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Working Cash Bonds for Building Projects Approved in Second District

The Illinois Appellate Court, Second District, in the case of *1001 Ogden Avenue Partners v. Henry*, has given school districts a major victory in the on-going battle against one of the most persistent arguments made in tax rate objections.

Illinois school districts often need to raise money to pay for capital projects in amounts which cannot be funded through normal operating revenues. This can be through the issuance of bonds, borrowing money which is paid off over a period of years. The law specifies several different kinds of school district bonds and the mechanism for obtaining the authority to issue them differs with each kind of bond. Some bonds always require voter approval, some only have to be submitted to referendum upon filing of a petition signed by a particular number of registered voters ("back door referendum"), and some do not need voter approval at all. Working cash bonds fall into

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the middle category, requiring voter approval only upon proper petition. Once working cash bonds have been issued, the money in the working cash fund may be used for many purposes, including short-term inter-fund loans. But working cash moneys may also be transferred to other district funds on a permanent basis. It has long been the practice of school districts throughout the State to issue working cash bonds and then use the proceeds to finance various types of building projects short of building a new school.

Over the last several years, however, taxpayers in multiple counties have been filing rate objections alleging that the School Code and the Property Tax Code do not permit the issuance of non-referendum bonds, such as those for working cash, if the school district intends to use those bonds to finance any kind of building project. The objectors have contended that direct referendum approval of “building bonds” is the exclusive means for financing building-related projects, regardless of the scope or size of the project.

This issue has been actively litigated for several years in both the Cook County and the DuPage County Circuit Courts. The DuPage Court ruled against the objectors in September 2016. Upon the

appeal of that decision, the Second District of the Appellate Court issued a unanimous opinion on September 21 which held that, where a school district complies with all of the statutory steps mandated in Article 20 of the School Code for the issuance of working cash bonds, then it need not also seek voter approval as required under Article 19 for building bonds, even though the district has indicated its intent to use the bonds to finance building projects. The court explained that the School Code permits working cash bonds to be used for any "corporate purpose" and that capital projects – such as the roof maintenance, carpet replacement, ceiling repair, and door and toilet replacements done by one of the districts in this case – fit the broad definition of that term. Although Article 19 building bonds, which always require voter approval, may be issued for the "building, equipping, altering or repairing [of] school buildings or purchasing or improving school sites", the legislature did not intend for Article 19 bonds to be the exclusive means of financing any and all projects which meet this description. While there is some overlap in the purpose for which Article 19 building bonds and Article 20 working cash bonds may be used, the two provisions include different tax and borrowing limitations and different procedures. Thus, as a

practical matter, school districts cannot use working cash bonds for the largest capital projects, such as building a new school. (Besides the amount of money required to build a completely new school building, the School Code expressly requires a referendum for that purpose.) Finally, despite the assertions by the objectors that the districts had been "fraudulent" and "hid" their true intent in order to "scam" the public, the Court found that, by complying with all of the notice and hearing requirements of several different statutory provisions, the districts had provided the taxpayers with ample opportunity to pose any questions they had or to submit petitions requesting a referendum.

The consequences of a court decision going the other way can hardly be overstated. Not only would those school districts with pending objections of this sort (and there are scores of those) face the prospect of losing millions of dollars in revenue through tax refunds, no school district in the future would be able to finance even the most routine capital projects without waiting for voter approval.

Nonetheless, this opinion may not end the dispute. First, the DuPage County objectors in the *1001 Ogden Avenue Partners* case

may seek a rehearing in the Appellate Court, review by the Illinois Supreme Court, or both. Further, the Cook County objectors have their own objections still pending and are expected to continue to pursue their remedies there, possibly to the First District of the Appellate Court. But the decision last week from the Second District Court is the first ruling on that level and hopefully indicates how this important school finance dispute will ultimately be resolved.

If you have questions about this topic, or tax rate objections generally, please contact one of our attorneys in Oak Brook (630.928.1200) or Flossmoor (708.799.6766).

