IN THE SUPREME COURT OF THE STATE OF GEORGIA

ANTHONY AVERY and SUSAN M. WILKINS, Appellants, v. STATE OF GEORGIA, PAULDING COUNTY AIRPORT AUTHORITY, and PAULDING COUNTY, GEORGIA, Appellees.	)	Case No. S14A0792

REPLY BRIEF OF APPELLANTS

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INTRODUCTION

Tacitly recognizing the weakness of their positions, Appellees largely avoid a substantive discussion of the issues in this case, choosing to ignore this Court's precedents and mischaracterize key facts in the hope of obscuring the merits of Appellants' arguments. Appellees, for example, are so concerned to avoid judicial scrutiny of the Authority's relationship with Silver Comet—the private entity that stands to receive exclusive benefits from the Series 2013 Bond—that they go so far as to claim that "Silver Comet has not agreed, in any of its agreements with the Airport Authority, to make any payments to the Authority to be used for paying principal and interest on the Bond." Resp. Br. at 9. But that is exactly what Silver Comet agreed to do in its October 22, 2013 contract with the Authority (the "Silver Comet Bond Agreement"). *See* R-929 (agreement that Silver Comet will pay the Authority "the principal amount of the Bonded Indebtedness as well as any interest associated with repayment of the Bonded Indebtedness"). Indeed, Blake Swafford, the Authority's Executive Director who negotiated the Silver Comet Bond Agreement on the Authority's behalf, has repeatedly confirmed in sworn testimony that "Silver Comet will pay the principal and the interest on the bonds." *See, e.g.*, T-147.

The deficiencies in Appellees' arguments, however, do not end with their misstatements of the record regarding Silver Comet. Asserting that Appellants'

position on the invalidity of the County-Authority Contract under the Intergovernmental Contracts Clause "relies entirely on *Nations v. Downtown Development Authority of City of Atlanta*, 255 Ga. 423 (1985) ('*Nations I*')," Appellees do not even attempt to distinguish or otherwise explain *Nations I*. Resp. Br. at 10-15. They instead claim that the County-Authority Contract is a valid intergovernmental agreement because it is "for the use of an airport facility." Resp. Br. at 14. But again, Appellees' argument is based on a mischaracterization of the facts. *See, e.g.*, T-130-31 (confirmation from Mr. Swafford that there is *no* "written agreement between the County and the Airport Authority on the use of the taxiway at all, or the use of the runway, or the use of the apron or the use of any other part of the airport").

Moreover, although Appellees take issue with Appellants' purported failure to acknowledge the "great benefits [to the public] that will result" from the Series 2013 Bond, Appellees fail to provide even a *single* citation to the record or any fact establishing the existence of these purported "great benefits." Resp. Br. at 18-19. As a result, Appellees' argument that the Series 2013 Bond does not violate the Gratuities Clause because it offers a "substantial benefit" to the public remains completely devoid of any factual support, *see id.*, which is exactly what Appellants have argued from the beginning of these bond validation proceedings, *see, e.g.*, Initial Br. at 21-22.

Equally remarkable is Appellees' claim that the legally required public notice of bond validation proceedings—which in this case indisputably misidentified the "Paulding Industrial Building Authority" as the issuer of the Series 2013 Bonds—was not defective because "Appellants, in fact, received notice of the Validation Hearing." Resp. Br. at 22. Ignoring the applicable standard this Court established in *Rhodes v. City of Louisville*, 121 Ga. 551 (1904), Appellees argue that the "sufficiency of the notice is demonstrated by the very intervention of the Appellants in this case." *Id.* That argument, however, is not only illogical and devoid of legal support, but, as explained below, would also result in the effective demise of the Revenue Bond Law's public notice requirement.

ARGUMENT AND CITATION TO AUTHORITY

I. THE SECURITY FOR THE SERIES 2013 BOND IS AN INVALID INTERGOVERNMENTAL AGREEMENT

The parties can agree on at least one point—the central issue "on appeal with respect to the validity of the [County-Authority Contract] under the Intergovernmental Contracts Clause is . . . whether the [County-Authority Contract] relates to the provision of services or the joint or separate use of facilities or equipment" as explained in *Nations I*. *See* Initial Br. at 12-17; Resp. Br. at 12.

