

Bond Case Briefs

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TAX INCREMENT FINANCING - COLORADO

1405 Hotel, LLC v. Colorado Economic Development Commission

Colorado Court of Appeals, Div. I - September 10, 2015 - P.3d - 2015 WL 5259813 - 2015 COA 127

Hotels brought judicial review and declaratory judgment action challenging decision of Colorado Economic Development Commission (CEDC) to award city a tax increment subsidy under the Regional Tourism Act (RTA). The District Court dismissed action. Hotels appealed.

The Court of Appeals held that:

- As a matter of apparent first impression, point of administrative finality of award to city under RTA, as would trigger time period for filing of judicial review action, was time when CEDC adopted resolution memorializing terms of award;
- Hotels' premature filing of judicial review complaint did not render complaint untimely; and
- Hotels' alleged injury was indirect and incidental, and therefore hotels lacked standing to bring action.

Point of administrative finality of grant to city by the Colorado Economic Development Commission (CEDC) under the Regional Tourism Act (RTA), as would trigger time period for filing of action for judicial review, was time when CEDC adopted resolution memorializing terms of grant, not when CEDC gave it preliminary approval. Preliminary approval contained conditions which city had 120 days to fulfill, and to hold that conditional approval constituted final agency action would require parties affected by a conditional approval of a grant under the RTA to commence litigation before knowing whether the recipient of the RTA grant would fulfill those conditions and receive final approval.

Hotels' alleged injury from decision of Colorado Economic Development Commission (CEDC) to make grant to city for hotel and conference center development project, pursuant to the Regional Tourism Act (RTA), was indirect and incidental to city's alleged wrongdoing, and therefore hotels lacked standing to bring judicial review and declaratory judgment action challenging CEDC's and city's alleged failure to comply with RTA, including failure to require city to make new application for grant following change in developer. Even assuming project would cause hotels economic harm by drawing away some of their existing customers, such harm was not directly caused by CEDC's or city's alleged failure to comply with RTA but rather would result from development project's subsequent lawful conduct of competing in the tourism marketplace.