Extended Leave Not a

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"Reasonable Accommodation" Under ADA

Employees who have exhausted their right to paid sick leave and unpaid leave under the Family and Medical Leave Act ("FMLA") often request additional unpaid leave as a "reasonable accommodation" due them under the Americans with Disabilities Act ("ADA"). Now, the United States 7th Circuit Court of Appeals, whose jurisdiction includes Illinois, has taken an important step in defining the parameters of an employer's obligation to provide such leave under those circumstances. In *Severson v. Heartland Wood Craft, Inc.*, the Court ruled that the ADA did not require that an employer grant an employee a multi-month period leave to recover from surgery which would have extended beyond the employee's 12-week period statutory leave period under the FMLA.

In *Severson*, the employee, who suffered from debilitating spinal impairments, properly exercised his right to the 12-week FMLA leave. Before his FMLA leave was scheduled to expire, the employee requested that he be given an additional 3-month leave

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to recuperate from surgery as a reasonable accommodation. The employer refused his request and terminated him at the conclusion of his FMLA leave, but invited the employee to reapply for work once he had recovered from surgery. Rather than re-apply, the employee filed suit alleging that the employer violated the ADA because, among other things, it failed to reasonably accommodate his disability. The U.S. District Court rejected the employee's claim and granted judgment in favor of the employer. The Court of Appeals agreed with the District Court and upheld its decision.

The Court of Appeals examined the language of the ADA and concluded that a "reasonable accommodation" was "one that allowed a disabled employee to perform the essential functions of the employment position." Based on this understanding, the Court held that if the accommodation does not make it possible for the employee to return to work, the employee is not a "qualified individual" within the meaning of the ADA, and therefore could not prevail in a lawsuit against an employer. Simply put, the Court of Appeals decided that the employee was not denied a "reasonable accommodation" because the accommodation he sought was more time off of work, not an

accommodation that would permit him to do his job. However, the Court distinguished "long-term" leave from intermittent time off and short-term leave of "a couple of days or even a couple of weeks", which might be considered a reasonable accommodation under some circumstances.

The Court of Appeals also rejected the employee's argument that he should have been allowed to take a vacant position with the employer that arose after he was terminated. Instead, the Court of Appeals decided that the employer's duty to provide alternative employment as an accommodation meant that the alternative position had to exist at the time of the employee's termination. In other words, the ADA does not require an employer to create a new job for the employee or remove the important duties of a currently existing job to accommodate an employee.

Severson is an important case because, while it confirms an employer's duty under the ADA to accommodate a disabled employee, it makes it clear that the employer's duty cannot be converted into a right to a multi-month extension of leave beyond the 12-week period set forth in the FMLA.

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If you have any questions concerning how *Severson* may apply to your employees, please contact our attorneys at our Flossmoor Office at 708-799-6766, or our Oak Brook Office at 630-928-1200.

Tax Rate Limit for Educational Fund Lifted in Tax-Capped Counties

Another of the provisions contained in the school funding legislation signed into law by Governor Rauner on August 31, 2017, (known as SB 1947, or Public Act 100-465) which has not received much attention in the media is the removal of the specific rate limit for Educational Fund levy for all school districts subject to the Property Tax Extension Limitation Act (PTELL or the "tax cap"). This new provision was added as Section 17-3.6 of the School Code. Since the Educational Fund

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can be used for any purpose, this action should give tax-capped school districts much more flexibility in the use of precious property tax revenues.

Some history is helpful in understanding the significance of this legislation. Prior to PTELL (and still in those counties not subject to PTELL), school district tax levies in all of the major operating funds were subject to specific rate limitations, defined as a percentage of the district's equalized assessed valuation (EAV). Those rate limits varied from district to district and could be increased by referendum, but there was a cap on the Educational Fund. Even with voter approval, an elementary or high school district's Educational Fund tax rate could not be higher than 3.50%, or 4.00% in unit districts. As the tax cap first came into play in the 1990s for most districts, each district's local rate limits carried over, so there were individual rate limits within the overall limiting rate for the aggregate levy established under the PTELL formula. However, the aggregate PTELL limiting rate floated up or down in inverse relation to the district's EAV, while the individual rate limits remained fixed as a percentage of EAV. In 2006, the Property Tax Code was amended to allow tax-capped

districts to maximize their rate limits without a referendum, meaning that all such districts could levy in their Educational Fund up to 3.50% or 4.00% of EAV.

