

# **Bond Case Briefs**

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## **ECONOMIC DEVELOPMENT - WEST VIRGINIA**

### **Jefferson County Foundation, Inc. v. West Virginia Economic Development Authority**

**Supreme Court of Appeals of West Virginia - June 8, 2022 - S.E.2d - 2022 WL 2063006**

Nonprofit organization that advocated for effective and accountable government brought action against West Virginia Economic Development Authority (WVEDA) and insulation manufacturer seeking declaration that WVEDA lacked statutory authority to enter into transactions to finance construction of manufacturing plant using a sale-leaseback arrangement and that transactions were a de facto tax abatement in violation of state constitutional guarantee of equal and uniform taxation.

The Circuit Court dismissed. Organization appealed.

The Supreme Court of Appeals held that:

- Organization had representative standing;
- Controversy did not present a nonjusticiable political question;
- Sale-leaseback arrangement was not a de facto tax exemption;
- WVEDA had statutory authority to enter into the sale-leaseback;
- No conflict existed in statutory tax exemption provisions; and
- Sale-leaseback did not violate constitutional guarantee of equal and uniform taxation.

Nonprofit organization that advocated for effective and accountable government had representative standing for its action against West Virginia Economic Development Authority (WVEDA) and insulation manufacturer seeking declaration that WVEDA lacked statutory authority to enter into transactions to finance construction of manufacturing plant using a sale-leaseback arrangement and that transactions amounted to a de facto tax abatement in violation of state constitutional guarantee of equal and uniform taxation, where organization sought a declaration regarding impact that a public contract would have on its members' interests that arguably fell within state constitutional protections.

Controversy about proposed transactions between a public entity, the West Virginia Economic Development Authority (WVEDA), and a private manufacturer to finance construction of manufacturing plant using a sale-leaseback arrangement did not present a nonjusticiable political question, where objector sought declaration that WVEDA lacked statutory authority to enter into proposed transactions and that transactions amounted to a de facto tax abatement in violation of state constitutional guarantee of equal and uniform taxation, and the court had duties to apply and enforce a statute unless statute was clearly unconstitutional.

Sale-leaseback arrangement involving West Virginia Economic Development Authority (WVEDA) and insulation manufacturer to finance construction of manufacturing plant was not a de facto tax exemption, and thus the West Virginia Economic Development Authority Act, as source of WVEDA's powers, did not need to be strictly construed in action seeking declaration WVEDA lacked statutory power for its actions and that the sale-leaseback violated state constitutional guarantee of equal and

uniform taxation, where sale-leaseback was a series of transactions resulting in two, distinct interests of a fee interest and a leasehold, and WVEDA's resolution to enter into sale-leaseback did not declare that the leasehold interest produced by sale-leaseback would be exempt from taxation.

West Virginia Economic Development Authority (WVEDA) had authority, under West Virginia Economic Development Authority Act, to adopt resolution to enter into a sale-leaseback agreement with insulation manufacturer to finance construction of manufacturing plant, where Act authorized WVEDA to engage in the specific transactions set forth in resolution, including issuing revenue bonds, exchanging bonds with manufacturer for property, purchasing fee interest in property from manufacturer, leasing property to manufacturer, and selling property to manufacturer at end of lease term.

Statute exempting property acquired or used by West Virginia Economic Development Authority (WVEDA) from taxation did not conflict with statute identifying types of property exempt from taxation, as applied to sale-leaseback arrangement involving WVEDA and insulation manufacturer to finance construction of manufacturing plant, where the sale-leaseback was a series of legislatively-authorized transactions and not a tax exemption, and statute identifying property tax exemptions was not, by its plain terms, an exhaustive list of types of property the Legislature exempted from taxation.

Sale-leaseback arrangement involving West Virginia Economic Development Authority (WVEDA) and insulation manufacturer to finance construction of manufacturing plant did not violate state constitutional guarantee of equal and uniform taxation, despite argument that the sale-leaseback was a sham structure hiding a huge property tax break for manufacturer, where sale-leaseback was a series of transactions resulting in two, distinct interests of a fee interest and a leasehold, WVEDA's resolution to enter into sale-leaseback did not declare that the leasehold interest produced by sale-leaseback would be exempt from taxation, and leasehold interest was subject to general rules of valuation of a leasehold.

Objector's due process challenge, including a claim of vagueness, to statute providing tax-exempt status to property acquired or used by West Virginia Economic Development Authority (WVEDA) was moot on appeal in declaratory judgment action raising statutory and constitutional challenges to sale-leaseback arrangement involving WVEDA and insulation manufacturer to finance construction of manufacturing plant, where the sale-leaseback was comprised of a series of transactions to be affected by WVEDA pursuant to its statutory authority, and WVEDA's resolution to enter into sale-leaseback did not claim to extend the disputed tax exemption to the leasehold produced by the sale-leaseback.