

Illinois Appellate Court Renders Decision on Premium Bonds

On June 22, 2012, the Second District Illinois Appellate Court entered a ruling affirming the judgment of the DuPage County Circuit Court awarding summary judgment in favor of Elgin Community College District No. 509, thereby striking down plaintiffs'/tax objectors' allegations that the District had issued certain of its bonds at excessive interest rates and with an unlawful premium.

Background

On April 7, 2009, voters in Elgin Community College District No. 509 (the "*District*") passed a referendum approving the issuance of bonds to the amount of \$41 million for various building projects. Pursuant to the referendum approval, the District issued bonds in two separate series: \$13 million at an interest rate of 7% and \$8 million at an interest rate of 9%. In each case, the sale of the bonds resulted in a premium, causing the District to receive \$2,584,108.90 more than the \$21 million par amount of the bonds.

In a complaint before the DuPage County Circuit Court, the tax objectors questioned the validity of the bonds, arguing that the District intentionally issued them at artificially high interest rates to generate bids in excess of the par value of the bonds. According to the tax objectors, the District was obligated to issue its bonds at the lowest interest rates possible. For this proposition, they pointed to language in the "Findings" section of the Registered Bond Act (30 ILCS 310/3(b)) which states that "[i]t is in the best interests of the citizens of this State that the bonds or other evidences of indebtedness of public corporations be issuable in registered form to be sold at the lowest rate possible." They argued that the District had violated its obligation to issue its bonds at the lowest possible rates.

The District countered that relevant controlling statutes authorized the interest rates at which it had issued the bonds. It cited the Local Government Debt Reform Act (30 ILCS 350/10), which states that bonds must bear "rates as authorized under applicable law," the Public

Community College Act (110 ILCS 805/3A-1), which states that interest rates on bonds may not "exceed the maximum rate authorized by the Bond Authorization Act," and, finally, the Bond Authorization Act (30 ILCS 305/2), which states that interest rates on bonds generally may not exceed 9% per annum. The District argued that these provisions gave it the authority to issue bonds at any interest rate, including at a premium, so long as it did not exceed the 9% ceiling.

Analysis and Ruling

The Appellate Court, in agreeing with the lower court's decision, held that the District was authorized to issue bonds at 7% and 9%, respectively, even if these rates generated a premium. The Court noted that the Public Community College Act explicitly allows community college districts to fund building projects by issuing bonds at a rate not greater than the rate authorized by the Bond Authorization Act, which generally permits a maximum interest rate of 9%. The Court held that a plain reading of the applicable statutes gave the District authority to issue bonds at any rate so long as it did not exceed the 9% ceiling.

The Court acknowledged that the Findings section of the Registered Bond Act does indicate that bonds should be sold at the lowest possible rate. However, the Court determined that that section is subordinate to the bond and interest rate authorization found in the Public Community College Act. Furthermore, the Court stated that the Findings section is intended only to state the

general reasons for legislative enactment and does not mandate a particular action.

Finally, the Appellate Court reviewed the tax objectors' argument that the District had a fiduciary duty to its taxpayers, which was breached when it issued bonds with interest rates above the lowest possible rates. The Court rejected the argument because the interest rate on the

bonds did not exceed the maximum 9% rate generally authorized in the Bond Authorization Act. The Court ruled that so long as the District did not exceed the maximum allowable interest rate, there was no duty to issue the bonds at the lowest possible rate.

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