In *Nations I*, the City of Atlanta ("City") and the Downtown Development Authority ("DDA") proposed to enter into an intergovernmental contract (the

"City-DDA Contract") to secure bonds to finance the development of Underground Atlanta. 255 Ga. at 324. Under the City-DDA Contract, the DDA agreed to issue the bonds and acquire and construct the development, and the City agreed to "pay up to 90 percent of any shortfall due the bondholders should the project proceeds prove to be insufficient," by, if necessary, levying and collecting a tax. *Id.* at 326. On appeal, this Court held that the City-DDA Contract was not valid under the Intergovernmental Contracts Clause because "the City's promise to use its taxing power to pay up to 90% of any shortfall due the bondholders should the project proceeds prove to be insufficient is not a contract for services or joint services, nor is it a contract for the joint or separate use of facilities or equipment." *Id.* at 327; *see also Mulkey v. Quillian*, 213 Ga. 507, 510 (1957) ("the loaning of money to the political subdivisions of the State or authorities controlled by them is not a permitted purpose for which public funds may be used, and that, therefore, is not a facility or service of the State within the meaning of that term in the Constitution of the State of Georgia . . .").

Importantly, the Court in *Nations I* accorded no weight to the fact that the ultimate project to be funded—Underground Atlanta—was located in Atlanta on land that would be owned by the City.[1] *See id.* at 324. Nor did the Court place any

[1] As a result, Appellees' passing reference to the County's alleged ownership of a parcel of Airport land, *see* Resp. Br. at 13, is immaterial to the validity of the County-Authority Contract.

significance on the fact that the development of Underground Atlanta would provide new "facilities" for use by the citizens of Atlanta, such as museums and parks, and bring all of the services associated with the new "retail, dining, and entertainment establishments" to be housed there. *See id.*

Instead, the Court focused its inquiry on the narrow question of whether the City of Atlanta's rights and obligations, as set forth within the four corners of the City-DDA Contract, expressly provide for "services" or the "use of facilities" within the meaning of the Intergovernmental Contracts Clause. *See id.* at 326-27. Accordingly, as *Nations I* makes clear, the relevant issue under the Intergovernmental Contract Clause is not whether the ultimate *project* to be funded can indirectly provide "services" or the "use of facilities" for the citizens of a given political subdivision. Rather, the issue is whether the purported intergovernmental contract *itself* expressly provides directly to the public *entity* a contractual right to valid "services" or the "use of facilities." *See id.*

Despite acknowledging the centrality of *Nations I* to Appellants' position, Appellees make no effort whatsoever to distinguish, explain, or otherwise engage the Court's opinion in that case. And understandably so—not one of the alleged "services" or "use of facilities" identified by Appellees passes muster under *Nations I.* Appellees claim, for example, that the Airport taxiway construction "*Project*" will provide "facilities" that the County and its citizens will be

"permitted to use" and that the "*Project* also provides . . . the service of commercial flights." Resp. Br. at 12-13 (emphases added). But as explained, the relevant question is not whether the *Project* provides "services" or the "use of facilities" by the *citizens* of Paulding County, but whether the *County-Authority Contract itself* is an intergovernmental contract that expressly provides for "services" or the "use of facilities" by the County as a distinct legal entity. That is exactly why the Court in *Nations I* found that the City-DDA Contract was not a valid intergovernmental contract, even though the ultimate *project* it was intended to help fund, *i.e.*, Underground Atlanta, would undoubtedly have provided citizens with "services" and the "use of facilities."

Appellees' reliance on *Clayton County Airport Authority v. State*, 265 Ga. 24 (1995), illustrates how Appellees misconstrue the law. There, the Court held that the intergovernmental contract at issue was valid because "[Clayton] County has contracted 'for the use' of an airport facility which the Authority proposes to acquire and expand." *Id.* at 25. Indeed, the intergovernmental contract there specifically and expressly provided that Clayton County would make payments securing the bond in consideration for the County's "use of the expanded airport facility." *Id.* at 24-26 (repeating nine times that Clayton County had contracted "for the use" of the expanded airport facility).

