

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **BOND VALIDATION - LOUISIANA**

### **Louisiana Local Government Environmental Facilities and Community Development Authority v. All Taxpayers**

**Court of Appeal of Louisiana, First Circuit - February 12, 2015 - So.3d - 2015-0162 (La.App. 1 Cir. 2/12/15)**

The Louisiana Local Government Environmental Facilities and Community Development Authority (the LCDA) brought a Motion for Judgment, pursuant to the state's Bond Validation Act to establish the validity, and legality of a proposed issuance of Property Assessed Clean Energy Special Assessment Revenue Bonds (PACE bonds) and related contracts, prior to the marketing of the PACE bonds.

Pursuant to the requirements of the Bond Validation Act, the LCDA named as defendants all taxpayers, property owners, citizens of the State of Louisiana, and nonresidents owning property or subject to taxation therein; and, in accordance with the requirements of La. R.S. 13:5124, sought an order directing the publication of the Motion for Judgment and of the time and place fixed for the hearing on the Motion, in *The Advocate*, a daily newspaper published in the City of Baton Rouge, Louisiana, being the official journal of the LCDA. Additionally, as required by La. R.S. 13:5124(B), a certified copy of the Motion for Judgment was sent by certified mail to the State Bond Commission and the Louisiana Attorney General. No objections to the Motion for Judgment were filed.

At the hearing, the court expressed concerns regarding a lack of due process resulting from the method of notice to all defendants, a class which included all property owners of the State of Louisiana, by publication in *The Advocate*. Accordingly, the district court denied the Motion for Judgment to validate the PACE bonds pursuant to the statutory framework of the Bond Validation Act on the basis that the Bond Validation Act did not provide for proper notice to all property owners in the State of Louisiana, as defendants to this action.

The LCDA appealed, contending that the district court erred in: (1) denying the LCDA's Motion for Judgment seeking to validate municipal bonds and related agreements, documents and proceedings pursuant to the Bond Validation Act, when no challenge or opposition had been asserted; (2) denying the LCDA's Motion for Judgment based on its belief that the service by publication provision of the Bond Validation Act was unconstitutional when no challenge to the manner of notice or the constitutionality of the statute had been asserted; (3) ignoring controlling Louisiana Supreme Court precedent holding that the right to challenge the validity of municipal bonds is not a right to life, liberty or property protected by the Due Process Clause of the United States Constitution; and (4) ignoring controlling Louisiana Supreme Court precedent affirming the constitutionality of the service by publication provision of La. R.S. 13:5124.

The Court of Appeal held that:

- The named defendants, i.e., the taxpayers and property owners of the State of Louisiana and all other persons interested in the issuance of the PACE bonds, did not have a protected property interest in challenging the validity of a resolution authorizing the issuance of bonds by a political

subdivision, thus, service of the Motion for Judgment, seeking validation of such bonds by publication in The Advocate did not raise any constitutional due process concerns;

- Because no answer was filed by any person following the publication of the LCDA's Motion for Judgment, the courts were required to "consider and pass upon" the merits of the action and decide whether, in light of the evidence submitted by the LCDA, it carried its burden of establishing its entitlement to the requested Motion for Judgment;
- As the LCDA had not introduced into evidence the bond resolution allegedly authorizing the issuance of the PACE bonds or any evidence to show its proper passage, the court could not render a judicial determination of the validity of all proceedings taken in connection with the authorization of the PACE bonds, and thus could not confirm the validity of the PACE bonds; and
- Amended the district court's judgment to dismiss the LCDA's Motion for Judgment without prejudice, thereby allowing the LCDA to seek further relief in the future, upon proper proof, pursuant to the Bond Validation Act, with regard to its proposed issuance of the PACE bonds.