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New Jersey Alliance for Fiscal Integrity, LLC v. New Jersey Sports and Exposition Authority

Superior Court of New Jersey, Appellate Division - October 3, 2016 - Not Reported in A.3d - 2016 WL 5759377

The New Jersey Alliance for Fiscal Integrity LLC, (NJAFI) appealed from four Resolutions issued by the New Jersey Sports and Exposition Authority (NJSEA) approving issuance of bonds to provide a portion of the financing for the American Dream development in the Meadowlands to be built by intervenor Ameream LLC.

In summary, the NJSEA plans to issue two types of limited obligation bonds, which will be backed exclusively by two revenue sources: redevelopment area bonds (RAB bonds), backed by payments in lieu of taxes (PILOTs) which Ameream will begin paying once it completes the project; and Economic Redevelopment Grant revenue bonds (ERG bonds), backed by an Economic Redevelopment Grant which the Economic Development Authority (EDA) has awarded to Ameream and the proceeds of which Ameream will in turn sell to the NJSEA. Once the RAB and ERG bonds are sold, the PILOTs and ERG grant money, respectively, will provide the sole source of funding to pay the bondholders a return on their investment

The NJSEA will sell both the RAB bonds and the ERG bonds to one buyer—the Wisconsin Public Finance Authority (PFA or Wisconsin PFA) — in a negotiated sale. The financing documents anticipate that the PFA will pay the NJSEA approximately $300 million for the ERG bonds and $800 million for the RAB bonds. The PFA will obtain the purchase money by issuing and selling its own bonds (PFA bonds) to the public, in Wisconsin. The PFA intends to use the revenue it earns from the RAB and ERG bonds to pay the debt service on the PFA bonds. However, each State's agency is issuing its own bonds. Nothing in the NJSEA bond documents obligates the NJSEA to guarantee or pay the PFA's debt service on the PFA's bonds.

NJAFI raised a series of arguments challenging the issuance of both bonds. It contends that the NJSEA'a actions are ultra vires, violate "legislative policies," and are arbitrary; the RAB bond resolutions unlawfully pledge the PILOTs as "collateral for another state's debt issue"; the NJSEA cannot issue the ERG bonds because it cannot issue the RAB bonds; the Stimulus Act does not permit the securitization of ERG grant payments; issuance of the ERG bonds violates the Debt Limitation Clause unless approved by the voters; the NJSEA lacks statutory authority to issue the ERG bonds; the NJSEA Resolutions violate Executive Order 26 because they contemplate a private sale of the bonds to one buyer; and the RAB bond resolutions differ materially from the financial transaction approved by the Local Finance Board (LFB).

The Appeals Court affirmed, holding that:

- NJAFI's argument that – because the Wisconsin PFA will use the proceeds from the New Jersey bonds to pay the Wisconsin PFA bondholders a return on their investment – this means that the NJSEA is "in effect" pledging the PILOTs as collateral for the Wisconsin PFA bonds

mischaracterizes the financing;

- The fact that a purchaser of NJSEA bonds intends to use those bonds as collateral for some economic project of its own does not transform the NJSEA into the issuer or guarantor of the bond purchaser's financial project;
- Because the ERG bonds are secured solely by the ERG grant revenue and the bondholders have no recourse against the State, the bonds are not "contract bonds" and their issuance would not violate the Debt Limitation Clause; and
- The ERG bonds will be issued pursuant to the NJSEA Law, N.J.S.A. 5:10-10, which authorizes the NJSEA to issue bonds or notes for any of its corporate purposes, including the redevelopment project to be financed here.

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