

Bond Case Briefs

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City of Bakersfield v. West Park Home Owners Association and Friends

Court of Appeal, Fifth District, California - October 31, 2016 - Cal.Rptr.3d - 2016 WL 6408001

The City of Bakersfield proposed to finance road improvement projects through a public benefit corporation (Corporation) and pay the debt from revenues held in special funds. The City filed an action seeking validation of this finance plan. West Park Home Owners Association and Friends (West Park) opposed the finance plan.

The Superior Court entered judgment for City. West Park appealed.

The Court of Appeal held that:

- Funding sources for road improvement projects – the gas tax revenues fund, the transportation impact fees fund, and the restricted utility franchise and surcharge fees fund – qualified as “special funds” under state constitution’s debt limitation provision;
- A provision of city’s contract purporting to make City’s payment obligation “absolute and unconditional” did not require payment from sources other than special funds;
- the three sources of revenue pledged by the City to make the installment payments satisfied the nexus requirement under the special fund exception;
- City did not violate the state constitution’s limitation on the permissible uses of gas tax revenues;
- The term “bonds” as used in article XIX, section 6 and Streets and Highways Code section 2107.4 includes installment payments under an installment sale agreement;
- The City’ use of gas tax revenues violated article XIX, section 6 and Streets and Highways Code section 2107.4 in that the City intended to use gas tax revenues on non-voter approved financing; and
- The Corporation had a separate existence from the City.

City’s gas tax revenues fund, which contained all amounts received by the city related to the purchase of motor vehicle fuels, qualified as a “special fund,” as required for obligations payable from the fund not to violate the state constitution’s debt limitation provision.

City’s transportation impact fees fund, which contained fees paid to the city by developers to mitigate the regional traffic impacts of development projects, qualified as a “special fund,” as required for obligations payable from the fund not to violate the state constitution’s debt limitation provision.

City’s “restricted utility franchise and surcharge fees” fund, which contained proceeds of a surcharge on the franchise fees imposed on utility companies related to their use of city streets for transmitting and distributing electricity and gas, qualified as a “special fund,” as required for obligations payable from the fund not to violate the state constitution’s debt limitation provision, where the city adopted an ordinance providing that the fund was to be segregated from all other

revenues and general funds and not maintained from the general funds.

Under a contract providing that city's obligation to pay for construction services was "absolute and unconditional," but that "notwithstanding" that provision the city's obligation to pay for the services was limited to three special funds, the city had no obligation to pay for the services if the special funds were insufficient, and thus the contract did not violate the state constitution's debt limitation provision.

City's gas tax revenues fund, which contained all amounts received by the city related to the purchase of motor vehicle fuels, had an adequate nexus to city's road improvement finance plan to fall within the special fund exception from the state constitution's debt limitation provision, since the gas tax revenues were generated by the public's use of the streets and highways.

City's transportation impact fees fund, which contained fees paid to the city by developers to mitigate the regional traffic impacts of development projects, had an adequate nexus to city's road improvement finance plan to fall within the special fund exception from the state constitution's debt limitation provision, since the fees were imposed so as to assure that new development bore a proportionate share of the cost of capital expenditures necessary to provide a regional transportation system.

City's "restricted utility franchise and surcharge fees" fund, which contained proceeds of a surcharge on the franchise fees imposed on utility companies related to their use of the city streets for transmitting and distributing electricity and gas, had an adequate nexus to city's road improvement finance plan to fall within the special fund exception from the state constitution's debt limitation provision, since the fees were imposed to compensate the city for the use of its streets to transmit and distribute electricity and gas.

City did not violate the state constitution's limitation on the uses of gas tax revenues, in making payments to a nonprofit corporation that was obligated to "cause the design, acquisition and construction" of the street improvements for, and sell those improvements to, the city, since the gas tax revenues were being used to pay for street improvements as required by the state constitution.

City's use of gas tax revenues to make payments to a nonprofit corporation that was obligated to "cause the design, acquisition and construction" of the street improvements violated the state constitution's prohibition against non-voter approved financing, since the payments were to be made under a certificate purchase agreement that amounted to "bonds," where the certificates included a maturity date, principal amount, interest rate, price, and yield.

State constitutional provision requiring two-thirds vote of qualified electors before city incurs indebtedness in excess of annual income and revenue did not apply to nonprofit corporation formed by city to implement a road improvement finance plan, since the corporation had a genuine separate existence from the city, where the corporation signed an agreement with the city to "cause the design, acquisition and construction" of the projects, and the corporation's bond purchase agreement did not make the city responsible for the corporation's debt.