Bond Case Briefs

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Platte County v. UMB Bank, N.A., Trustee of Transportation Refunding and Improvement Bonds (Zona Rosa Retail Project) Series, 2007

Missouri Court of Appeals, Western District - August 25, 2020 - S.W.3d - 2020 WL 4941592

In October, 2007, the Industrial Development Authority of Platte County ("Development Authority") issued the Zona Rosa Bonds in the amount of $32,200,000. The Zona Rosa Bonds provided funding for the construction of parking garages at an outdoor shopping mall located in Platte County, Missouri. The Zona Rosa Bonds are revenue bonds.

Subsequently, Trustee sent the County written notice of default under the Financing Agreement and threatened to sue the County unless it issued a binding written commitment to pay the revenue shortfall on the debt service.

In connection with the issuance of the Zona Rosa Bonds, the Development Authority executed the Trust Indenture with Trustee and the Financing Agreement with the County, and Platte County, Missouri South Transportation Development District I and District II ("Districts I and II"). Pursuant to the Trust Indenture, Trustee agreed to undertake certain duties and responsibilities as corporate trustee of the Zona Rosa Bonds and represents the interests of the holders of the Zona Rosa Bonds ("Bondholders"). Under the terms of the Trust Indenture and the Financing Agreement, the Development Authority assigned its rights under the Financing Agreement to Trustee.

Districts I and II are special taxing districts formed under state law to support transportation-related retail projects like the parking garages at Zona Rosa. Pursuant to the Financing Agreement, the Zona Rosa Bonds are paid from revenues generated by a 1% sales tax collected by Districts I and II on retail sales within their respective boundaries, which includes Zona Rosa. The County does not control or operate Districts I or II. Instead, Districts I and II are distinct legal entities that collect the 1% sales tax at Zona Rosa.

Article II of the Financing Agreement outlines the obligations of the County, which provides:

Section 2.2. Annual Appropriations. The County intends, on or before the last day of each Fiscal Year, to budget and appropriate, specifically with respect to this Agreement, moneys sufficient to pay the Appropriation Amount for the next succeeding Fiscal Year. The County shall deliver written notice to the Trustee no later than 15 days after the commencement of its Fiscal Year stating ***whether or not the County Commission has appropriated funds*** in an amount equal to the Appropriation Amount estimated to become due during such Fiscal Year. Notwithstanding any provision in the Indenture or herein to the contrary, if the Letter of Credit is in effect, the parties hereto agree that such Letter of Credit shall be drawn on prior to any payment of the Appropriation Amount by the County.

Section 2.3. Annual Budget Request. The County further covenants that its responsible financial officer3 shall do all things lawful within his power to obtain and maintain funds from which the

Appropriation Amount may be paid, including making provision for such payments to the extent necessary in each proposed budget or appropriation request submitted for adoption in accordance with applicable provisions of law and to exhaust all available reviews and appeals in the event such portion of the budget or appropriation request is not approved; ***it being the intention of the County that the decision to appropriate or not to appropriate under this Agreement shall be made solely by the County Commission*** and not by any other official of the County.

Section 2.4. Appropriation to Constitute Current Expenses. The parties hereto acknowledge and agree that the Appropriation Amount shall constitute currently budgeted expenditures of the County ***and shall not in any way be construed or interpreted as creating a liability or a general obligation or debt of the County*** in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, ***nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of [the] County***. The County's obligations under this Agreement shall be from year to year only, and shall not constitute a mandatory payment obligation of the County in any ensuing Fiscal Year beyond the then current Fiscal Year.

The court concluded that, "The plain and ordinary meaning of the language used in these provisions supports the trial court's Judgment that the Financing Agreement does not contain a promise by the County to pay on the Zona Rosa Bonds."

The court then turned to Trustee's contention that the County had a moral obligation to pay the revenue shortfall on the debt service.

> A moral obligation is a form of credit enhancement typically provided by a government to another entity. Generally, a highly credit-worthy government pledges its 'moral obligation' to enhance a specific borrowing by a government of lesser credit quality. The debt is usually issued by a separate government entity, and the morally obligated government typically pledges to consider appropriating funds to replenish a debt service reserve that has been drawn upon. Creditor recourse in the event of non-payment is very limited for moral obligations, which, as the name suggests, are based more on good faith and a belief in market discipline than on legally enforceable covenants…. The moral obligation pledge is neither a guarantee to pay debt service or replenish a debt service reserve, nor is it a legal obligation to seek appropriation to pay for debt service or refill a reserve. Rather, it is the declaration that the pledging entity intends to support the debt with appropriations and will consider providing funding under certain circumstances…. While a moral obligation is weaker than a legal obligation to pay debt service, the entity providing the moral obligation pledge is signaling its support for the transaction to investors. Therefore, as with lease-backed obligations and non-lease annual appropriation obligations, the failure of a government to honor its moral obligation commitment is generally an indicator of severe stress that would likely result in negative rating action on the government's [general obligation] rating. Similarly, in weighing the decision whether or not to honor a moral obligation, governments typically consider the market impact of the decision. The potential impact is usually sufficient to motivate the government to make the moral obligation appropriation, absent severe stress.

The court concluded that, "County did not promise to use best or reasonable efforts to pay, County did not promise to pay at all. It is undisputed that the Zona Rosa Bonds are revenue bonds to be paid from the 1% sales tax collected by Districts I and II. A Letter of Credit was also in place as was a Reserve Fund. Under the express and plain terms of the Financing Agreement, the County was never obligated to pay the shortfall on the Zona Rosa Bonds."