

Bond Case Briefs

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Board of Sup'rs of Fluvanna County v. Davenport & Co. LLC

Supreme Court of Virginia - April 18, 2013 - S.E.2d - 2013 WL 1687514

Supreme Court of Virginia holds that county board of supervisors waived its legislative immunity in bond-related action against its financial advisor.

County board of supervisors brought action against board's financial advisor alleging breach of fiduciary duty, actual fraud, gross negligence, constructive fraud, unjust enrichment, breach of contract, and breach of the Virginia Securities Act in connection with advice rendered to the board regarding a bond issuance.

The Supreme Court, Leroy F. Millette, Jr., J., held that board waived legislative immunity in regards to issues relating to complaint against financial advisor.

The advisor argued that the court should dismiss the complaint, as it violated the separation of powers doctrine because the elements of the claims and advisor's defenses required the court to adjudicate issues not properly before the judiciary. The circuit court agreed, holding that the separation of powers doctrine prohibited the court from resolving the dispute because to do so would require inquiry into the motives of the board.

The Supreme Court of Virginia reversed, finding that County waived legislative immunity, and thus, immunity did not bar action against county's financial advisor, by: 1) declining to assert legislative immunity; 2) voluntarily filing a complaint that, due to the Board's burden of proof, involved issues protected by legislative immunity; and 3) making an unequivocal waiver of protection from inquiry into legislative motivation in the text of its complaint.