking fund balances are. That's the debt service. Then that leaves us with what does the general fund balance mean? That's a pretty broad term isn't it? How could that term be interpreted to mean just property tax revenue?

SLAVIN: I believe it's modified by maintenance. I believe they acquaint in the statute maintenance and operation or general fund balances. Now which do you choose if they don't mean the same thing? So I think we take the general term and go back to the limiting term. It's either it means the same thing...

HANKINSON: So you think general fund means the same thing as M&O?

SLAVIN: I believe the statute directs that.

ABBOTT: Where does the statute direct that?

SLAVIN: It says maintenance and operation or general fund.

ABBOTT: But to me that means - it doesn't mean that they are the same thing. Why would that not be a redundancy?

SLAVIN: They get to choose which one. Let's assume they are not the same thing. Which would you choose?

ABBOTT: Both.

SLAVIN: It says, or. It doesn't say, and. It says you disclose the maintenance and operations or general fund balances. I would submit to the court you have to look at what the legislature defined as maintenance. Not a perfectly drafted statute in any stretch of the imagination. Do we pick disclosed maintenance and operation fund balances or do we pick...

HANKINSON: Is anything else besides property tax revenue used to fund M&O?

SLAVIN: Yes.

HANKINSON: So maintenance and operation could have other things in it besides property tax revenue?

SLAVIN: It could. My point is, that's why these are specialized...

HANKINSON: That's not just property tax revenue that must be directed towards maintenance and operation or other sources of revenue are used to fund maintenance and operation?

SLAVIN: Other sources of revenue are under the fund maintenance...

BAKER: Isn't the same thing true with the general fund balance? More than property taxes are put into an account under that name.

SLAVIN: Yes it is.

HANKINSON: Then how can you read either maintenance and operation or general fund balances if you emphasize the "or" to only mean property tax revenue if in fact those terms also refer

to other sources of revenue?

SLAVIN: I read it that way because §26.04 provides some definition and the overall context of it is to focus of what I believe the legislature \_\_\_\_\_, the property tax revenues how do you spend those and what's left of those.

HANKINSON: But the balance of the property - this statute also is obviously dealing with effective and rollback tax rates. Do you agree with counsel that the amount of property tax revenue left at the end of the year is not material to the determination of the effective tax rate of the rollback tax rate?

SLAVIN: Not directly.

HANKINSON: It doesn't go into the calculations at all?

SLAVIN: No.

HANKINSON: Why would it be important to know the amount of property tax revenue left as opposed to the amount of total revenue left? I ask that question because you keep talking about context, and I'm not understanding your argument.

SLAVIN: This is a property tax code provision. Chapter 26 deals with property taxes affecting the rollback \_\_\_\_\_. We have this provision that is unclear. In truth and taxation what are you trying to get that's important to taxpayers that doesn't go into the calculation? And are we talking about entire revenues on the hand of which the statute doesn't say that? Or are we talking about maintenance and operation funds, remaining property tax revenues as the comptroller has construed it? Or, are we talking about something else? And so in trying to answer that question, I believe you have to look at the context of what we're given by the legislature including the definition and the focus on the entire provision. As far as why would it be important to know if there are unspent property tax revenues, because the public needs to know those are needed.

HANKINSON: Wouldn't it be important for the public to know how much revenue was on hand? For example: money that came in as a result of income to the hospital for paying patients. Wouldn't it be important for a taxpayer to know how much revenue remained from that source of income if the taxpayer was going to make a determination as to whether or not to petition for a rollback?

SLAVIN: It is, and they do. That is public information. The budgets, the financial statements are all approved in the open hearing. My point is that, that is a red herring in this context because this statute is focused on property tax revenues and remaining balances unspent for these purposes.

HANKINSON: But you keep going back to context, and I'm playing devil's advocate with you that if I'm looking at context and I'm a taxpayer and I'm going to make this determination before you raised my property tax rate and I decide to sit back and not petition for rollback, if in fact, the rate increase is the 8% over the effective tax rate, before I do that I want to know how much money you have. I don't care where you got it. If you're sitting on millions of dollars as a result of the medical services that people pay for, I would like to know that because you may not need my property taxes then. So when you talked about context, I'm not understanding why the information I would want as a taxpayer is limited to information related to property tax revenue as opposed to all sources of revenue.

SLAVIN: What we're dealing with in this case for the purposes of my client is all \_\_\_\_\_ disproportionate of share fund.

HANKINSON: I want to go back to the statutory interpretation question that you've asked us to focus our attention on. Why as a taxpayer would I only want to know information about property tax revenue as opposed to all revenue that remained if I'm going to make a decision about whether I want to be proactive as a taxpayer?

