

**UNITED STATES DISTRICT COURT
for the Western District of Texas
San Antonio Division**

FILED

2006 NOV 17 PM 3:56

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXASBY
DEPUTY CLERKALFRED E. EHM, *pro se*

Plaintiff

V.

Civil Action: SA 06 CA 0103 RF

BOARD OF TRUSTEES of the METRO-
POLITAN RAPID TRANSIT AUTH.

Defendant

**MOTION FOR ORDER REQUIRING DEFENDANT TO COMPLY WITH
FEDERAL ACCARDI DOCTRINE**

PLAINTIFF MOVES THE COURT, under the Equal-Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983, for an order requiring Defendant to comply with the Federal *Accardi* Doctrine by conducting without further delay a public hearing concerning the Main Plaza service changes that the agency will institute on December 3rd, and in support of his motion would SHOW THE COURT as follows:

1. The Transit Authority System ("TAS"), the property-holding and operations arm of the Metropolitan Rapid Transit Authority, has for a number of years regularly conducted so-called open-forum public meetings concerning contemplated changes in routing, frequency, service level, and boarding facilities. The TAS held such public hearings during September for the numerous service changes that the bus operator instituted on the 6th of this month.

2. In early 2006 the TAS settled upon the changes in routing and boarding faci-

Motion for Order (Accardi Doctrine)**Page 2**

lities that it intended to institute because of the closing of two thoroughfares on Main Plaza, but did not promptly inform the public of these changes, and, furthermore, decided to forego the customary public hearing on the same, in contravention of its standard practice. During the Summer of 2006 the TAS also entered into secret negotiations with the City government concerning these changes, which confidential agreement reportedly includes the payment of agency funds to the municipality for permission to advertise VIA services and to construct an agency-owned public convenience on the Plaza, which is, of course, municipal property.

3. On July 3, 2006, Plaintiff, on behalf of the Transit Users' Association, submitted to the Transit Board a petition under Art. I, § 27, of the State Constitution, for a public hearing on the Main Plaza Project. Because Defendant declined to take "official notice" of the petition, as the law requires, Plaintiff on Aug. 5th resubmitted the TUA's petition, which the VIA Board also refused to officially notice and act on. Plaintiff thereafter submitted the TUA's petition a third time, which application the Transit Board also ignored.

4. On Oct. 18th Plaintiff, on behalf of himself and others similarly situated, petitioned the 37th State District Court for an order requiring Defendant to hold a public hearing on the "Main Plaza/Flores Street Interlocal Agreement" and on the decided-upon Main Plaza service changes. Defendant did not object to the motion, but at the same time failed to schedule a public hearing.

5. It has been the TAS's practice in the past eight to ten years to hold "open-forum" (*i.e.*, informal) public hearings, at the Metro Transit Center and sometimes in the affected outlying neighborhoods, concerning all proposed service changes. Thus, the TAS held open-forum hearings during September on changes proposed for over a dozen lines to be implemented this month. In the case of the Main Plaza service

Motion for Order (Accardi Doctrine)**Page 3**

changes, however, the TAS declined to hold a hearing on the projected service changes and to even divulge the nature of these changes and continues to do so.

6. The U.S. Supreme Court established through *Accardi* that all government agencies, Federal as well as State and local, must *strictly* adhere to their adopted rules and procedures. *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681(1954), *Service v. Dulles*, 354 U.S. 363, 380, 77 S.Ct. 1052, 1061, 1 L.Ed.2d 1403, 1414 (1957), *Vitarelli v. Seaton*, 359 U.S. 535, 540, 79 S.Ct. 968, 973, 3 L.Ed.2d 1012, 1017(1959), *Morton v. Ruiz*, 415 U.S. 190, 232, 235, 94 S.Ct. 1055, 1073, 1074, 39 L.Ed.2d 270, 292, 294 (1959).

7. The Court of Appeals for the Fifth Circuit held in *Rhodes v. United States*, 574 F.2d 1179, 1180 n. 2 (1978), that "agencies of the government are bound by their own regulations," and, in *Placid Oil Co. v. Federal Energy Administration*, 465 F.Supp. 1199, 1203 (N.D. Tex. 1979), *aff'd*, 600 F.2d 813 (1979), upheld the Federal ruling that "an agency may not apply its rules in a discriminatory manner." Texas courts have also acknowledged the applicability of the *Accardi* Doctrine to State and local agencies, as in *Southern Clay Products, Inc. v. Bullock*, 753 S.W.2d 781, 783 (1988).

Respectfully submitted,

Alfred E. Ehm

November 17, 2006

Alfred E. Ehm
170 Carousel Drive
San Antonio, Texas 78227-4712
210/673-8982

Certificate of Service

I hereby certify that I served a true and correct copy of the foregoing "Motion for Order Requiring Defendant to Comply with the Federal *Accardi* Doctrine" and the proposed order upon Defendant by hand-delivering them to the office of Mr. Howard P. Newton, Esq., at 112 East Pecan Street, Suite 1800, San Antonio 78205, on this 17th day of November, 2006 A.D.

Alfred E. Ehm

Alfred E. Ehm

UNITED STATES DISTRICT COURT
for the Western District of Texas
San Antonio Division

ALFRED E. EHM, *pro se*

Plaintiff

V.

BOARD OF TRUSTEES of the METRO-
POLITAN RAPID TRANSIT AUTH.

Defendant

Civil Action: SA 06 CA 0103 RF

ORDER REQUIRING DEFENDANT TO COMPLY WITH
FEDERAL ACCARDI DOCTRINE

IN RESPONSE to Plaintiff's motion for an order requiring Defendant and their subordinates to fully comply with the Federal *Accardi* Doctrine in respect to public hearings, the Court finds that

(1) the Transit Authority System, the property-holding and operational arm of the Metropolitan Rapid Transit Authority of San Antonio, neglected to hold the customary "open-forum" public hearing regarding the changes in routing and boarding facilities that Defendant adopted on Sept. 26th, and

(2) Defendant and the Transit Authority System did so in clear violation of the U.S. Supreme Court's *Accardi* ruling of 1954, which mandates that a governmental agency *strictly* adhere to its adopted rules, policies, procedures, and practices.

THE COURT ORDERS, accordingly, that Defendant instruct the Transit Authority System to conduct, without further delay, the customary open-forum public hearing on the changes in routing and boarding facilities that the Board formally approved on Sept. 26th in order to accommodate the closing of parts of the Main Plaza

in central San Antonio on December 3rd, as Defendant is required to do pursuant to *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681 (1954), *Service v. Dulles*, 354 U.S. 363, 380, 77 S.Ct. 1052, 1061, 1 L.Ed.2d 1403, 1414 (1957), *Vitarelli v. Seaton*, 359 U.S. 535, 540, 79 S.Ct. 968, 973, 3 L.Ed.2d 1012, 1017(1959), *Morton v. Ruiz*, 415 U.S. 190, 232, 235, 94 S.Ct. 1055, 1073, 1074, 39 L.Ed.2d 270, 292, 294 (1959).

IT IS SO ORDERED.

Signed this _____ day of November, 2006 A.D.

W. Royal Furgeson, Jr.
United States District Judge