

Bond Case Briefs

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HIGHWAYS - NORTH CAROLINA

Widen I77 v. North Carolina Department of Transportation

Court of Appeals of North Carolina - May 2, 2017 - S.E.2d - 2017 WL 1632611

Citizens group brought action against state Department of Transportation and private toll-lane operator for a declaratory judgment and injunctive relief as to the constitutionality of transportation statute and agreement between Department and toll-lane operator.

The Superior Court granted summary judgment for Department and toll-lane operator and dismissed citizens group's claims with prejudice. Citizens group appealed.

The Court of Appeals held that:

- Transportation statute that allowed agreement was not an unconstitutional delegation of power by the General Assembly to the Department and toll-lane operator;
- Expenditures related to agreement served a public purpose so as not to violate taxation clause of the state constitution; and
- Transportation statute that allowed agreement was not an unconstitutional delegation of General Assembly's authority to tax.

Transportation statute that allowed state Department of Transportation to make an agreement with private toll-lane operator stated sufficient legislative goals, policies, and procedural safeguards so as not to be an unconstitutional delegation of power by the General Assembly to the Department and toll-lane operator. The achievement of the stated legislative policy of using tolls to help maintain the state road system required expertise, Department had to develop standards for entering into comprehensive agreements with private entities, agreements were limited to 50 years, and toll-lane operator had to provide performance and payment security.

Expenditures related to state Department of Transportation's agreement with a private toll-lane operator served a public purpose, as required under the taxation clause of the state constitution. The General Assembly recognized that the state's road system was becoming increasingly congested, which it sought to alleviate through agreements with private entities to finance transportation infrastructure, toll-lane operator's involvement as a private actor did not negate the public purpose of the expenditures, and all of the infrastructure constructed by toll-lane operator would be owned by the state.

Agreement between state Department of Transportation and private toll-lane operator did not violate statute that required that the Board of Transportation, Joint Legislative Transportation Oversight Committee, and Joint Legislative Commission on Governmental Operations review any toll or fee 30 days prior to its effective date, where statute authorizing the agreement made such oversight inapplicable to the project covered by the agreement.

Transportation statute permitting agreement between state Department of Transportation and private toll-lane operator was not an unconstitutional delegation of General Assembly's authority to tax, such that it would violate state constitution and U.S. Constitution's Due Process Clause; a toll

was not a tax.