SLAVIN: You may want to know that information. And 1) that information is available, it's public information about what sources they have; 2) that information - if the legislature had wanted them to disclose that they would have said that in the statute. "Tell us what all funds are on hand." That's not what this statute says.

HANKINSON: But the things is, the disclosure provision in the statute deals with more than just property taxes. It talks about sales and use tax. It talks about debt service. It talks about all kinds of other things besides property tax revenue and what the proposed rates are. If you look at context don't we have a broader context presented in terms of the notice provision as opposed to a more limited one? Isn't that what the statute seems to do?

SLAVIN: I do not believe that when you look at the other provisions of 26.04 in the definitions it uses in those provisions...

HANKINSON: Which definitions are you referring to?

SLAVIN: I'm talking about maintenance and operation.

HANKINSON: Which we would find where?

SLAVIN: You will find at 26.012(16). And it defines maintenance and operations as meaning any lawful purpose other than debt service for which a taxing unit may spend property tax revenues. That raises two observations. One is a much broader meaning than I would put on maintenance and operation. And two, it focuses on spending of property tax revenue. So it goes

from my view to make sense that if you're focused on spending the property tax revenues, then the balance of those unspent property tax revenues is what they want to be reported. If we're dealing \_\_\_\_\_ maintenance and operation fund that it talks about maintenance and operation being the expenditure property tax revenue, then it seems logical to conclude that what's left unspent of those funds is what the statute intends to.

HANKINSON: Is there any place we can find the definition of general fund balances?

SLAVIN: I was not able to find it.

HECHT: Do you know what other hospitals do besides Tarrant county who thinks you are right?

SLAVIN: I do believe all of the hospitals that receive disproportionate share fund were \_\_\_\_\_.

ABBOTT: And what's that belief based on?

SLAVIN: I met with a group of those hospitals and they told me.

HECHT: And why did the comptroller change the form in 1992? Any idea on that?

SLAVIN: I can only speculate that he read the statute and decided that this was the logical construction of the statute.

HECHT: You've been wrong before.

SLAVIN: Been wrong before, but he also discharged...

BAKER: Do you think this was a sua sponte change on the behalf of the comptroller at the time?

SLAVIN: It appears to have been. But it's been that way since 1992. We now have three amendments of this very statutory provision without any change.

O'NEILL: But we had 9 amendments before the change didn't we?

SLAVIN: That's true. Maybe no one's paying attention. But it's not only the maintenance and operation definition in the statute that I was looking at in terms of \_\_\_\_\_. Debt is also defined in 26.0127 and it means different than I would think debt would mean: indebtedness owed by a taxing unit payable solely from property tax revenues pledged to the debt and that are not budgeted for payment from the maintenance and operations fund. So again we have

another clue in trying to discern the legislative intent that they are focused on - as the words that are in this statute that you are trying to construe the definitions that come out, again we are focused on property tax revenues that are not used for maintenance and operation fund.

HANKINSON: Isn't that because when the taxing is done certain amount is taxed for debt service and certain amount is taxed for maintenance and operations.

SLAVIN: That's true.

HANKINSON: They are divided that way and they are generated slightly differently, and so that's why you've got this division because the money each has a separate tax rate attached to it and a separate authorization for it?

SLAVIN: Exactly. And when we're looking at what is the meaning of interest and sinking fund and maintenance and operation fund, it's consistent with that to show that they are focused on property tax revenues. And if they are focused on how you spend them certainly they are focused on what remains of those that did not get spent.

ENOCH: This is a notice provision to taxpayers. And there is probably going to be a sense that it ought to be interpreted broadly, inclusively because after all it's notice to the public. There may be an \_\_\_\_\_ to say well it could be a close question, but we ought to air in favor of open government. What policy is there for why the hospital district would find that it is not in the public's best interest to know the total amount in the general fund or maintenance and operation? It struck me that you said those hospital districts that receive dispro funds do it your way. So I'm giving you an opening here. Is there some policy reason why hospitals doing that should not be faced with a notion that you ought to broadly construe notice provisions?

SLAVIN: Yes. The medicaid disproportionate share funds are not general funds. They are restricted use funds. And that is all the hospital has segregated into these treasury notes. The regulations that used to be a \_\_\_\_\_ and it's now in chapter 1, §355 of the Texas Administrative Code states that you cannot use those funds to reduce your property taxes. And also you must use those funds for indigent care and if you don't do that you will lose those funds.

ENOCH: When did dispro funds come into existence?

SLAVIN: I'm not sure.

ENOCH: There was some major medical bills passed in 1991 and 1992 that I'm aware of dealing with doctor's ability to accept medicare funds, but they couldn't have ancillary businesses and that sort of thing. The change of the form by the comptroller could it be tied - are you aware that that might be tied to some sort of federal statutes having to deal with these dispro funds or anything?

SLAVIN: I'm not.

