

Bond Case Briefs

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SCHOOL IMPACT FEES - NORTH CAROLINA

Zander v. Orange County, NC

Court of Appeals of North Carolina - July 5, 2023 - S.E.2d - 2023 WL 4339347

Plaintiffs appealed from a summary judgment order dismissing their class action complaint brought against Defendants Orange County (County) and the Town of Chapel Hill¹ on behalf of persons: (1) who were assessed allegedly ultra vires school impact fees by the County (the “Feepayer Class”); or (2) who are allegedly entitled to a refund of some school impact fees due to a 2016 change in the fee schedule (the “Refund Class”).

Plaintiffs filed a complaint alleging, inter alia, that the County failed to comply with the Enabling Act’s fee-setting provisions and the fees were thus ultra vires.

TischlerBise, the County’s consultant included the following costs as “capital improvements” in drafting the 2007 Studies that served as the basis of the fees: (1) construction; (2) land acquisition; (3) portable/temporary classrooms; (4) support facilities; (5) buses; and (6) TischlerBise’s consulting fee.

The court held that “buses and TischlerBise’s consultant fees are not ‘capital improvements to ... schools’ because they are not themselves ‘capital improvements’ as the word is ordinarily understood. A bus and a consultant’s report simply are not ‘acqui[sitions] [of] or improve[ments] [to] a fixed asset.’”

The Court of Appeals held that:

- The County unlawfully included some costs not authorized by statute in calculating the impact fees and hold that the Feepayer Class is entitled to recoup the portion of the school impact fees that were assessed to cover those improper costs; and
- As to the Refund Class, the trial court properly granted summary judgment for the County because the forecast of evidence demonstrated that no refunds were owed under the applicable ordinance.