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CALmatters Commentary: California Supreme Court Helps Insider Dealing

One should expect the California Supreme Court to protect the integrity of governmental actions.

However, on the day after Christmas, the court, by a 6-1 margin, gave government officials a gift. It decreed that the validity of municipal bond issues can be challenged only by those directly involved in the transactions — freezing out civic watchdogs and other outsiders.

It earned the six majority justices a scathing, much-deserved rebuke from Chief Justice Tani Cantil-Sakauye.

The case at hand involved bonds that the city of San Diego issued in 2015 to refinance bonds that had been issued for the construction of Petco Park, home of the San Diego Padres baseball team.

The refinancing bonds were approved by San Diego's City Council and its Public Facilities Financing Authority. Afterward, a local civic organization, San Diegans for Open Government, sued the city and the financing authority. The group contended that the bonds violated a California law (Government Code Section 1092) dealing with conflicts of interest because one member of the financing team had an "interest in one or more contracts for the sale of the 2015 bonds."

The city won at the trial level by asserting that Section 1092 allowed only parties involved in the transaction to challenge the bonds' legal validity. But an appellate court overturned that ruling, declaring that outsiders could also intervene, and the case spiraled upward to the state Supreme Court.

The conflict hinged on the legal meaning of Section 1092's authorization for "any party" to challenge the transaction.

The Supreme Court took the narrow approach, declaring that "any party" is restricted to just those directly involved, while contending that other authorities, such as district attorneys or the state Fair Political Practices Commission, could investigate conflict-of-interest allegations if needed.

However, Cantil-Sakauye said those supposed remedies are, in a practical sense, largely useless.

"One would think, then, that municipal bond issuances would be subject to the most exacting scrutiny — the kind of scrutiny needed to detect and remedy conflicts of interest that could both undermine public confidence in this crucial financing vehicle and saddle taxpayers with large enduring financial obligations," she wrote.

"Yet, today's majority opinion holds otherwise. The majority interprets Section 1092's language providing that 'any party' may bring a judicial action to avoid a contract involving a prohibited conflict of interest as conferring standing only upon the parties to the very contract to be avoided. I disagree. I do not believe the Legislature created a scheme that counts on the foxes to guard the henhouse, and leaves taxpayers helpless to halt even the most egregiously conflicted government

bond issuances. The likely result under the majority's rule is that no one will bring a challenge to avoid a government contract afflicted with a conflict of interest."

"Put differently," she concluded, "today majority's opinion holds that in cases in which government officials make contracts that amount to writing checks on the public's checkbooks, the public cannot stop them."

The chief justice is absolutely correct. All public bond issues deserve scrutiny, but those for essentially private purposes, such as a baseball park, are especially prone to insider dealing.

It now falls to Gov. Gavin Newsom and the Legislature to clarify that the outside public should have the unfettered to challenge the validity of bond issues or other important governmental actions if there are conflicts of interest.

To let the Supreme Court's decision stand would be, as Cantil-Sakauye says, allowing the foxes to guard the henhouse — and perhaps feast on its residents.

Dan Walters, CalMatters Commentary

Published 2:30 p.m. PT Jan. 3, 2020

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