Then the Great Recession of 2008-09 hit, bringing with it historic drops in property values and sinking EAVs. The effect of this was that, while PTELL's floating limiting rate protected a district's aggregate property tax revenues, the fixed Educational Fund rate limit prevented many districts from levying enough in the one school fund where districts needed the money most. To meet this challenge, many districts levied more in the unlimited Transportation Fund and then transferred those revenues to the Educational Fund later, but this was never a satisfactory solution and last year's transportation "Lockbox" constitutional amendment raised real issues concerning the transferability of those revenues.

SB 1947's elimination of the Educational Fund rate limit for school districts in tax-capped counties solves this problem. Districts can now levy whatever portion of their aggregate tax levy in the Educational Fund which they need to. And since Educational Fund revenues can effectively be used for any school district purpose, this provides much more flexibility in the use

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and management of the district's funds. ***School boards and school administrators should keep this in mind when preparing this year's and future years' proposed levies.***

The lifting of the Educational Fund tax rate limit will not bring more money to tax-capped school districts, but it is designed to allow those districts to put their tax moneys where it can be most effectively used to accomplish the district's goals. Levies should be prepared to take advantage of this new authority.

If you have questions about this topic, or any provision within SB 1947, please contact one of our attorneys in Oak Brook (630.928.1200) or Flossmoor (708.799.6766).

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Mandate Relief to Illinois School Districts

One of the lesser known aspects of the school funding legislation signed into law by Governor Rauner on August 31, 2017, (known as SB 1947, or Public Act 100-465) is that it provides much-needed relief from some of the mandates historically imposed upon school districts statewide. Importantly, the School Code previously permitted waivers of mandates only when they were necessary to stimulate innovation or improve student performance. Under the new law, a waiver may be granted if a school district believes that criteria will be satisfied **or** if it can demonstrate that it can address the intent of the mandate in a more effective, efficient, or economical manner.

Public Act 100-465 also makes changes to the waiver process. Previously, waivers of School Code mandates were considered by the full General Assembly. However, the legislation establishes a panel of four legislators who will now have the opportunity to first review waiver requests. If three or more of the

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legislators object to the request, then it goes directly to the full legislature for consideration. But, if fewer than three object, the waiver is transmitted to ISBE which can approve, deny, or modify the waiver. ISBE's failure to act on a request will constitute approval of the waiver. If ISBE denies it, the request will go to the full legislature just as requests did previous to this new law.

The legislation also provides relief with regard to some specific School Code mandates which have been the frequent subject of waiver applications: driver training and physical education.

Driver Training. Formerly, a school district needed to be granted a waiver in order to contract with a driver training school. Under the new law, a school district will be able to contract with a commercial driver training school to provide both the classroom instruction part and the practice driving part, or either one, without having to request a modification or waiver of administrative rules of the State Board of Education. Rather, the school district will only need to approve a contract with a commercial driver training school after a public hearing.

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Physical Education. Schools have been required to provide physical education five days per week. Under the new law, however, a school board may determine the schedule or frequency of physical education courses, provided that a pupil engages in a course of physical education for a minimum of three days per five-day week. The legislation also permits additional discretion to excuse students, on a case-by-case basis, from physical education requirements. SB 1947 provides that, in addition to the existing bases by which students in grades 11 and 12 may be excused from physical education, a school board may also, on a case-by-case basis, excuse pupils in grades 7 through 12 who participate in an interscholastic or extracurricular athletic program from engaging in physical education courses. Lastly, waivers from all physical education mandates are still available; however, the law now permits the waiver to remain in place for five years, instead of just two years with a limit of two renewals.

If you have questions about this topic, or any provision within SB1947, please contact one of our attorneys in Oak Brook (630.928.1200) or Flossmoor (708.799.6766).

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