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SCHOOL FINANCE - CALIFORNIA

California Taxpayers Action Network v. Taber Construction, Inc.

Court of Appeal, First District, Division 2, California - May 2, 2017 - Cal.Rptr.3d - 12 Cal.App.5th 115 - 2017 WL 2365295

Objector brought a reverse validation action to challenge a lease-leaseback agreement for construction of school facilities.

The Superior Court sustained demurrer without leave to amend. Objector appealed.

The Court of Appeal held that:

- School construction lease-leaseback arrangement was authorized by statute;
- Leaseback did not require competitive bidding;
- Taxpayer failed to allege facts sufficient to state claim for breach of fiduciary duty;
- Lease-leaseback agreement was not void as a breach of the public trust;
- Objector had standing to bring a conflict of interest claim; and
- Objector stated a conflict of interest claim.

School district's lease-leaseback of its real property to contractor for construction of school facilities was authorized by the 2014 version of the school construction lease-leaseback statute, notwithstanding objector's argument that the agreement should be deemed a sham and subterfuge to avoid competitive bidding requirements, even though the agreement failed to provide financing, since the lease was for the purposes of construction, and the agreement provided for the title to vest in the school district at the end of the lease term.

The 2014 version of the statute authorizing a school district to lease real property to a contractor for a construction project without advertising for bids also allows the contractor to lease the property with improvements back to the school district, even if the district has not advertised for bids.

Objector failed to allege facts sufficient to state claim for breach of fiduciary duty against school district and contractor related to school board's approval of expenditures for school construction project pursuant to lease-leaseback agreement. Objector's complaint requested that contractor return money paid to it under lease-leaseback agreement, but did not allege that contractor was subject to fiduciary duty, complaint did not allege that school board profited from transactions and did not request restitution or disgorgement of profits, and relief sought for alleged breach of fiduciary duty was against contractor, a party that did not have a fiduciary duty.

School district's lease-leaseback agreement for a school construction project without competitive bidding was not void as a breach of the public trust, absent evidence that any member of the school board had a personal interest in the lease-leaseback agreement.

Court of Appeal would address school district's and contractor's argument that objector lacked standing to bring a claim of conflict of interest challenging lease-leaseback construction agreement,

even though district and contractor raised the argument for the first time in opposition to objector's appeal from the judgment sustaining demurrer without leave to amend.

Objector alleged sufficient facts to state cause of action against contractor, as corporate consultant, for violation of conflict of interest provision in statute barring public officials or employees from being personally financially interested in contracts they formed in their official capacities, stemming from contractor's lease-leaseback construction contracts with school district. Taxpayer alleged that contractor served as a professional consultant to district and had a hand in designing and developing the construction plan, which was sufficient to state that contractor was an employee for purposes of statute and participated in making contracts, and taxpayer's allegations sufficiently stated that contractor was financially interested in contracts for purposes of statute.

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