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PRIVATE ACTIVITY BONDS - FLORIDA

Indian River County v. Rogoff

United States District Court, District of Columbia - August 16, 2016 - F.Supp.3d - 2016 WL 4385776

Two counties brought action against the Department of Transportation (DOT) and DOT officials, alleging that DOT's authorization of tax-exempt private activity bonds (PAB) supporting construction and operation of railway violated various federal statutes.

After owner and operator of railway project intervened as defendant, defendants moved to dismiss for lack of subject matter jurisdiction and for failure to state claim.

The District Court held that:

- Counties suffered redressable injury;
- Counties adequately alleged the existence of major federal action; and
- County was not within zone of interests protected or regulated by section of Internal Revenue Code dealing with tax-exempt bonds.

There was substantial likelihood that operator of railway construction project would not proceed with project if Department of Transportation (DOT) did not support project with tax-exempt private activity bonds (PAB), and thus counties, through which portion of railway would run, suffered redressable injury, as required for them to have Article III standing in their action challenging DOT's decision under various federal statutes including NEPA. Operator did not have alternative financing plan in place beyond PAB-financing, operator had only invested about 13% of total estimated capital cost of second phase of project that would run through counties, and project was likely not financially viable through conventional taxable debt financing.

Counties, which challenged authorization of tax-exempt private bonds (PAB) by Department of Transportation in support of construction project of railway that would travel through counties, adequately alleged the existence of major federal action, as required to state claim that DOT failed to conduct environmental review of project as required under NEPA. PAB-financing would enable operator of project to finance about 50% of overall estimated cost of project, DOT required operator to undertake mitigation measures as condition of PAB-financing, and DOT's authorization of PAB-financing was not conceptually distinct from an agency providing a loan to a project, which had been determined to amount to major federal action, especially given that federal government chose to forgo large amounts of tax revenue by authorizing PAB-financing, likely resulting in ultimately greater cost to taxpayers than in the loan context.

County, through which railway was planned to be constructed, was not within zone of interests protected or regulated by section of Internal Revenue Code that allowed for tax-exempt bonds to be issued when their proceeds are used to fund certain types of projects, and thus county could not bring Administrative Procedure Act (APA) challenge alleging that decision of Department of Transportation (DOT) to authorize tax-exempt private activity bonds (PAB) to finance railway construction project violated Internal Revenue Code section. Section was created to create tax

benefit to support certain construction projects, and had nothing to do with county’s asserted environmental and public safety interests.

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