

Bond Case Briefs

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Judge Derails Lewiston's Bid to Issue Wastewater Bonds.

Rules city did not meet requirements when it posted notice of court hearing

Second District Judge Gregory FitzMaurice on Wednesday dismissed the city of Lewiston's request to issue bonds to rebuild its wastewater treatment plant, ruling that the city didn't meet the legal requirement to post notice of a court hearing at a "prominent" location at city hall.

Boise attorney Stephanie Bonney, who argued the case for Lewiston, said the city will refile its request for judicial confirmation of the bonds. But city officials have not decided whether to reboot the whole process, including holding a new public hearing and bringing a new resolution to the city council.

"The statutes don't address that," Bonney said, noting that starting over would be the safest route. "But that also bumps you back for at least a couple of months. And the issue here is that they need to proceed with funding and the project as soon as possible."

City Engineer Shawn Stubbers said the setback shouldn't affect when construction can begin on the plant. The city can't apply for state revolving loan funds for the project until January and won't know the results until March, so he said there is time to pursue judicial confirmation again.

The state loans are preferable because they carry a lower interest rate than the municipal bond market, Stubbers said. Previous applications have been unsuccessful, so the city needs the municipal bonding capacity to backfill the \$28.5 million needed for the project if the state application is completely or partly denied.

FitzMaurice didn't rule on the substance of the city's request. The city council decided this summer to seek judicial confirmation rather than put the issue on the November ballot, and Bonney argued that the need for repairs is urgent enough to seek approval from a judge, rather than voters.

Retired 2nd District Judge John Bradbury filed a motion to dismiss the request Sept. 12, the day before the confirmation hearing. Bradbury argued that even though the city complied with the statutory requirement to post notice of the hearing 30 days in advance, its placement on a bulletin board with several other notices eight to 10 steps away from the city hall front door was not prominent enough.

In a ruling the judge himself described as harsh, FitzMaurice said he can lawfully have jurisdiction over the case through publication and posting of the hearing notice, according to the requirements in Idaho code. The city complied with the publication requirement by placing a notice in the Lewiston Tribune for three consecutive weeks, but it fell short on the posting requirement by placing the notice on a bulletin board labeled for public meeting agendas at the east end of the lobby.

"A Lewiston citizen, who was going to city hall to pay their water and sewer bill or to get a building permit, would likely not look at the board," FitzMaurice wrote. "They would be more likely to see a notice posted on the front door of city hall, particularly since there are not nine notices posted on

the front door.”

The judge noted Bradbury’s separate argument that the request for judicial confirmation should be dismissed because there is no evidence of an emergency situation at the plant, but he didn’t rule on its merits either.

Bradbury agreed that the word “emergency” doesn’t exist in the judicial confirmation statute, but said earlier court decisions have interpreted it that way. He also said he will lodge another objection once the city refiles its request, this time based solely on the merits of the case.

“As long as the right to vote is involved, I’m going to be involved,” Bradbury said. “My view is that the judicial confirmation statute is designed to correct an emergency at as little cost as necessary until you can get to the voters on the overall issue.”

The council enacted 40 percent increases to wastewater and water rates earlier this year to create enough revenue to repay the wastewater treatment plant debt, plus any future financing for a new water treatment plant. Those rates kicked in Monday, and are unaffected by FitzMaurice’s ruling.

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