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PUBLIC FINANCE - NORTH DAKOTA

East Central Water District v. City of Grand Forks

Supreme Court of North Dakota - July 5, 2024 - N.W.3d - 2024 WL 3308359 - 2024 ND 135

Water district brought federal action against city seeking, in part, a declaration that a water supply and service agreement with city was void ab initio due to absence of a public lending authority as a party to agreement.

The United States District Court for the District of North Dakota certified questions.

The Supreme Court held that:

- Supreme Court would exercise its discretion and answer certified questions, and
- As matter of first impression, failure to include public lending authority in a service agreement between political subdivisions makes the agreement void, not voidable.

Supreme Court would exercise its discretion and answer certified questions from federal court as to whether the failure to include the public lending authority that finances the construction of acquisition of an improvement in a service agreement between political subdivisions makes the agreement void or voidable pursuant to state statute governing protection of service during term of a loan, where interpretation of statute was a matter of first impression, and resolution of the questions of law could have been determinative of the matter, which involved a water supply and service agreement between city and water district.

Statutory language “invalid and unenforceable,” in statute providing that the failure to include the public lending authority that finances the construction or acquisition of an improvement for a service as a party to an agreement between political subdivisions for the provision of the service makes the agreement invalid and unenforceable, means void ab initio, not voidable and capable of ratification.