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SALE LEASEBACK - INDIANA

Luebke v. Indiana Department of Local Government Finance

Tax Court of Indiana - September 13, 2024 - N.E.3d - 2024 WL 4182290

Coalition of Allen County taxpayers objected to the Allen County Board of Commissioners' plan to build a new jail, challenging the legality of a lease approved by the Department of Local Government Finance (the "DLGF").

The new jail was projected to take at least three years to build, with an estimated cost of roughly $320 million. The Commissioners undertook several steps to move this project forward. For instance, they established the "Allen County, Indiana Building Corporation" to assist the County in financing its facilities by acquiring, owning, constructing, renovating, and leasing both existing and new county buildings. In addition, they planned to convey the historic Courthouse to this newly formed entity, which would then lease the property back to the County during the new jail's construction. The sale-leaseback plan for the Courthouse sought to reduce overall costs by avoiding approximately $28 million in capitalized interest expenses during the initial construction period, thereby lowering the lease payments for the new jail. The Building Corporation and the Commissioners executed a lease-purchase agreement ("the Lease") to implement the sale-leaseback plan and formalize the terms for leasing the new jail.

The objecting taxpayers contended that the lease was unlawful because the statutory framework for county leases did not permit the sale-leaseback of historical buildings long owned by the county, such as the Allen County Courthouse. They further argued that the jail's construction could not proceed because the resolution lacked the statutorily required determination of need for the Courthouse sale-leaseback.

The Commissioners argued that the taxpayers had not established an injury sufficient to confer standing because they had focused solely on the use of the Courthouse as a financing method for the new jail and that and that the lease and resolution comply with the law.

The Tax Court affirmed the final determination of the DLGF, holding that:

- The objecting taxpayers had standing to challenge the lease and the resolution; but
- The lease was legally valid under Indiana Code section 36-1-10-7(c).

"The Commissioners suggest that the Objectors have not been injured by the sale-leaseback of the Courthouse, when viewed as a separate, unrelated transaction from the jail project. However, they have provided no reason to consider these transactions in isolation. On the contrary, the Commissioners have consistently emphasized that the sale-leaseback of the Courthouse is integral to the new jail project. Indeed, the sale-leaseback is designed to generate revenue that will reduce lease payments by avoiding millions in capitalized interest during the new jail's construction. This demonstrates that the construction of the new jail and the sale-leaseback of the Courthouse are inherently interrelated, with the financing and execution of one directly impacting and supporting the other."

“An examination of the relationship between the sale-leaseback of the Courthouse and the new jail project confirms the Objectors’ standing in this case. The sale-leaseback of the Courthouse is a means of funding the new jail project that directly impacts each of the Objectors individually as taxpayers and property owners. The Commissioners and the Building Corporation executed a single lease encompassing both the Courthouse and the new jail, creating a unified funding structure. The sale-leaseback is not merely an isolated transaction, but plays a critical role in generating substantial revenue to reduce the overall financial burden on other funding sources. The funds required to cover lease payments are sourced from the Jail LIT, economic development revenues from a local income tax and, if necessary, the County’s property tax. Without this revenue stream, any shortfall would likely be offset by increasing reliance on the Jail LIT, economic development funds, or property taxes, directly affecting the taxpayer Objectors. Thus, the sale-leaseback and new jail project are not just parallel transactions, but form an interdependent funding framework that materially impacts the taxpayers and property owners of Allen County.”

“The Commissioners’ own arguments demonstrate that the sale-leaseback of the Courthouse is designed solely to fund the new jail project. Similarly, the Objectors challenge to the legality of the sale-leaseback, inherently involves the entire financing structure, which directly relies on taxpayer contributions, including the Jail LIT and potentially the County’s property tax. As taxpayers and property owners, the Objectors are directly impacted by the commitment of their tax liabilities in support of this funding arrangement. Thus, their challenge is not just to the isolated transaction of the sale-leaseback of the Courthouse, but to a funding scheme that imposes a personal and imminent financial burden. Consequently, the Court finds that this impact constitutes a personal and direct injury, satisfying the requirement for standing.”