

Bond Case Briefs

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BONDS - NEBRASKA

Salem Grain Company, Inc. v. City of Falls City

Supreme Court of Nebraska - March 22, 2019 - N.W.2d - 302 Neb. 548 - 2019 WL 1318449

Grain company brought action against city seeking declaratory judgment that redevelopment project was not planned or adopted in accordance with the Community Development Law, alleging that community redevelopment authority had violated Nebraska's Open Meetings Act (NOMA), and requesting a permanent injunction to prevent project from proceeding.

After most claims were dismissed on summary judgment, and following bench trial, the District Court dismissed remaining claims. Grain company appealed.

The Supreme Court held that:

- There is a narrow exemption from conclusive presumption of validity of bonds issued by a community redevelopment authority for actions challenging the validity and enforceability of bonds brought during the 30-day period after the bonds were authorized to be issued;
- Statute providing exception to conclusive presumption of validity of contracts executed or bonds issued by a community redevelopment authority did not also exempt actions already pending when contracts were executed or bonds were authorized from the presumption of validity;
- Conclusive presumption of validity of contract executed by and bonds issued by community redevelopment authority applied;
- Dinner attended by members of city's community redevelopment authority did not constitute a meeting to which NOMA applied; and
- E-mail communications between chairman of city's community redevelopment authority and other members of authority did not constitute a meeting to which NOMA applied.

Statute establishing conclusive presumption of validity of bonds issued by a community redevelopment authority if certain factual predicates were met was modified by statute applying the conclusive presumption 30 days after the bonds were authorized, such that there is a narrow exemption from conclusive presumption for actions challenging the validity and enforceability of the bonds brought during the 30-day period after the bonds were authorized to be issued.

Statute providing exception to conclusive presumption of validity of contracts executed or bonds issued by a community redevelopment authority for actions challenging the validity of the contracts or bonds that were brought within 30 days of bonds being authorized did not also exempt actions already pending when contracts were executed or bonds were authorized from the presumption of validity.

Conclusive presumption of validity of contract executed by and bonds issued by community redevelopment authority applied in grain company's action against city challenging validity and enforceability of bonds and contract for redevelopment project, pursuant to statutes providing such presumption and only providing an exception to the presumption for suits challenging validity of contracts and bonds that were filed within 30 days of contract being executed or bonds being issued, where grain company initially challenged validity of redevelopment project prior to factual

predicates for presumption to apply having been met, and grain company did not amend its complaint within 30 day period after contract was executed and bonds were issued that contained factual predicates to specifically challenge the contract and bonds.

Dinner attended by members of city's community redevelopment authority did not constitute a meeting to which Nebraska's Open Meetings Act (NOMA) applied; although company that sought funding for its redevelopment project gave a presentation during the dinner, no witness could recall the specifics of the presentation, and redevelopment authority members who attended testified that no business was discussed and that they did not rely on any information from the dinner to support their subsequent decisions during public meetings to approve the redevelopment project.

E-mail communications between chairman of city's community redevelopment authority and other members of authority regarding lawsuit against city challenging authority's redevelopment plan did not constitute a meeting to which Nebraska's Open Meetings Act (NOMA) applied, where purpose of the e-mail was to let authority members know of the suit and advise members that previously-approved redevelopment contract was being amended to disclose the litigation, but chairman was not seeking permission to take such actions, and chairman stated that he would schedule a special meeting if any members want to discuss or act upon the matters addressed in the e-mail.