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'Classic Conflict of Interest' Kills Stadium Bond Refinancing.

The county could forego $6.4 million in savings on the Talen Energy refinancing if it can't resolve a conflict with its financial advisor.

MEDIA — Delaware County Council failed to move on a $22.8 million refinancing on Talen Energy stadium construction funds after concerns about the financial advisor's "classic conflict of interest" arose, potentially relinquishing $6.4 million in savings.

By a 2-2 vote along party lines with Republican county council Chairman John McBlain abstaining, the motion to refund the 2009 bonds through an issuance of general obligation notes with the Delaware Valley Regional Finance Authority was deadlocked. Republican council members Colleen Morrone and Michael Culp voted in favor of the motion, while Democratic members Kevin Madden and Brian Zidek opposed it.

"Two to two, the motion fails, the savings are not realized," McBlain said immediately after the vote, followed by Madden's surprise at the comment, then his inquiry of county Solicitor Michael Maddren to review options for the county to receive counsel from another financial advisor than the one Delaware County uses — Calhoun Baker Inc.

"From my perspective, I'm concerned that this deal is rife with conflict of interest," Zidek said as he also expressed concern about the county's potential responsibility for termination rates.

With any refinancing, Delaware County is required to have two readings prior to a vote. The first reading of this occurred in March, when Zidek raised his concern that there was a conflict in Lucien B. Calhoun, president of Calhoun Baker Inc. serving as Delaware County's financial advisor and also serving as the program administrator for the Delaware Valley Regional Finance Authority, a position Calhoun has held since 1989.

To address this, Maddren was directed to hire outside counsel from Cozen O'Connor for $7,500 to do a memorandum regarding the situation.

Zidek read from that memo, stating, "Calhoun Baker's dual role as financial advisor to the county and program administrator for the Del Val loan program presents a classic conflict of interest. Calhoun Baker stands to benefit financially by advising the county to participate in the Del Val loan program."

Calhoun Baker is paid about 6.25 points for the gross process of a loan but if one is taken with the Delaware Valley Regional Finance Authority, it gets paid 20 basis points while waiving its 6.25 point fee.

"In terms of conflicts, I think the whole issue has been muddled," Calhoun said at the county council meeting. "Del Val is the conduit issuer. There's not a diversity of interests between Del Val and any participant in the loan program."

He added that the authority has 124 local governments from 12 counties with outstanding loans.

He also quoted an interpretive guidance issued by the Municipal Securities Rulemaking Board, stating, “It was not necessarily a conflict of interest for a municipal advisor to have dual representation of a conduit, an issuer such as Del Val and … the county of Delaware … And the reason for that is there is no diversity.”

Madden asked about having a third-party financial advisor look at the figures for the refinancing.

“I think that would be problematic for any other firm to come in and do that,” Calhoun said, adding that that advisor would have an inherent conflict of interest because of the potential incentive of getting Delaware County as a client with finding wrongdoing on Calhoun Baker’s part.

“This is in no way a personal matter,” Madden said. “I trust you as a person but structurally, I don’t trust the structure we have here.”

Calhoun then said, “I would resign. I would resign.”

In addition, Zidek said the Cozen O’Connor memo stated that the advisor would be required by federal securities laws to disclose their conflict to their client in such a situation, as Zidek said he hadn’t seen any disclosure.

McBlain said the relationship was apparent in Calhoun Baker’s 2014 agreement with the county “They disclose in that agreement that they are the program administrator for Del Val,” he said, adding that council had met with Calhoun last year to talk about various financings.

The chairman also noted that obtaining a Delaware Valley authority loan would have approximately $1.5 million in savings due to lower administrative costs, Calhoun Baker’s not taking a fee from the county if it goes with the authority and other fees such as bond issuer’s.

He added that the authority was specifically created by Chester, Delaware, Montgomery and Bucks counties to assist municipalities to do these types of financings at a lower rate for less cost.

Culp referenced this in his vote for the refinancing.

“I’m not going to risk a $6.4 million savings,” he said. “I don’t want Mr. (Calhoun) to have to resign … and we lose $6.4 million in savings and we’re back up here at square one again … I think my vote is with Mr. Calhoun. He’s been nothing but upfront with everything. He’s answered every question I’ve ever had. We’ve had great business dealings with him in the past. I know he works well with our staff. I don’t know how much longer we’re going to drag this out and not get the savings for our county residents.”

Zidek said, “One method of refinancing would be by doing the Del Val loan … and other ways would be to refinance by taking out bonds … It’s not zero or $6.5 million … The face of the matter is there is a structural conflict that exists here that I don’t feel comfortable waiving.”

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