Appellees claim that the "contractual arrangement between the County and the Airport Authority under the [County-Authority Contract] is indistinguishable from that set forth in *Clayton County Airport Authority*." Resp. Br. at 15. They assert that in *Clayton County Airport Authority*, "like here, the county had contracted 'for the use' of an airport facility which the Authority proposed to acquire and expand." *Id.* at 14. Appellees, however, are gravely mistaken. There are no "written agreement[s] between the County and the Airport Authority on the use of the taxiway at all, or the use of the runway or the use of the apron or the use of any other part of the Airport." T-130-31. Contrary to Appellees' assertions, the record makes crystal clear that the County has never—in the County-Authority Contract or in any other agreement—"contracted 'for the use' of an airport facility which the Authority proposed to acquire and expand." *See, e.g.*, T-127 (confirming that under the County-Authority Contract, "the County will not have any new or different use of the Airport"); T-129 (confirming that "the intergovernmental agreement . . . does not grant the County any new or different use of the Airport facilities"); T-130 (confirming that there is no "written use agreement between the County and the Authority concerning the taxiway improvement project"); T-131 (confirming that the "County's operations and activities at the Airport do not change under the Intergovernmental Agreement").

Indeed, far from providing for the County's "use of facilities," Section 5.4 of the County-Authority Contract actually permits the Authority to "sell, lease or give away all or a portion of the Project," without so much as obtaining the County's consent. It is thus no surprise that none of Appellants' repeated assertions that the County-Authority Contract is for the County's "use of facilities" is supported by any citation to the County-Authority Contract or anything else in the record. *See* Resp. Br. at 14-15.[2]

Setting aside Appellees' mischaracterizations of the County-Authority Contract, the reality is that Appellees made a simple, but constitutionally fatal, mistake in structuring their purported intergovernmental contract. To satisfy the requirement that intergovernmental contracts expressly set forth "services" or the "use of facilities" by the securing entity, intergovernmental contracts securing bonds are often structured as leases to the entity paying for the bonds. *See Nations I*, 255 Ga. at 328.[3] Such leases are, almost by definition, contracts for the securing

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[2] Separately, the *Clayton County Airport Authority* decision suggests that unlike the County here, Clayton County did not actually guarantee the bonds. Indeed, the opinion indicates that such a guarantee is illegal. *Clayton Cnty. Airport Auth.*, 265 Ga. at 26 ("Although the bonds are obligations of the Authority and the County cannot pledge its full faith and credit to pay them . . . "). That is why Clayton County entered into a "use" agreement and paid the Authority for its independent contractual obligation.

[3] The Court explained that "typical authority financing" arrangements were like those "described in *Building Authority of Fulton County* and *Frazer v. City of Albany*." *Nations I*, 255 Ga. at 328. The arrangements in both cases involved intergovernmental contracts structured as lease agreements. *See Bldg. Auth. of*

entity's "use of facilities" and thus generally provide a simple and reliable way for contracting public entities to satisfy the Intergovernmental Contracts Clause.

The Court's decision in *Nations v. Downtown Development Authority of the City of Atlanta*, 256 Ga. 158 (1986) ("*Nations II*"), is illustrative of this point. There, the Court validated the DDA's proposed bonds to finance Underground Atlanta—after having invalidated the DDA's previous bond proposal in *Nations I*—because under the new intergovernmental contract securing the bonds, the City agreed to "lease the property back from the DDA." *Id.* at 162. Because the City was paying for its own contractual lease of the project, the new intergovernmental contract in *Nations II* qualified as a contract for the use of facilities in satisfaction of the Intergovernmental Contracts Clause. *See id*. ("Under the intergovernmental contracts clause the City may lease facilities.")

Here, it is beyond dispute that Appellees did not structure the County-Authority Contract as a lease agreement. *See* T-130 (confirming that there is no "lease agreement between the County and the Authority concerning the use of the

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Fulton Cnty. v. State of Ga., 253 Ga. 242, 242 (1984) ("The lease agreement between the Authority and the county provides for payment of rent by the county to the Authority in the same amounts and at the same times as certain amounts are required to be paid by the Authority as debt service on the [] bonds."); *accord Frazer v. City of Albany*, 245 Ga. 399, 399 (1980); *see also Nations I*, 255 Ga. at 333 (Hill, C.J., concurring) (In "[t]he typical authority financing plan," "the state, county, city or private industry *leases* the property from the authority for a period of years, and agrees to pay rent annually to the authority in amounts necessary to retire the revenue bonds issued by the authority.") (emphasis added).

taxiway improvement project"). Nor does the County-Authority Contract provide the County with any other type of contractual right to use the project. Appellees' inability to identify any qualifying "service" or "use of facilities" expressly set forth in the County-Authority Contract is fatal to Appellees' case. *Compare* T-130 (confirming that there is no "use agreement between the County and the Authority concerning the taxiway improvement project") *with Clayton Cnty. Airport Auth.*, 265 Ga. 24 ("[Clayton] County has contracted 'for the use' of an airport facility which the Authority proposes to acquire and expand").

