Bond Case Briefs

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BONDS - MISSOURI

Cromeans v. Morgan Keegan & Co., Inc.

United States District Court, W.D. Missouri, Central Division - February 24, 2014 - F.Supp.2d - 2014 WL 818638

Municipal bond purchasers brought putative class action against underwriter, alleging that underwriter made material misrepresentations and omissions in offering statement. Underwriter filed third-party complaint against municipality, seeking indemnification and contribution to extent it might be liable to bond purchasers. Municipality moved to dismiss third-party complaint based on sovereign immunity.

The District Court held that:

- Missouri legislature did not expressly waive sovereign immunity for municipalities in enacting the Missouri Securities Act, and
- Issuance of municipal bonds was governmental, rather than proprietary, function.

Missouri legislature did not expressly waive sovereign immunity for municipalities in enacting the Missouri Securities Act, although provision of act stated that “a person” could be liable for making misrepresentation in connection with sale of securities, and general definition of “person” in act included government entities. However, definitions section of act had qualifying language, which provided that definitions applied “unless context otherwise requires” and act never mentioned sovereign immunity, term “person” was used in sections of act other than civil liability section, and enactment of act was not motivated by any particular concern with municipal liability.

Under Missouri law, issuance of municipal bonds was governmental, rather than proprietary, function, and thus municipality was entitled to sovereign immunity in underwriter’s action against municipality for indemnity and contribution to extent underwriter might be liable to any bond purchaser based on alleged misrepresentations and omissions contained in offering statement.

The court did not agree with underwriter’s argument that municipality was not entitled to sovereign immunity because it engaged in for-profit, and therefore proprietary, functions in connection with the issue of the bonds. Although the only benefit that municipality’s residents might have received from facility was some degree of economic stimulation, that still qualified as an essential governmental purpose.