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San Diegans for Open Government v. Public Facilities Financing Authority of City of San Diego

Court of Appeal, Fourth District, Division 1, California - June 30, 2020 - Not Reported in Cal.Rptr. - 2020 WL 3527338

On March 17, 2015, the City of San Diego and the Public Facilities Financing Authority issued 2015 Refunding Bonds.

On May 18, 2015, San Diegans for Open Government (SDOG) filed a reverse-validation complaint that challenged the validity of the Bonds based upon alleged conflicts of interest under section 1090. SDOG claimed that three financial institutions were hired for the Bond financing team, although those entities already acted as fiduciaries to the City on other financial matters, and the City would allow existing financial brokers to purchase the Bonds through a negotiated sale instead of through a public sale to the highest bidder.

As to standing, the Court of Appeals concluded that SDOG had standing under Government Code section 1092 (section 1092) to sue the city to invalidate the Bond Approvals and Bonds allegedly made in violation of section 1090.

The Supreme Court of California granted review and reversed the decision, holding that section 1092 did not provide plaintiff a private right of action because it was not a party to the contracts.

The Supreme Court remanded the case to decide what sort of relief SDOG was seeking and whether SDOG could proceed under section 526a or any other statutory provision.

The Bonds were issued and sold in May 2016. SDOG then stated that it no longer sought to enjoin issuance and sale of the Bonds, but sought instead disgorgement by the interested individual or individuals. The City responded that disgorgement would necessarily require voiding of the Bond Approvals and a declaration that the Bonds were void.

The Court of Appeals agreed, and concluded that SDOG had no standing to invalidate the Bond Approvals and Bonds. “In sum, when granting standing to taxpayers to challenge illegal or wasteful actions, the Legislature carved out an exception, choosing not to give taxpayers standing to enjoin the issuance, offer for sale or sale of municipal bonds. (§ 526a, subd. (b).) We conclude that this prohibition extends to any action that would result in invalidating bonds, regardless of the form of the action or the particular remedy sought.”

The Court of Appeals held that, “A declaration that the Bond Approvals and Bonds were null and void is equivalent to a restraint on the issuance and sale on the bonds, because it would invalidate the municipal backing of the Bonds, their essential feature, and thus is barred by section 526, subdivision (b).”

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