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State of Minnesota
In Supreme Court

In re a Petition for Instructions to Construe
Basic Resolution 876 of the Port Authority
of the City of St. Paul

BRIEF OF *AMICUS CURIAE*
LEAGUE OF MINNESOTA CITIES

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LEGAL ISSUE

A 1993 amendment to Minn. Stat. § 501B.25 authorizes a district court pursuant to Minn. Stat. § 501B.16 to “construe, interpret or reform” revenue bonds issued without a trust indenture. Did the district court properly exercise subject matter jurisdiction over the Port Authority’s petitions in 2002, 2004 and 2006 which requested the district court to “construe, interpret or reform” revenue bonds issued by the Port Authority under Basic Resolution 876 without an express trust indenture before the 1993 statutory amendment?

The district court and the court of appeals held that the district court had subject matter jurisdiction because application of the 1993 amendment to the Port Authority’s petitions was not a retroactive application of the statute.

INTRODUCTION

The League of Minnesota Cities (“League”) has a voluntary membership of 831 out of 855 cities in Minnesota.¹ The League represents the common interests of cities before judicial courts and other governmental bodies and provides a variety of services to its members including information, education, training, advocacy, and insurance services. The League has a public interest in this appeal as a representative of the hundreds of cities and other public bodies associated with cities (including housing and redevelopment authorities, port authorities, economic development authorities, and local development agencies and districts) with authority to issue municipal bonds under chapters 469 and 475 of the Minnesota Statutes.

In this case, the Port Authority of the City of Saint Paul (“Port Authority”) issued individual series of revenue bonds from 1974-1991 under Basic Resolution 876 without an express trust indenture to finance 139 development projects. (T. 128-29, 284; Appellants’ Appendix (“AA”) at A. 44, A. 169.) Revenue bonds are payable from specifically defined revenues and are not backed by tax revenue. Minn. Stat. §§ 469.155, 469.162. Due to circumstances beyond the Port Authority’s control, there will never be sufficient funds to pay the full principal and interest to the 876 Bondholders. (AA at A. 25-26, A. 28-29.) Basic Resolution 876 does not specifically address what should be done in this situation. (AA at A. 44.) As a result, the Port Authority petitioned the district court in 2006 pursuant to Minn. Stat. §§ 501B.16 and 501B.25 for permission to

¹ Pursuant to Minn. R. Civ. App. P. 129.03, the League certifies that this brief was not authored in whole or in part by counsel for either party to this appeal and that no other person or entity made a monetary contribution to its preparation or submission.

liquidate the 876 bond fund and – in a way that is consistent with Basic Resolution 876 – to distribute the proceeds equally and ratably to all 876 Bondholders. (AA at A. 168, A. 175-176.) The district court granted the Port Authority’s Petition, and the court of appeals affirmed. (AA at A. 1, A. 9.)

STATEMENT OF THE CASE AND FACTS

The League concurs with the Port Authority’s Statement of the Case and Facts.

ARGUMENT

The Port Authority’s brief demonstrates why the lower courts’ decisions should be affirmed. The League concurs with the Port Authority’s legal arguments and will not repeat them here. Instead, this brief will address why it is important to the municipal bond market to ensure that there is an efficient procedural remedy for resolving ambiguities in municipal bond documents.

I. It is important to the municipal bond market to ensure that there is an efficient procedural remedy for resolving ambiguities in municipal bond documents.

Appellants dramatically claim that the court of appeals “has issued an opinion with the immediate potential to destabilize the market for publicly and privately issued securities by all municipal and state authorities in Minnesota.” Petition for Review of the Decision of Court of Appeals at p. 4. The League strongly disagrees with this claim and believes it is false for two reasons:

First, the situation involving Basic Resolution 876 is unique because all series of 876 bonds were financed by a common fund that received pooled payments from borrowers for distribution to bondholders. *See* Brief of Respondent at 4-5. Indeed, it is

very unlikely that there will be other similar situations where revenue bonds were issued before 1993 without an express trust indenture and where there are ambiguities in the bond documents that will need to be resolved. As a result, the court of appeals' holding will not have a far-reaching impact as Appellants claim, but instead, it will have a very limited impact.