Accordingly, the Court should find that the County-Authority Contract purporting to secure the Series 2013 Bond is an invalid intergovernmental agreement and vacate the judgment of the superior court on that basis.

II. THE SERIES 2013 BOND ISSUE IMPERMISSIBLY BENEFITS PRIVATE PARTY SILVER COMET

For all of their unsubstantiated statements about the alleged irrelevance of Silver Comet, Appellees cannot dispute that the Series 2013 Bond must not be validated if the Series 2013 Bond or the County-Authority Contract purporting to secure it impermissibly benefits Silver Comet, in violation of the Constitution's Lending Clause, Art. IX, Sec. II, Para. VIII, or Gratuities Clause, Art. II, Sec. VI, Para. VI. Here, Silver Comet stands to benefit impermissibly from the issuance of the Series 2013 Bonds, and Appellees' arguments to the contrary cannot withstand even the slightest scrutiny.

A. The Series 2013 Bond Violates The Lending Clause

The Lending Clause of the Constitution prohibits a county, municipality or other political subdivision from "lend[ing] its credit to any person or to any non-public corporation or association except for purely charitable purposes." Art. IX, Sec. II, Para. VIII. In the context of bond issuances, the Lending Clause prohibits entities purporting to secure bonds from guaranteeing the bond payment obligations of private parties. *See Nations I*, 255 Ga. at 328 (holding that City's "guarantee" to make bond payments if revenue from private developers proved insufficient to service the bonds was "a loan of credit of the City for the benefit of the developers" in violation of the Lending Clause). Here, the Series 2013 Bond violates the Lending Clause because it is secured by the County-Authority Contract, which is nothing more than an agreement from the County to lend its credit to Silver Comet by guaranteeing Silver Comet's obligations to make payments due on the Series 2013 Bond in the first instance.

Under the terms of the Silver Comet Bond Agreement, Silver Comet is obligated to pay the principal and interest on the Series 2013 Bond. R-540; R-596; R-929; T-138-40; T-147; (confirming that "in the first instance Silver Comet will pay the principal and the interest on [the Series 2013 Bond]"). In the event Silver Comet is unable to meet its obligations, the County has "pledg[ed] its full faith and credit to make the bond payments," pursuant to the County-Authority Contract, T-

148, and has thereby agreed to "provid[e] the guarantee for the payment of the bonds." T-132. Accordingly, Silver Comet is obligated to make payment on the Series 2013 Bond in the first instance, and the County has "pledged its full faith and credit" to guarantee payment on the Bond in the event Silver Comet cannot fulfill its obligations. There can be no clearer example of a public entity impermissibly lending its credit to a private entity.

Unable to deny the reality of this unlawful financial arrangement, Appellees accuse Appellants of "rely[ing] on agreements that are irrelevant to the [Series 2013] Bond and its validation proceedings." Resp. Br. at 17. But any suggestion that the Silver Comet Bond Agreement is "irrelevant" to the Series 2013 Bond and these proceedings is inconsistent with the record. The Silver Comet Bond Agreement was certainly not "irrelevant" when—on behalf of the Authority—Mr. Swafford attended a work session of the County Board of Commissioners and represented that Silver Comet "will be responsible for one hundred percent of the bond payments" and that "there will be no cost to the citizens" of Paulding County by virtue of the Silver Comet Bond Agreement. R-596; T-138-39. And the Silver Comet Bond Agreement apparently was not "irrelevant" to the County, given that even Mr. Swafford acknowledges that it was "definitely a factor" in the County's decision to authorize the issuance of the Series 2013 Bond. T-138.