ABBOTT: The dispro funds come solely from where?

SLAVIN: They are federal government grants to hospitals that serve disproportionate low income patients.

ABBOTT: So money that comes from other sources can't be hidden under that category?

SLAVIN: That's true. And that's why they are segregating and separating.

O'NEILL: Why as a practical matter have they been accumulating so much in this case?

SLAVIN: It's saving for a rainy day and they are rapidly depleting those funds. As we speak, as increased cares come in they are enrolling lots more low income children and other things and this hospital has established to serve to indigents statutorily. So it has an obligation to do that. Certainly they don't want to engage in a project that's going to require on-going maintenance and these funds dry up, which often they come and they go. So they have held them back mainly from a conservative basis to make sure that 1) that it goes to where it goes and they are not going to obligate themselves to get into a problem if the funds were cut and then they have to maintain some clinic that they started that they now have no revenue to continue.

HANKINSON: Do these funds have to go to direct patient care?

SLAVIN: You have to show that it was used for indigent care.

HANKINSON: How broad is that? Can they use that to pay the light bill?

SLAVIN: I think it is broader than that, but you have to establish the connection.

GONZALES: Do you agree that listing the dispro funds or disclosing these dispro funds to public doesn't necessarily jeopardize those funds? Is it the district's concern that in some way the dispro funds might be jeopardized?

SLAVIN: If you don't keep a wall between those funds - in property tax notices if there is a tax increase and those funds someone can argue because of those funds, the tax increase was rolled back, I think you jeopardize your dispro funds. Because the argument would be made that those funds were used to decrease taxes that had been raised.

HANKINSON: But it's public information.

GONZALES: They are going to have to be made anyway whether or not you disclose it.

SLAVIN: It is public information.

ABBOTT: The thing here that you did not report that they wanted reported was your primary operating account. Correct?

SLAVIN: I have seen that term. I don't know where that term is in the record.

ABBOTT: The request was not that you disclose your dispro funds. The request was that you report your general remaining leftover funds which could include some dispro funds, but could also include some non-dispro funds, correct?

SLAVIN: Under the petition for review they ask for all funds on hand.

ABBOTT: Part of the funds that have not been disclosed include dispro funds, correct?

SLAVIN: All of the funds from my client's perspective that were remaining at the end they were all dispro funds. If you exclude dispro funds under the stipulation, you will see that they spend every penny and all other sources of revenue to run the hospital. In fact the CA noted that they would have been in a loss position without those dispro funds. All funds on hand that are remaining are all medicaid dispro funds.

ABBOTT: So you disclosed absolutely everything except for dispro funds?

SLAVIN: It just happens to be they were disclosing property taxes. There could be a scenario where many of those revenues were more than the property - there were some property tax revenues that remained unspent.

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#### REBUTTAL

MOBBS: Let me talk first about the context, and second about the policy. If the quotes that Mr. Slavin read from the statutes show us anything, they show that when the legislature wanted to use the words 'property tax' in the statute it knew how to use those words. And if it had intended to limit the disclosure of property tax revenue it could very easily have eliminated the disclosure requirement of the tax revenue balances.

HANKINSON: Can you say though that dispro funds are part of the general fund balances with the maintenance and operation balances, if in fact, they are kept segregated and by law are limited in their use? Where do the dispro funds fit in the words that are used in the statute?

MOBBS: I think the dispro funds are part of the maintenance and operation fund balance or a general fund balance.

HANKINSON: Even though they are required to be kept segregated and are limited by law as to their use?

MOBBS: I'm not sure that they are required to be kept segregated. I think that the El Paso County Hospital district does segregate them, but I don't think they are legally required to be kept segregated. The \_\_\_\_\_ part being used for indigent patient care. That's the mandate of the county hospital district is that it be used for indigent patient care. The maintenance and operations expenses is defined as all expenses for which property taxes can be lawfully spent. And I think anything that the hospital spends the money on lawfully is going to be spent for indigent/patient care.

ENOCH: But if they are not allowed to be used as a substitute for property taxes, so would it be appropriate to notify taxpayers on the truth and taxation, including a fund that is specifically prohibited by law from being used in a determination of what the tax rate will be?

MOBBS: I think the answer to that problem is not less disclosure but more disclosure. Let the public know: part of this money is dispro fund. And if these dispro funds somehow cause us to lose tax revenue, then we're in danger of losing the dispro funds. But let's just hide this from the taxpayers so they don't know about this other money just in case they might decide that since we have this extra money, they don't need to pay as much taxes.

HECHT: Why didn't they just say all funds?

MOBBS: Because they divided it into two categories: interest and sinking fund; and everything else - M&O or general fund. They didn't say all funds because that would be one line which would include both the debt service requirement and the general financial requirement of the M&O fund.