

Bond Case Briefs

Municipal Finance Law Since 1971

CONTINGENCY FEES - TEXAS

International Paper Co. v. Harris County

Court of Appeals of Texas, Houston (1st Dist.) - July 25, 2013 - S.W.3d - 2013 WL 3864317

County brought environmental enforcement action against industrial companies. After county obtained authorization to retain private attorneys on contingent-fee basis, companies sought temporary injunction to prevent county's use of private attorneys on contingent-fee basis.

On appeal, defendants contended that the trial court erred in denying their request for temporary injunctive relief because (1) the County did not comply with the statutory provisions that control when a governmental entity can hire attorneys on a contingent-fee basis; (2) the County violated the state constitution's separation-of-powers doctrine by agreeing to payment of the private attorneys' contingent fee from funds to which the state may be entitled; and (3) the federal constitution's due-process guarantee prohibits private attorneys from prosecuting a quasi-criminal action on a governmental entity's behalf for a contingent fee.

The Court of Appeals held that:

- No live controversy existed regarding statutory compliance of county's retainer of outside counsel through particular contingent-fee agreement, and thus issue was moot;
- Companies' argument that county's use of contingent-fee counsel violated companies' due process rights was not moot;
- Companies did not have probable right to relief on due process claim; and
- Balance of equities did not weigh in favor of granting temporary injunction.

Industrial companies did not have probable right to relief on claim that county's use of private attorneys on contingent-fee basis to prosecute civil environmental enforcement action against companies violated due process, as could support temporary injunction to prevent county's use of such attorneys. Due process clause did not establish blanket prohibition against a governmental entity's engagement of private counsel on contingent-fee basis to pursue civil litigation in which only remedy sought was civil penalties, caselaw did not support companies' labeling of action as quasi-criminal, and county had disclaimed any intention to pursue criminal charges against companies.

Balance of equities did not weigh in favor of granting temporary injunction to prevent county's use of private attorneys on contingent-fee basis to prosecute civil environmental enforcement action against industrial companies, despite companies' argument that this violated companies' due process rights. There was public benefit to contingent-fee agreements in some circumstances, and any interest of attorney retained on contingent-fee basis to pursue maximum penalties could have existed for other advocates.