Legal

Landmark case addresses special district financing

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In 2016, the Colorado Court of Appeals issued an opinion in Landmark Towers Ass'n, Inc. v. UMB Bank, N.A., which caused significant disruption within the special district finance market in Colorado. That decision was recently overturned by the Colorado Supreme Court, UMB Bank, N.A. v. Landmark Towers Ass'n, Inc., 408 P.3d 836 (2017), which held that a legal challenge to a Taxpayer's Bill of Rights election years after it had taken place was time-barred under C.R.S. § 1-11-213(4), thereby reinforcing the important policy considerations for maintaining certainty and finality for special district financing.

Special districts serve an important role in Colorado by ensuring the provision of cost-effective development. Special taxing districts are commonly formed in states experiencing high growth rates as a way to ensure that growth pays for itself. In Colorado, "metropolitan districts" formed under C.R.S. § 32-1-101, et seq. are the most common way for local governments to target the costs of new public infrastructure to those residents most benefited by the infrastructure. Metropolitan districts finance, construct and maintain public infrastructure that is necessary for new development, including streets, water and sewer, and recreational spaces. Special districts raise funds by accessing the public bond market and issuing bonds, most often tax-exempt bonds, which bear lower interest rates and are issued on more favorable terms than would be available in the private equity market. Currently, there are 2,258 active special districts in Colorado.

Special district bonds most commonly are repaid with property tax revenues. The continued access by special districts to public securities markets depends on certainty that the tax revenues pledged for repayment of bonds will be available for such repayment. As such, the finality of elections conducted pursuant to the Colorado Constitution art. X, § 20 (TABOR) to approve debt and new property taxes for repayment of debt is critical to maintaining certainty in the public securities market. To this end, the legislature passed several key statutes with short limitations periods, which are specifically designed to prevent the filing of legal actions contesting the results of a TABOR election long after taxes have been approved and bonds have been issued. C.R.S. 1-11-213(4) provides that, unless a person files a written statement of intention to contest an election within 10 days after the official survey of returns has been filed, "no court shall have jurisdiction over the contest."

In Landmark, district organizers held a TABOR election in 2007 to approve the organization of the Marin Metropolitan District, debt (bonds) to finance public improvements for a planned multifamily development and the imposition of property taxes to repay the debt. Six months later, the district issued general obligation bonds of approximately $31 million.

In June 2011, three years after the bonds were issued, the Landmark Towers Association, acting on behalf of its member owners, filed legal action seeking relief from the TABOR election, claiming the election was invalid and that the due process rights of the owners were violated. The trial court found that Landmark's claims with respect to the TABOR election were time-barred under C.R.S. § 1-11-213(4). However, it enjoined the district from imposing further taxes to repay the bonds, reasoning that Landmark received no "special benefit" from the taxes and thus the taxes violated due process.

In issuing its decision, the Court of Appeals did not address the due process issue but instead concluded that: Landmark's challenge to the election was timely; the TABOR election was illegal; and the district had illegally levied taxes to repay the bonds.

The Court of Appeals' decision jeopardized the validity of past elections and, therefore, all of the outstanding bonds approved by such elections. Indeed, since TABOR was passed in 1992, Colorado voters have voted in approximately 2,000 TABOR elections. Thus, the decision potentially called into question the results of any past special district election and brought current deals to a standstill. To alleviate the detrimental impact of the Court of Appeals' decision, emergency corrective legislation was introduced as Senate Bill 16-211, which passed unanimously and became law on May 18, 2016 – less than one month after the Court of Appeals' decision.

Thereafter, the Colorado Supreme Court reversed the Court of Appeals' decision. Specifically, the Supreme Court rejected the Court of Appeals' conclusion that C.R.S. § 1-11-213(4) was subject to equitable tolling, holding that the doctrine of equitable tolling does not apply to nonclaim statutes such as C.R.S. § 1-11-213(4). In addition, the Supreme Court rejected the Court of Appeals' conclusion that Landmark's claims were substantive under its earlier decision Cacioppo v. Eagle County School District Re-J, 92 P.3d 453 (Colo. 2004), where it held that substantive claims are not subject to the time bar in § 1-11-213(4). The Supreme Court found that Landmark challenged the means by which the election results were obtained and its claim was, therefore, procedural and "precisely the type of challenge" prohibited by Cacioppo. However, the Supreme Court expressly refrained from deciding the due process issue that formed the basis of the trial court's decision and remanded for further proceedings to the Court of Appeals.

On remand, the Court of Appeals is to address the due process and other issues that it elected not to decide as part of its 2016 decision. As to the due process issue, it is well settled by U.S. and Colorado Supreme Court case law that due process is not violated where taxpayers pay taxes for which they receive no benefit – for example, we all pay property taxes that fund local schools even if we have no children attending local schools. If the trial court's injunction is allowed to stand, this could upend decades of case law interpreting the due process clause, and potentially bring new uncertainty to the public securities market in Colorado.▲