

In Brief

November 2010

COURT REJECTS CHALLENGE TO SYCAMORE TRANSFER TAX AND PERMITS TRANSFER OF TAX REVENUE TO SCHOOL DISTRICT

In a victory for Illinois taxing bodies, the Illinois appellate court affirmed dismissal of a challenge to the City of Sycamore's transfer tax which was enacted to provide additional operating revenue to the Sycamore School District. Several taxpayers challenged the constitutionality of the transfer tax itself, as well as the validity of an intergovernmental agreement between the City and the School District that provided for the City to distribute the transfer tax revenue to the School District to be used for its general operating purposes, and the School District agreed to use the tax revenue for its general operating purposes. The court upheld both the City's transfer tax and the intergovernmental agreement against the taxpayers' challenge.

The plaintiffs ("Plaintiffs") were a group of property owners who each were required to pay the transfer tax. They included persons who had lived outside the corporate limits of Sycamore prior to purchasing real property within the City. The Plaintiffs alleged that new City residents were not the cause of the School District's inadequate funding, and that in requiring new residents to pay the transfer tax but not requiring current residents to pay the transfer tax, the City and the School District infringed upon the Plaintiffs' right to travel, and thereby violated the Privileges and Immunities Clause and the Equal Protection Clause of the United States Constitution, and the Uniformity Clause of the Illinois Constitution. The Plaintiffs also alleged that the City and the School District exceeded their authority by imposing a City tax for the purpose of funding the School District.

The School District, which was represented by ROBBINS SCHWARTZ NICHOLAS LIFTON & TAYLOR, LTD. and the City, represented by FOSTER & BUICK LAW GROUP, LLC, joined in their defense and responded to the Plaintiffs'

Complaint by filing a joint Motion to Dismiss. Within the Motion, the School District and the City argued that the Plaintiffs' Complaint failed to properly state a claim upon which relief could be granted because the transfer tax was a valid exercise of municipal power under Illinois law.

With regard to the plaintiffs' contention that the City and School District exceeded their authority by entering into an agreement permitting the City to exercise its power to supplement the School District's funds, the School District and the City argued that they were acting within their authority to work cooperatively pursuant to the Illinois Intergovernmental Cooperation Act and the Intergovernmental Cooperation Clause of the Illinois Constitution, both of which expressly permit units of local government and school districts to combine and transfer powers. As for the Constitutional challenges, the School District and the City, citing the Illinois cases of *Ball v. Village of Streamwood* and *Stahl v. Village of Hoffman Estates*, argued that pursuant to Illinois law, even when certain classes of property owners are exempted, real estate transfer tax ordinances are valid so long as the taxing body has a rational basis, or "plausible reason," for imposing the tax. In this case, the City and the School District argued that the stated purpose of the transfer tax was to provide a new source of funds to supplement the School District's revenue, and that such purpose was rational.

On October 16, 2009 the Sixteenth Judicial Circuit Court adopted the School District and the City's arguments and dismissed the Plaintiffs' case. The Plaintiffs then appealed the Circuit Court's decision to the Second District Court of Appeals. In a well-reasoned opinion, the Second District affirmed the

Circuit Court's decision, upheld the Transfer Tax and struck each of the Plaintiff's arguments. The Court found that the plaintiffs failed to "provide any factual allegations supporting their conclusion that residents of a foreign state. . . who move to the City and purchase real estate do not cause inadequate school funding." The Court explained that the Transfer Tax Ordinance "makes a reasonable distinction between those adding new burdens to the schools (who are subject to the Transfer Tax) and those who do not add to the underfunding (who are exempt from paying the tax)." The Court added that it is "certainly reasonable to impose upon new residents the one-time burden, via the Transfer Tax, of contributing to the maintenance of the School District." Finally, the Court found that the Intergovernmental Agreement between the City and the School District was an appropriate method for contributing to the maintenance of the School District. The Court held

that no "School Code provision . . . prohibits a school district from receiving transfer tax revenues."

The Court's ruling in the Sycamore litigation is a significant victory for taxing bodies and units of local government. The litigation provides significant authority as to the extent of powers that may be shared pursuant to a validly executed intergovernmental agreement. Additionally, the Court's ruling will once again reaffirm the notion that taxing districts may exercise their taxing powers so long as a tax is rationally related to a legitimate government interest. The full court decision can be found at <http://state.il.us/court/Opinions/AppellateCourt/2010/2ndDistrict/November/2091136.pdf>

This Client In Brief was prepared by Scott L. Ginsburg of the firm's Chicago office.

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