

Bond Case Briefs

Municipal Finance Law Since 1971

Another Friend of Court Sides with Town over Prism Bonds.

WEST ORANGE, NJ — The second amicus curiae brief submitted in the New Jersey Supreme Court case against West Orange sided with the township just as the first did, with the New Jersey State League of Municipalities and the New Jersey Institute of Local Government Attorneys jointly arguing that the administration had followed proper procedure in issuing \$6.3 million in municipal bonds to real-estate operator Prism Capital Partners.

The brief, which was filed by the organizations' attorney, Edward Purcell, on Jan. 8, made the case that not only was the township free to pledge the bonds without receiving approval from the Local Finance Board, but that the plaintiffs had acted after the deadline for filing a complaint on the matter in the first place.

For the latter argument, the brief pointed out that local bond law stipulates that no one can take any action denying or questioning the validity of a bond ordinance after 20 days have passed since its publication. Because the five residents did not file suit until May 14, 2012 — 53 days after the ordinance was advertised on March 22, 2012 — the brief argued that they did not meet that statute of limitations. As such, the brief urged the court to dismiss the plaintiffs' case, or else risk losing the credibility of state municipal bonds.

The brief argued that "Every bond issued by a New Jersey municipality would be less marketable," if the plaintiffs were victorious. "And, as a consequence, New Jersey municipal bonds would have to be issued at a higher interest rate, increasing costs to taxpayers and making certain projects unfeasible."

In arguing that the township did not need the LFB's approval in issuing the bonds, the brief presented two cases. The first was that local bond law dictates a municipality only has to seek LFB review if exceeding its debt limit or choosing to deduct debt from its debt limit in granting a bond. The brief argued West Orange did neither in pledging the \$6.3 million to Prism, therefore there was no need for it to obtain permission from the LFB.

The brief's second case, also a point made in the amicus brief submitted by acting Attorney General John Hoffman, dealt with the interpretation of an unclear passage of the law. Specifically, the section's language leaves room for debate as to whether bonds can only be pledged after receiving approval from the LFB. It begins with the statement that bonds may be issued and sold in a number of ways, which it then lists, and ends with the phrase "upon application to and prior approval of the Local Finance Board in the Department of Community Affairs."

Like the acting Attorney General's Office, the League of Municipalities and the Institute of Local Government Attorneys cited grammatical legal precedent to argue that the wording did not refer to all of the ways listed, which would have meant that every bond would require permission from the LFB. Instead, the brief made the case that only the third way listed — selling bonds at a public sale at less than par and at a private sale at par or less than par — mandates LFB approval.

In fact, the brief took it a step further, arguing that requiring LFB approval for bond sales above par

is just not necessary from a policy perspective.

“LFB oversight is only needed where bondholders appear to be receiving benefit to the detriment of taxpayers,” the brief said. “It simply doesn’t make policy sense to require LFB approval for the sale of bonds above par.”

The brief went on to argue against the plaintiffs’ assertion that West Orange “intentionally attempted to masquerade the issuance of ordinary General Obligation Bonds as Redevelopment Bonds” in order to avoid being subject to a referendum. The fact that the township issued GO bonds is really “immaterial,” according to the brief, since what legally determines whether it should be subject to referendum is the law under which the bonds were enacted. And, since the administration enacted the bonds under the Local opment and Housing Law, voters did not have the ability to disapprove the ordinance by referendum.

With both amicus briefs coming down in its favor, the township has confidence in its chances going forward in the suit. Indeed, Mayor Robert Parisi previously told the West Orange Chronicle that he is optimistic.

“The court is being diligent in its review of this matter, but the township remains confident that the court will ultimately rule in our favor,” Parisi said. “We are anxious to have this matter resolved.”

But the five plaintiffs in the case are far from giving up hope. Windale Simpson, a plaintiff and the spokesman for the group, previously told the Chronicle that he still did not expect to lose the lawsuit even after reading the attorney’s general’s brief. And he feels the same way about the second amicus brief.

“We were not surprised by the League of Municipalities brief,” Simpson said in a Jan. 20 email. “At the onset we expected that it would be up to the high court to clarify the dangerous confusion that exists around the ambiguous redevelopment law.”

According to the Supreme Court Clerk’s Office, a new date for oral arguments has not yet been set. The original Nov. 10 date was postponed after the court requested the amicus briefs.

Essex News Daily

By: Sean Quinn – Staff Writer

January 26, 2015