

## **WORKING CASH BONDS USE FOR BUILDING PROJECTS RECEIVES APPELLATE COURT APPROVAL, AGAIN**

For the second time in a little more than three years, an Illinois Appellate Court panel has rejected the persistent claims of tax rate objectors that limited bonds, such as working cash bonds, cannot be used for capital projects without prior voter approval.

In 2017, the Illinois Appellate Court, Second District, issued an opinion in the case of *1001 Ogden Avenue Partners v. Henry*. There, the focus was on whether building improvement projects fell within the broad meaning of the “corporate purposes” for which non-referendum working cash bonds could be issued. The Second District answered this question in the affirmative.

In a new order issued December 24, 2020, the Illinois Appellate Court, First District, followed the Second District’s lead. In *1400 Wolf Road, LLC v. Pappas*, the court rejected several alternative arguments as to why a school district could not issue working cash bonds without voter approval, even though the school district had indicated an intent to use the bond proceeds for certain building projects. The court recognized that the law permits the issuance of these bonds even when the proceeds are intended for permanent transfers, not just future loans, and for capital projects, not just operational expenses. Both *1001 Ogden Partners* and *1400 Wolf Road* held that a school district giving the notices prescribed by law prior to the issuance of working cash bonds did not have to say anything more in those notices in order to justify using the bonds for capital purposes.

It has long been a common practice for school districts throughout the State to borrow money via non-referendum limited bonds, such as working cash or funding bonds, and then to transfer the proceeds to pay the cost of capital improvements -- large or small, but short of building a new school building. Such a method of financing is, of course, subject to various express legal limitations. School Code Article 20 provides a limit on the amount of a working cash bond issue. These bonds can only be issued after public notice and an opportunity for a backdoor referendum petition and after a public hearing under the Bond Issue Notification Act. The taxes to pay for the bonds must fall within the limits of the district’s debt service extension base.

The tax rate objectors argued that the issuance of working cash bonds for capital projects must follow the School Code’s direct referendum process for building bonds, and that failing to do so also violated the Property Tax Extensions Limitation Law and other statutes. The court in *1400 Wolf Road* held that a school district following all the statutory procedures for the issuance of working cash bonds did not violate any other law.

Aspects of this particular tax rate objection theory have been pursued for many years by taxpayers in different counties. Amendments to Article 20 in 2010 clarified that abatements of the working cash fund may be made “at any time” and the transfers may be made to “any fund”. Nonetheless, there are rate objections against numerous school districts still pending in court which are premised on the theory which has now been rejected twice in the Appellate Court. While the objectors may yet seek review by the Illinois Supreme Court, the fact that two Judicial Districts have come to the same conclusion means that such review is highly unlikely.

What we said in our Priority Briefing after the decision in *1001 Ogden Partners* applies just as well after the decision in *1400 Wolf Road*:

*“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.”*

John Izzo of Hauser, Izzo, Petrarca, Gleason & Stillman, working with other law firms, has been actively involved in the long struggle to defeat the working cash fund bonds objections throughout the years of litigation in DuPage and Cook Counties and the successful effort to pass the amendments to Article 20 of the School Code. If you have any questions, please contact John or any our attorneys in our Flossmoor Office at 708-799-6766 or our Oak Brook Office at 630-928-1200.