Moreover, the Silver Comet Bond Agreement was not "irrelevant" to the Authority or Silver Comet when they jointly resolved that Silver Comet's agreement to pay the principal and interest on the Series 2013 Bond was intended to "provide the Authority with an incentive to issue" the Bond. R-928. The record forecloses any serious contention that the Silver Comet Bond Agreement—*i.e.*, Silver Comet's agreement to pay for the Series 2013 Bond in the first instance—is irrelevant and not central to the Bond.[4]

Appellees' only other argument concerning the Lending Clause is equally invalid. Citing *Nations II*, Appellees attempt to seek cover under the proposition that a "county may pledge its credit or taxing power in order to meet its own legally authorized obligations." Resp. Br. at 17. But that unremarkable

[4] Appellees also appear to suggest that the Silver Comet Bond Agreement is irrelevant because the Bond Resolutions and the County-Authority Contract do not state that Silver Comet's agreement to pay for the Series 2013 Bond is "relied upon as security for the bond issuance." Resp. Br. at 17. But there is no reason to expect that Appellees would have advertised the illegality of their financial arrangement by expressly referencing the Silver Comet Bond Agreement in those documents. After all, Appellees have gone so far as to deny that the Silver Comet Bond Agreement exists, s*ee id.* at 9, even though Mr. Swafford's testimony, the Airport Authority's Oct. 22, 2013 Called Meeting Minutes, the Paulding County Board of Commissioners' Oct. 8, 2013 Work Session Minutes, and the Silver Comet Bond Agreement itself all say otherwise. T-137-38; T-141-47; R-539-40; R-594-96; R-927-934. In any event, this Court repeatedly has held that public entities cannot accomplish indirectly what they cannot do directly. *E.g.*, *City of Baldwin v. Woodward & Curran, Inc.*, 293 Ga. 19, 25 (2013). It is unclear why Appellees believe their efforts to obscure the true nature of the financial arrangement securing the Series 2013 Bond should support, rather than undermine, their case for validation.

proposition has nothing to do with the legality of the Series 2013 Bond. While a county may quite obviously pledge its credit "to meet its own legally authorized obligations," the County here has pledged its credit to guarantee obligations that are neither its own nor legally authorized. The record is crystal clear that the County's pledge is nothing more than a guarantee of Silver Comet's obligation to pay for the Series 2013 Bond in the first instance, which is precisely what the Lending Clause forbids.

B. The Series 2013 Bond Issue Violates The Gratuities Clause

The parties agree that under the Gratuities Clause of the Constitution, a public entity provides an unlawful gratuity when its actions "favor private individuals," without deriving a "substantial benefit" to the public in return. *See Garden Club of Ga., Inc. v. Shackelford*, 266 Ga. 24, 24-25 (1995); Resp. Br. at 18. As Appellants have previously explained, the Series 2013 Bond violates the Gratuities Clause because it plainly "favors" Silver Comet, and nothing other than Appellees' repeated "broad, conclusory," and "[u]nsubstantiated assertions of a general public benefit" can be viewed as suggesting a "substantial benefit" to the public from the Series 2013 Bond. Initial Br. at 21-22. And, confirming that the 2013 Bond constitutes an impermissible gratuity, Section 5.4 of the County-Authority Contract expressly permits the Authority to "sell, lease or *give away* all or a portion of the Project." R-578 (emphasis added).

Remarkably, Appellees concede that "irrespective of Section 5.4 of the [County-Authority Contract], the Airport Authority cannot 'give away' the Project without violating the Gratuities Clause of the Constitution. Without question, the provisions of the Constitution trump any rights the Airport Authority may have under the [County-Authority Contract]." Resp. Br. at 16, n. 5 (internal citation omitted). That is exactly Appellants' point. While Appellees grasp for any possible way to convince the Court that Section 5.4 does not mean what it says,[5] Section 5.4 expressly permits the Authority to "give away" the airport taxiway construction project, which as Appellees acknowledge, would "violat[e] the Gratuities Clause of the Constitution." *Id.* This unilateral right of the Authority clearly demonstrates that the Series 2013 Bond violates the Gratuities Clause.

Appellees' remaining argument on the matter fares even worse. Although Appellees do not dispute that the Series 2013 Bond favors Silver Comet, they contend that it does not violate the Gratuities Clause because "[c]onspicuously

[5] Initially, the Authority claimed simply that Section 5.4 was "inaccurate," and Mr. Swafford, who negotiated the County-Authority Contract for the Authority, provided sworn testimony that he did not "recall ever reading" Section 5.4 and blamed the Authority's bond counsel for its inclusion. Mr. Swafford subsequently testified that he had since been told by the Authority's bond counsel that Section 5.4 would not permit transfers to "private entities" but conceded that nothing in the language of Section 5.4 reflected that purported limitation. T-135. Adopting a third position on the meaning of Section 5.4, Appellees now claim that "Section 5.4 *implies*" that "any transfer of the Project by the Airport Authority jeopardizes the [Series] 2013 Bond's tax-exempt status" and that the Authority has "agree[d] not to take any action that would adversely affect the tax-exempt status of the Bond." Resp. Br. at 16 n.5 (emphasis added).

