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PRIVATE ACTIVITY BONDS - FLORIDA

Indian River County, Florida v. Department of Transportation

United States District Court, District of Columbia - December 24, 2018 - F.Supp.3d - 2018 WL 6736036 - 122 A.F.T.R.2d 2018-7081

County and its emergency services district brought action against Department of Transportation (DOT) and related defendants for claims arising from extension of express passenger railway connecting Orlando and Miami, Florida.

Parties cross-moved for summary judgment.

The District Court held that:

- County could challenge DOT's decision to authorize tax-exempt private activity bonds (PAB) to finance project, on basis that decision violated Internal Revenue Code (IRC) provisions;
- Phase of project developing express passenger railway between Orlando and Miami, Florida constituted a "surface transportation project" under IRC provision, as required for Secretary of Transportation's allocation of PABs to qualify for tax-exempt status;
- State of Florida properly approved issuance of tax-exempt PABs for financing of railway in accordance with IRC provision establishing public approval requirements before bonds could be "qualified" to receive tax-exempt status, thereby obviating the need for approval by all counties through which the railway ran;
- Federal Railway Administration (FRA) did not act arbitrarily, capriciously, abuse its discretion or otherwise not in accordance with law by purportedly failing to adequately analyze, in final environmental impact statement (FEIS), the public safety consequences of more and faster trains traveling along rail line upon completion of railway extension until after NEPA process was complete;
- FRA did not act arbitrarily, capriciously, abuse its discretion or otherwise not in accordance with law by purportedly failing to adequately analyze in FEIS the effects of vessels waiting or queuing to cross through draw bridges at navigable rivers over which train track would run upon completion of railway extension; and
- FRA did not act arbitrarily, capriciously, abuse its discretion or otherwise not in accordance with law by purportedly failing to adequately follow, in FEIS, applicable guidance on evaluating noise impacts of rail project when approving extension of railway until after NEPA process was complete.

County through which express passenger railway connecting Orlando and Miami was to be constructed was within zone of interests protected or regulated by provisions of Internal Revenue Code that allowed for tax-exempt bonds to be issued when their proceeds are used to fund certain types of projects and, thus, county could challenge, under Administrative Procedure Act (APA), the decision of Department of Transportation (DOT) to authorize tax-exempt private activity bonds (PAB) to finance railway construction project, on basis that decision violated Internal Revenue Code provisions; the provisions enumerated types of facilities that benefited the public enough to qualify

for tax-exempt status, and created a mechanism of democratic accountability by which public could confirm that particular project did indeed confer public benefit.

Phase of project developing express passenger railway between Orlando and Miami, Florida constituted a “surface transportation project” under Internal Revenue Code provision defining “qualified highway or surface freight transfer facilities,” as required for Secretary of Transportation’s allocation of private activity bonds (PAB) to qualify for tax-exempt status; dictionary definition of “surface transport” was movement of people or goods by road, train, or ship, rather than by plane, and Surface Transportation Board’s charge included jurisdiction over rail issues.

Phase of project developing express passenger railway between Orlando and Miami, Florida received funding under Title of United States Code governing federal highway funding, as required for Secretary of Transportation’s allocation of private activity bonds (PAB) to qualify for tax-exempt status; although funding went to owner of railway rather than project developer and owner, in addition to developer, benefited from funding, disproportionate amount of funding was disbursed only after project began.

State of Florida properly approved issuance of tax-exempt private activity bonds (PAB) for financing of express passenger railway connecting Orlando and Miami in accordance with Internal Revenue Code provision which established public approval requirements before bonds could be “qualified” to receive tax-exempt status, thereby obviating the need for approval by all counties through which the railway ran; Florida Development Finance Corporation (FDFC) issued bonds after noting public hearing was held in Tallahassee, followed by approval by State official who was designee of Governor, and applicable elected representative to approve bond issuance, and although term “governmental unit” was ambiguous insofar as to which entities were required to approve issuance, State’s approval alone was sufficient to support approval of bond issuance.

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