

Bond Case Briefs

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BONDS - ALASKA

Forrer v. State

Supreme Court of Alaska - September 4, 2020 - P.3d - 2020 WL 5269487

Taxpayer brought action against the State and the Commissioner of the Department of Revenue in his official capacity, seeking declaratory and injunctive relief on the grounds that bonding scheme in statute creating public corporation capable of borrowing up to \$1 billion through the issuance of subject-to-appropriation bonds to purchase outstanding oil and gas exploration tax credits violated state constitution.

The Superior Court granted State's motion to dismiss for failure to state a claim, and taxpayer appealed.

The Supreme Court held that:

- State's submission of statutory history materials not in the pleadings did not require court to convert motion to dismiss into motion for summary judgment;
- Scheme violated state constitution's prohibition against state debt absent ratification by the voters;
- Scheme did not limit recourse to the leased property;
- Scheme improperly created long-term obligation binding future generations or Legislatures;
- Scheme was not merely refunding indebtedness of the state;
- Scheme did not permissibly establish revenue bonds; and
- Scheme was unconstitutional in its entirety.

State's submission of statutory history materials not in the pleadings did not require court to convert motion to dismiss into motion for summary judgment, although court did not take judicial notice of the history materials; complaint itself relied upon legislative history, and legislative history was publicly available.

Bonding scheme in statute creating public corporation capable of borrowing up to \$1 billion through the issuance of subject-to-appropriation bonds to purchase outstanding oil and gas exploration tax credits violated state constitution's prohibition against state debt absent ratification by the voters.

Bonding scheme in statute creating public corporation capable of borrowing up to \$1 billion through the issuance of subject-to-appropriation bonds to purchase outstanding oil and gas exploration tax credits did not limit recourse to the leased property, as required pursuant to test of *Carr-Gottstein Properties v. State*, 899 P.2d 136, to determine whether a lease-purchase agreement is permissible under state constitution's debt limitation provisions; rather, bondholders' sole recourse was to legislatively appropriated funds, held by the corporation.

Bonding scheme in statute creating public corporation capable of borrowing up to \$1 billion through the issuance of subject-to-appropriation bonds to purchase outstanding oil and gas exploration tax credits created long-term obligation binding future generations or Legislatures, and thus violated test of *Carr-Gottstein Properties v. State*, 899 P.2d 136, for determining whether a lease-purchase agreement is permissible under state constitution's debt limitation provisions; corporation's sole

function was to borrow money over several years to facilitate the purchase of existing oil and gas tax credits rather than permit those credits to be applied to future oil production taxes, and scheme's very purpose was to create a long-term obligation even though there was none previously.

Bonding scheme in statute creating public corporation capable of borrowing up to \$1 billion through the issuance of subject-to-appropriation bonds to purchase outstanding oil and gas exploration tax credits was not merely refunding indebtedness of the state within exception to state constitution's prohibition against incurring debt without referendum.

Bonding scheme in statute creating public corporation capable of borrowing up to \$1 billion through the issuance of subject-to-appropriation bonds to purchase outstanding oil and gas exploration tax credits did not establish revenue bonds within meaning of constitutional provision stating that restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public corporation; proposed corporation would have no actual revenues, and thus bonds were not tied to any self-sustaining enterprise, but rather bond payments would be made solely from annual legislative appropriations.

Subject-to-appropriation bonds are not revenue bonds under constitutional provision stating that restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public enterprise or public corporation.

Bonding scheme in statute creating public corporation capable of borrowing up to \$1 billion through the issuance of subject-to-appropriation bonds to purchase outstanding oil and gas exploration tax credits was unconstitutional in its entirety, as subject-to-appropriation bonds, which violated state constitution's debt restrictions, was the central pillar around which other minor provisions were erected; although scheme accomplished more than just establishing a corporation for issuing subject-to-appropriation bonds, those other provisions were inexorably linked to the proposed bonds, and legislation contained no express saving clause.