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Image Group of Toledo, Inc. v. Holland-Springfield Township Joint Economic Development Zone

Court of Appeals of Ohio, Sixth District, Lucas County - June 23, 2017 - N.E.3d - 2017 WL 2709811 - 2017 -Ohio- 4470

Taxpayers, which were businesses and an individual in a joint economic development zone formed by a township and village, brought action against zone, zone's board of directors, and township that had joined with a village to form the zone, challenging the zone's implementation of 1.5% income tax and seeking a declaratory judgment that the contract creating the zone was void.

The Court of Common Pleas found that taxpayers had standing, found that zone's creation met statutory requirements, and, in a second judgment upon reconsideration, found that the income tax imposed by the zone was invalid. Taxpayers appealed, and zone, zone's board of directors, and township cross-appealed.

The Court of Appeals held that:

- Taxpayers had standing to challenge zone's legality;
- Township and village agreed in their contract forming the zone to share the costs of improvements for the zone, as required by statute governing the formation of joint economic development zones;
- Zone complied with statutory requirements concerning the selection of its review council;
- Failure by township and village to provide for public inspection the addendum to zone's formation contract and zone's economic development plan for 30 days prior to a public hearing did not void zone's creation;
- Township's submission to county board of elections of a copy of the resolution that approved the formation of the zone satisfied statute governing the formation of joint economic development zones; and
- Township provided valid consideration to support the contract with village to form the zone.

Taxpayers, which were businesses and an individual in a joint economic development zone that had imposed a 1.5% income tax, had standing to challenge the zone's legality. The limited applicability of the zone's income tax was a discreet and particularized injury to taxpayers and others located within the zone that was different from that suffered by the public at large.

Township and village agreed in their contract that formed a joint economic development zone to share the costs of improvements for the zone, as required by the statute governing the formation of such zones, despite argument that it was acknowledged at a meeting of the township trustees that the village was only a partner for legislative purposes. Statute at issue defined "contributions" broadly to be any form to which the contracting parties agreed, and township and village agreed to the village's nominal contribution to engage in activities to promote, compliment, and benefit economic development in the zone as determined in the sole discretion of the village and agreed to village's possible contribution to maintenance and improvements to rights of way.

Under the statute allowing for the formation joint economic development zones, if new, expanded, or additional services, facilities, or improvements are part of the zone's economic development plan, a schedule for them must be included in the plan.

Any decision by the Court of Appeals as to taxpayers' appeal of the trial court's conclusion that the lack of scheduled new, expanded, or additional services, facilities, or improvements in a joint economic development zone, whose existence taxpayers were challenging, meant that none of the zone's income tax revenue had to be spent in the zone would have been purely advisory, and thus the Court of Appeals would decline to address the issue, where no income tax revenue had yet been collected.

Joint economic development zone between township and village complied with statutory requirements concerning the selection of its review council, where township administrator accessed publicly available information, consulted with the county auditor, and used her own experience from living in the area to ascertain the four largest employers, which had first chance at representation on the council under the statute governing joint economic development zones, one of the employers declined appointment to the council, another employer was unavailable to attend the meeting and failed to respond to future requests, the purportedly next largest employer failed to timely respond as to how many people it employed, and the next two employers in line accepted appointments.

Failure by township and village, which had formed a joint economic development zone, to provide for public inspection the addendum to zone's formation contract and zone's economic development plan for 30 days prior to a public hearing did not void the creation of the zone. Statute governing the formation of joint economic development zones did not require an additional 30 days of public inspection every time a change was made to the proposed contract forming a zone, and the formation contract, a description of the zone's boundaries of the zone, and the zone's economic development plan were available for public inspection for 30 days prior to a public hearing.

Township's submission to county board of elections of a copy of the resolution that approved the formation of a joint economic development zone with village satisfied statute that required each party to the formation of a zone to submit a copy of the ordinance or resolution approving the contract forming the zone to the county board of elections, despite argument that township did not submit with the resolution a copy of the contract with the village forming the zone; submission of a copy of the resolution was all that the statute required.

Township provided valid consideration to support the contract with village that formed a joint economic development zone with township, where township agreed under the contract to provide expanded public services beyond those that it was already providing and to provide for the construction and improvement of such roads in the township it deemed appropriate to provide an improved transportation network to benefit the zone.

Taxpayers, which were business and an individual located in a joint economic development zone that township and village had formed, lacked standing to challenge the adequacy of consideration of the township and village's contract forming the zone, where taxpayers were incidental beneficiaries to the contract.

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