In fact, it is most likely that the court of appeals' decision will only impact the 876 Bondholders. The Port Authority, for example, continues to operate and continues to be able to issue municipal bonds as do the rest of the municipalities in Minnesota. In short, Appellants have failed to provide any support for their claim that the court of appeals' decision will destabilize the municipal bond market in Minnesota.

Second, the League believes that the court of appeals' decision is actually reassuring to the municipal bond market. It is important to both the issuers and the holders of municipal bonds that there be an efficient way to resolve ambiguities in municipal bond documents. The procedural remedy provided by Minn. Stat. §§ 501B.16-.25 ensures that all interested parties will be notified and provided with an opportunity to be heard by an objective decision-maker. *See* Minn. Stat. § 501B.18. This procedural remedy helps stabilize the municipal bond market because it removes uncertainty by allowing ambiguities in municipal bond documents to be resolved efficiently and fairly in a way that does not affect the substantive rights of bondholders. In this case, for example, this procedural remedy made it possible for the district court to harmonize different provisions of Basic Resolution 876 in order to give effect to all of its terms. *See* Brief of Respondent at 34-37.

Because the League's members are issuers of municipal bonds, it is important to them to have uncertainty removed from the municipal bond market whenever possible. It is also important to our state to have uncertainty removed from the municipal bond market because municipal bonds are a significant part of our economy and because projects financed by municipal bonds are vitally important to our citizens.

For example, the municipal debt issued in 2006 by the State of Minnesota, the University of Minnesota and Minnesota municipalities was 6.04 billion. *2006 Full-Year Regional Review: Midwest States*, The Bond Buyer, February 14, 2007.² About 44% (2.67 billion) of these municipal bonds were revenue bonds and the majority of the municipal bonds were issued to finance capital projects involving schools, housing, health care, utilities, transportation, public facilities, development and other general purposes. *Id.*

Cities use bonds to finance public projects because it allows them to avoid dramatic tax increases by smoothing out their debt repayment over time. State law authorizes cities to issue bonds for any authorized corporate purpose with the exception of current expenses. Minn. Stat. § 475.52, subd. 1. The League's member cities have used bonds to finance a wide variety of important public projects including the construction of fire and police stations, hospitals, water-treatment facilities and street, sidewalk, water and sewer improvements. Because the court of appeals' decision

² The League provides this information, which is in the public domain, to give the Court some background regarding the municipal bond market in Minnesota. *See, e.g., Camacho v. Todd and Leiser Homes*, 706 N.W.2d 49, n. 3 (Minn. 2005) (discussing the type of information that an *amicus curiae* may bring to this Court's attention).

provides stability to the municipal bond market, it helps ensure that cities will continue to be able to accomplish important public projects like these that benefit Minnesota citizens.

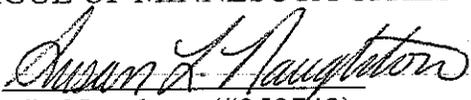
CONCLUSION

The court of appeals' holding will only apply in very limited circumstances and will likely only affect the 876 Bondholders. It is important to the municipal bond market to have an efficient procedural remedy to resolve ambiguities in municipal bond documents. The procedural remedy at issue in this case provides stability for the municipal bond market by removing uncertainty from it. It is important to the League's members and to our state to have uncertainty removed from the municipal bond market because municipal bonds are a significant part of our economy and because projects financed by municipal bonds are vitally important to our citizens. For all of these reasons and for the reasons stated in the Port Authority's brief, the League respectfully requests that this Court affirm the lower courts' decisions.

Dated: October 27, 2008

Respectfully submitted,

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