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Bondholders of the Lost Ark: Squire Patton Boggs

When most bond advisors think of the types of projects that bond proceeds may be used for, they think of roads, bridges, hospital or university buildings, etc. I think it is safe to say that very few bond advisors visualize an ark, let alone a replica of Noah's Ark. However, the City Council of Williamstown, Kentucky did just that. I guess that makes them visionary.

On December 23, 2013, the City of Williamstown issued $62,000,000 of Taxable Industrial Building Revenue Bonds (the "Bonds") to finance in part a "biblically-themed educational and entertainment complex, to include a replica of the Ark of Noah and related facilities". Per the Official Statement of the Bonds, which is available on EMMA-MSRB, the Bonds were issued under §§103.200 to 103.285 of the Kentucky Revised Statutes. In general, these provisions of Kentucky law permit cities and counties in Kentucky to issue industrial development bonds for projects that will promote economic development within the Commonwealth. So far so good, because successful theme parks most likely promote economic development in their surrounding communities.

When you delve into the details, however, it becomes a little less clear how the owner of the biblical theme park qualified under Kentucky law as a proper conduit borrower of the proceeds of these types of bonds. For example, the relevant provisions of the Kentucky Revised Statutes provide that a city or county may issue industrial development bonds in order to decrease the cost of purchasing or constructing "any industrial building or pollution control facility". The definition of "industrial building", interestingly, includes both facilities used by a nonprofit educational institution and a recreation or amusement park, which I assume is how the owner of a biblical theme park qualified to borrow the proceeds of the Bonds.

The biblical theme park is called Ark Encounters. Unlike the lost Ark of the Covenant in the well-known movie, "Raiders of the Lost Ark", this ark will not be hard to locate (it's also unlikely to melt the faces of those who peer inside). According to the website of Ark Encounters, the replica of Noah's Ark was built according to the dimensions given in the Bible, making it 510 feet long, 85 feet wide, and 51 feet high. This means it is about five stories high and almost as long as one-and-a-half football fields. According to the website, the ark is the largest timber-framed structure in the world. The ark apparently is full of exhibits, including displays of Noah's family and many cages containing animal replicas. Interestingly, at some point, Ark Encounters must have considered housing live animals in the ark, because one of the risk factors listed in the Official Statement for the Bonds is that the "animals that will be in the borrower's care will be important to the Project, and these animals could be exposed to infectious diseases". This is probably not a risk factor that shows up in too many Official Statements.

One obstacle that the owner of Ark Encounters encountered in building its theme park was uncertain financing. For example, the owner had received approval in May of 2011 for a tourism tax credit from the Kentucky Tourism Sales Tax Credit Program. The Official Statement for the Bonds, however, notes that this decision may be challenged as a violation of the Establishment Clause in the U.S. Constitution. (Although the interest on the Bonds is taxable from a federal income tax standpoint, the interest is exempt from Kentucky income tax.) The owner's concern in this regard was warranted, and on December 10, 2014, the owner's qualification for the tourism tax credit was

revoked at a cost of approximately $18 million. Apparently, the Kentucky officials were concerned that Ark Encounters had evolved from a tourism attraction to an extension of the owner's ministry, and had reason to believe that the owner intended to discriminate in hiring based upon religion.

Despite the financial uncertainty that the owner of Ark Encounters encountered, the biblical theme park opened a few weeks ago. That is good news for the bondholders of the lost ark, because the debt service on the Bonds will be paid from park revenues.

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