

Bond Case Briefs

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REFERENDUM - ILLINOIS

Zurek v. Village of Franklin Park

Appellate Court of Illinois, First District, Fifth Division - March 13, 2015 - Not Reported in N.E.3d - 2015 IL App (1st) 141286-U

Village Board of Trustees for the Village of Franklin Park, Illinois passed a resolution placing a referendum question on the primary election ballot for the primary general election to establish a 1% non-home rule municipal retailers' occupation tax and a non-home rule municipal service occupation tax to be used for the repair and reconstruction of public streets.

Taxpayer challenged the referendum question as submitted to the voters, alleging that it did not substantially comply with the mandated statutory language, rendering the election void.

The Village Trustees submit the following referendum question to the voters of the Village:

"Shall the corporate authorities of the Village of Franklin Park, Illinois be authorized to levy a Non-Home Rule Municipal Retailers' Occupation Tax and a Non-Home Rule Municipal Service Occupation Tax (commonly referred to as a 'sales tax'), each at a rate of 1%, pursuant to 65 ILCS 5/8-11-1.3 and 65 ILCS 5/8-11-1.4, for expenditures on the repair and reconstruction of public streets?"

Plaintiff claimed that because the proceeds of the "sales tax" may be used for municipal operations, David Orr, the Cook County Clerk, was statutorily required to submit the question of whether to impose the proposed taxes in "substantially the following form," pursuant to section 8-11-1.1(b) of the Code (65 ILCS 5/8-11-1.1(b) (West 2012)):

"Shall the corporate authorities of the municipality be authorized to levy a tax at a rate of (rate)% for expenditures on municipal operations, expenditures on public infrastructure, or property tax relief?"

The court agreed with the village that, because the proposed taxes at issue were to be used for expenditures on public infrastructure, specifically the "repair and reconstruction of public streets," and not municipal operations, they were not required to substantially follow the mandated statutory form.

"The plain language of the statute only requires the corporate authorities of the municipality to submit the referendum question in the mandated statutory form "if the proceeds of the tax may be used for municipal operations." Here, the proceeds of the tax are being used for expenditures on public infrastructure, specifically the repair and reconstruction of public streets. Accordingly, we conclude that the referendum question was not required to substantially comply with the form mandated by section 8-11-1.1(b)."