absent from Appellants' argument are the great benefits that will result from the issuance of the Bond." Resp. Br. at 18. But these purported "great benefits" are "[c]onspicuously absent" from Appellants' argument because competent evidence of these "great benefits" is "[c]onspicuously absent" from the record. Appellees, in effect, fault Appellants for declining to divine non-existent facts about the supposed "great benefits" of the Series 2013 Bond. Appellees conjure every conceivable benefit to the public that could possibly result from some airport construction projects, without providing a *single citation* to any evidence in the record. *See id.* at 18-19. But if conclusory and unsubstantiated statements are sufficient to establish that a project paid for with taxpayer money will confer a "substantial benefit" to the public in return, then no litigated project would ever be found to violate the Gratuities Clause.

Appellees' unsupported claims of a "substantial benefit" to the public are particularly problematic here. According to Appellees' argument, the supposed benefits to the public resulting from the Series 2013 Bond hinge on the success of "Appellees' master plan to turn its small, relatively local Airport into a regional hub for commercial flights" that serves as "an alternative to Hartsfield-Jackson Atlanta International Airport." Resp. Br. at 18-19. This stunning and unsupported assertion contradicts every public statement Appellees and their representatives

have made regarding the scope of their plans for the Airport.[6] Appellees apparently hope that the Airport will go from a "small and relatively inconsequential" facility to a "regional hub for commercial flights" that, in turn, will help spur economic growth. Appellees have previously admitted, however, that they have conducted no due diligence into the business operations or financial condition of Silver Comet, the lone entity entrusted with developing commercial service at the Airport. *See* T-151-52; Initial Br. at 5. In other words, despite not having bothered to ascertain whether Silver Comet and its parent company have ever operated or managed any airports in the past, Appellees expect this Court to find that the Series 2013 Bond will provide a "substantial benefit" to the public because they would like Silver Comet to transform the Airport into a "regional hub for commercial flights."

Appellees' unfounded and self-serving optimism alone, however, cannot establish the legality of the Series 2013 Bond. Appellees have yet to offer any

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[6] *See, e.g.*, Open Ltr. from County Chairman David Austin to Richard Anderson (Nov. 15, 2013) ("Paulding airport, and any future commercial traffic there, will have minimal impact on Hartsfield-Jackson. A couple of flights a week to other similarly-sized airports across the country does not make our facility Atlanta's 'second airport.'"); Austin Blasts Delta in Airport Update, *Douglas County Sentinel* (Feb. 6, 2014) (quoting David Austin's criticism of "efforts to stop a small community airport" and statement that it is "absolutely untrue" that Paulding intends to build "the future second Atlanta airport"); Paulding Airport Plan Includes Airline Flights, *Atlanta-Journal Constitution* (Oct. 3, 2013) ("Austin said because the Paulding airline service would be so limited, 'I couldn't see them spending a lot of time worrying about our tiny little airport.'").

competent evidence that the Series 2013 Bond will confer a "substantial benefit" to the public in satisfaction of the Gratuities Clause, and the Series 2013 Bond should be invalidated on this basis alone.

III. TAXPAYERS RECEIVED INSUFFICIENT NOTICE OF THE BOND VALIDATION HEARING

O.C.G.A. § 36-82-76 requires that citizens and residents be given "proper notice of [bond] validation proceedings." *Turpen v. Rabun Cnty. Bd. of Comm'rs*, 351 Ga. App. 505, 508 (2001). The notice must be at least "sufficiently descriptive of the [issuing entity's] corporate name so as to be easily and readily applied to the legal name of the corporation." *Rhodes v. City of Louisville*, 121 Ga. 551, 552-53 (1904). The sufficiency of notice is particularly important in bond validations because validated bonds are generally immune from collateral attack. *See* O.C.G.A. § 36-82-78.

