

Bond Case Briefs

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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 - April 19, 2021 - Cal.Rptr.3d - 2021
WL 1525877**

In order to fund construction of an underground parking garage and other improvements in Balboa Park, the City of San Diego entered into a “lease revenue bond” transaction. For a nominal fee, the City would lease the land underlying the improvements to the Public Facilities Financing Authority of the City of San Diego (Financing Authority). The Financing Authority, in turn, would lease the land and improvements back to the City in exchange for annual payments. The Financing Authority would issue bonds to fund construction of the improvements, secured by the City’s annual lease payments to the Financing Authority. In the event of default by the Financing Authority, any recourse by the bondholders would be limited to collection of the City’s lease payments. This type of transaction was approved by the California Supreme Court in *Rider v. City of San Diego* (1998) 18 Cal.4th 1035, 77 Cal.Rptr.2d 189, 959 P.2d 347 (Rider) and by California Court of Appeal in *San Diegans for Open Government v. City of San Diego* (2015) 242 Cal.App.4th 416, 195 Cal.Rptr.3d 133 (SanDOG).

In *Rider*, the California Supreme Court explained that a joint powers agency, like the Financing Authority, has the power under state law to issue bonds in its own name. It therefore need not comply with the limitations that would apply to City-issued bonds, such as voter approval: “[W]hen the Financing Authority issues bonds, it does so independently of any common powers delegated in the joint powers agreement, and therefore it is not subject to the limitations that would apply to the City, including the two-thirds vote requirements in the [California] Constitution and the City’s charter.”

In *SanDOG*, the Court of Appeal followed *Rider* even where, as here, the Financing Authority is under the control of the City. The Court explained, “Rider made clear that for purposes of the debt limitation provisions, when a financing authority created to issue bonds ‘has a genuine separate existence from the City,’ ‘it does not matter whether or not the City ‘essentially controls’ the financing authority.”

After *Rider* and *SanDOG*, San Diego voters approved several amendments to the San Diego City Charter regarding bond issuance. Plaintiff San Diegans for Open Government (SanDOG) challenged the Balboa Park lease revenue bond transaction based on these amendments. In SanDOG’s view, one newly-amended provision restricts the ability of the City to use the Financing Authority to issue bonds without voter approval.

The parties disputed whether the newly-amended section 90.1 applied to lease revenue bonds issued by the Financing Authority. SanDOG contended that section 90.1 applies to revenue bonds, including those issued by the Financing Authority, and lease revenue bonds are a type of revenue bond. SanDOG argued that the Financing Authority’s lease revenue bonds are impermissible because they violate section 90.1’s two conditions, that the bonds not be “payable from the general fund” and that

they be used “for the construction, reconstruction or replacement of water facilities, wastewater facilities, or stormwater facilities.” The City and the Financing Authority, by contrast, contended that section 90.1’s limitations do not apply to the Financing Authority. Even if they did, they argue that the “revenue bonds” described in the section do not encompass the “lease revenue bonds” at issue here.

The trial court disagreed with SanDOG’s position and the Court of Appeal affirmed the court’s judgment on this issue.

The Court of Appeal found that the provision in question reflects a limitation on City-issued bonds; it does not cover bonds issued by the Financing Authority. Moreover, even if the provision were not limited to City-issued bonds, it would not cover the lease revenue bonds contemplated here. “In sum, we conclude section 90.1 does not apply to lease revenue bonds issued by the Financing Authority. The plain language does not unambiguously encompass such bonds, and the ballot materials make clear that the voters intended section 90.1 to have a limited scope. The type of financial transaction at issue here, approved in Rider and SanDOG, is not prohibited by the 2016 amendments to the San Diego City Charter.”