

Bond Case Briefs

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BOND VALIDATION - VERMONT

Soares v. Barnet Fire District #2

Supreme Court of Vermont - July 22, 2022 - A.3d - 2022 WL 2898896 - 2022 VT 34

Plaintiff brought action against fire district and municipal bond bank, challenging approval of municipal bond for loan to acquire fire district's private water system and secure state funding for its rehabilitation.

The Superior Court ruled on partial summary judgment and, following two-day trial, entered declaratory judgment for plaintiff but denied request to invalidate the bond vote, denied motion for reconsideration, and denied motion for attorney's fees. Plaintiff appealed.

The Supreme Court held that:

- Defects in bond approval procedure were subsequently cured by the committee's validation resolution;
- Open Meeting Law provision allowing attorney's fees did not apply retroactively; and
- Committee had authority to charge curb-stop fee.

Defects in procedure which fire district used to obtain approval for municipal bond for loan to acquire fire district's private water system and secure state funding for its rehabilitation, including failing to properly adopt a necessity resolution at a meeting before the bond vote and adopting warning and proposal for a bond vote at a districtwide meeting rather than at a prudential committee meeting, were the result of oversight, inadvertence, and mistake which were subsequently cured by the committee's validation resolution; committee consistently attempted to promote the interests underlying the Open Meeting Law and it acted in a transparent way throughout the process, and validation statute did not contain any exception for Open Meeting Law violations.

Plaintiff failed to establish on appeal that trial court, in action challenging approval of municipal bond, erred by failing to explicitly address his request for a new trial, in which he sought admit into evidence an exhibit and related testimony that was offered at trial as proof of the harm caused to him and the fire district community by violations of the Open Meeting Law; while plaintiff referenced evidence and testimony that the trial court apparently excluded at trial, he provided no transcript of the proceedings below and the Supreme Court had no record on which to evaluate his claim that the trial court should have admitted such evidence.

Open Meeting Law provision allowing attorney's fees did not apply retroactively to fire district committee's violation of the Law while approving municipal bond; provision was not solely remedial or procedural, but created a substantive change in the law by setting forth a process by which municipalities could become obligated to pay attorney's fees for violations of the Open Meeting Law where they had no such exposure before, and including a process by which municipalities could avoid such obligations, and it would be unfair to apply it to support an award of attorney's fees when committee had no ability to take the steps to avoid liability under the statute.

Fire district's prudential committee had authority, when approving municipal bond for loan to acquire fire district's private water system and secure state funding for its rehabilitation, to charge curb-stop fee; statutory authority to require existing customers to remain connected to the municipal water system necessarily encompassed the power to charge a fee to those who seek to leave that system.