Here, the Notice of the bond validation proceedings undisputedly misidentified the "political subdivision" issuing the Series 2013 Bond and entering into the County-Authority Contract securing the Bond, as the "Paulding Industrial Building Authority," rather than the Paulding County Airport Authority. *See* T 17-18. As a result, there can be no serious debate that the Notice was not "sufficiently descriptive of the [Authority's] corporate name so as to be easily and readily applied to the legal name of the corporation." *Rhodes*, 121 Ga. at 552-53. To make matters even more confusing, at the time the defective Notice was issued, the

actual "Paulding Industrial Building Authority" was in the process of seeking validation of its own revenue bonds that had nothing to do with the Series 2013 Bond at issue in these proceedings. *See* T-121-22.

In response, Appellees are studiously silent on the requirement established in *Rhodes v. City of Louisville* that notice be "sufficiently descriptive of the [issuing entity's] corporate name so as to be easily and readily applied to the legal name of the corporation." *See* Resp. Br. at 21. Instead, Appellees take the erroneous initial position that "all [that the law] requires is that the date and time of the validation hearing be provided." *Id*. But a "date and time" is meaningless without additional information. And as Appellees begrudgingly acknowledge, *Rhodes* confirms the obvious point that notice must at least unmistakably provide the name of the "political subdivision" seeking to validate the bonds. *Id.* at 21.

Appellees next contend that the requirement of public notice was satisfied because the Notice contained information about the Series 2013 Bond. Among other things, Appellees point to the fact the Notice stated "that the Validation Hearing would address the validity of the IGA between the County and the Authority." Resp. Br. at 22 (citing R-91-92). Appellees' observation is absolutely correct—the Notice undisputedly stated that the validation hearing would consider the validity of an intergovernmental contract "between the Authority and Paulding County." R-91-92. But what Appellees fail to mention is that the Notice expressly

defined "Authority" as the "Paulding Industrial Building Authority," not the Paulding County Airport Authority. *See id.* Accordingly, Appellees merely confirm that the Notice misinformed the public that the validation hearing would address the validity of an intergovernmental contract between the Paulding Industrial Building Authority and the County. *See* R-91-92. It is unclear why Appellees—perhaps themselves confused by the contents of the Notice—believe that the Notice's repeated references to the "Paulding Industrial Building Authority" sufficiently informed citizens that the validation hearing would involve the Paulding County Airport Authority.

Appellees also point to the Notice's statement that the Bond would be issued to "pay the costs of acquiring, constructing, extending and improving the landing field for the ***Paulding Northwest Atlanta Airport***." Resp. Br. at 21 (emphasis added by Appellees). But to the extent Appellees assume that the Notice's reference to the Airport should somehow have made clear that the Airport Authority, not the "Paulding Industrial Building Authority," is involved in issuing or securing the Series 2013 Bond, Appellees' position is entirely baseless. The incorrectly identified "Paulding Industrial Building Authority" has regularly loaned money for projects at the ***Paulding Northwest Atlanta Airport***, and indeed, has done so for the very Airport taxiway construction projects that the Series 2013 Bond is intended to fund. Accordingly, it would have been perfectly plausible for

the "Paulding Industrial Building Authority" to have proposed the Series 2013 Bond to fund projects at the Paulding Northwest Atlanta Airport, and there is no reason why the Notice's reference to the Airport would or should have made apparent the Airport Authority's role as issuer.

Finally, Appellees argue that the "sufficiency of the notice is demonstrated by the very intervention of Appellants in this case." Resp. Br. at 22. But Appellees unsurprisingly cite no legal authority in support of their position, *see id.*, because the presence of an intervenor has never been the standard for determining the sufficiency of the notice of a bond validation hearing. The law requires notice to the public, not just to particular individuals, and there is no way to confirm that other members of the public would not have exercised their statutory right to oppose Appellees' attempt to spend their tax generated money, if the Notice had not been defective.

Indeed, adopting Appellees' standard would deal a fatal blow to O.C.G.A. § 36-82-76's requirement of public notice. Public entities proposing bonds would be free to issue confusing, inaccurate, or otherwise defective notice without any legal consequences because either: (1) the defective notice would fail to inform potential intervenors of the validation hearing, resulting in unopposed proceedings that would routinely lead to the validation of bonds; or (2) intervenors would happen to appear, and public entities would claim that the "sufficiency of the notice is

demonstrated by the very intervention" in the case, as Appellees claim here. There is no reason why the Court should render O.C.G.A. § 36-82-76's public notice requirement a virtual legal nullity by adopting Appellees' illogical proposed standard.

