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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

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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

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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).