IV. THE AIRPORT AUTHORITY VIOLATED THE OPEN MEETINGS ACT IN CONSIDERING AND APPROVING THE SERIES 2013 BOND

"[T]he Open Meetings Act seeks to eliminate closed meetings which engender in the people a distrust of its officials who are clothed with the power to act in their name." *Moon v. Terrell Cnty.*, 249 Ga. App. 567, 568 (2001) (quoting *Atlanta Journal et al. v. Babush*, 257 Ga. 790, 792 (1988)). Given the importance of maintaining the public trust, "[a]ny exception to the requirement that meetings shall be open must be strictly construed." *Id.* at 569 (quoting *Steele v. Honea*, 261 Ga. 644, 645 (1991)).

There is no dispute that the Authority entered into "Closed Session[s]" during meetings supposedly open to the public, without providing the "specific reasons" for doing so in their official minutes. It is further undisputed that the Authority omitted the "specific reasons" for "Closed Session[s]" at meetings in which the Authority approved the Silver Comet Commercial Lease (Nov. 21, 2012), and approved the Series 2013 Bond Resolution (Sept. 18, 2013).

While they disclaim any "violation of the Open Meetings Act," Appellees notably do not address the provision violated by the Authority, O.C.G.A. § 50-14-4(a), which requires that "the specific reasons" for closing a public agency meeting "be entered upon the official minutes." Instead, Appellees tout their compliance with the *separate* requirement that agencies that close meetings also provide a "notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters" permitted by law to be discussed in closed sessions. Resp. Br. at 23-24; *see also* O.C.G.A § 50-15-4(b). Nothing in the law or Appellees' brief provides any reason to believe that the Authority's compliance with subsection (b) of O.C.G.A § 50-15-4 cures the Authority's separate violation of subsection (a).

Appellees further claim that "[o]nly after the Authority had completed its business with respect to the Bond and the Bond Resolution did it enter a 'Closed Session'" during its September 18, 2013 meeting. Resp. Br. at 23. Thus, according to Appellees, "to the extent any actions taken during the 'Closed Session' are considered non-binding, *see* O.C.G.A. § 50-14-1(b)(2), those non-binding acts cannot render the Bond invalid.'" *Id.* at 24. But the invalidation of actions contemplated in O.C.G.A. § 50-14-1(b)(2) is not limited to actions taken during Closed Sessions, as the Appellees would have the Court believe. Rather, it states that "[a]ny resolution, rule, regulation, ordinance, or other official action of

an agency adopted, taken, or made at a *meeting* which is not open to the public as required by this chapter shall not be binding." O.C.G.A. § 50-14-1(b)(2) (emphasis added); *see also Moon*, 249 Ga. App. at 569 ("Because the board violated the Open Meetings Act in conducting the *closed sessions*, the actions taken *during that meeting* are void.") (emphases added).

Finally, Appellees state that the Authority's invalid actions taken during meetings that violated the Open Meetings Act "were later ratified and approved during the Authority's October 22, 2013 meeting (*See* R-539-40) and Appellants do not contend there was any violation of the Open Meetings Act at this meeting." Resp. Br. at 24. But the October 22, 2013 meeting that allegedly cured the invalidity of the Authority's prior actions was held only *after* the initiation of these bond validation proceedings on October 9, 2013. Appellees do not even attempt to argue that a proposed revenue bond can be validated on the basis of actions taken to cure existing violations of law *after* a bond validation proceeding has been initiated. Accordingly, Appellees' belated attempt to cure the invalidity of the Authority's actions should play no part in the Court's determination of the legality of the Series 2013 Bond, and the Court should vacate the superior court's validation order.

CONCLUSION

For all of the reasons stated above and stated in their Initial Brief, Appellants respectfully request that the Court vacate the judgment of the superior court validating the Series 2013 Bond Issue.

This 22nd day of April, 2014.

Respectfully submitted,

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IN THE SUPREME COURT OF THE STATE OF GEORGIA

ANTHONY AVERY and SUSAN M. WILKINS,	)	
Appellants,	)	
v.	)	Case No. S14A0792
STATE OF GEORGIA, PAULDING COUNTY AIRPORT AUTHORITY, and PAULDING COUNTY, GEORGIA,	)	
Appellees.	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 22, 2014, a true and correct copy of the foregoing **REPLY BRIEF OF APPELLANTS** was served by mail and electronic service to the following:

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