

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-001960-MR

CHARLES YOUNG; PAUL M. LAWRENCE;  
DONALD FORNASH; MARTHA CALVERT;  
ROBERT PING; MAGGIE WHEELER;  
GARY WHEELER; JEANETTE DAVIS;  
RUBY KECK; STACY MEREDITH;  
EUGENIA FERNANDEZ; GEORGE W.  
HELMS; AND MARIE HELMS

APPELLANTS

v. APPEAL FROM GALLATIN CIRCUIT COURT  
HONORABLE JOSEPH F. BAMBERGER, JUDGE  
ACTION NO. 01-CI-00064

KENTUCKY SPEEDWAY, LLC, A  
KENTUCKY LIMITED LIABILITY  
COMPANY; AND COUNTY OF GALLATIN

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \* \*

BEFORE: COMBS AND DYCHE, JUDGES; POTTER<sup>1</sup>, SPECIAL JUDGE.

DYCHE, JUDGE: On April 20, 2001, appellants initiated a complaint in the Gallatin Circuit Court seeking a declaration that the issuance of industrial revenue bonds (KRS 103.200-.285)

---

<sup>1</sup>Senior Status Judge John Woods Potter sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

for the construction of the Kentucky Speedway, pursuant to ordinance of the Gallatin County Fiscal Court, was Avoid, invalid and illegal. . . .@ Other challenges were included in the complaint, but the main thrust of the complaint concerned the alleged invalidity of the bond issue and the enabling ordinance.

The fiscal court gave the ordinance its first reading on November 11, 1999, and enacted the ordinance on November 22, 1999. Notice of the consideration of the ordinance for passage was published in the *Gallatin County News* on November 10, 1999, and notice of the enactment of the ordinance was published December 1, 1999. KRS 67.077.

KRS 58.190 provides,

Any action challenging the validity of any ordinance or resolution adopted by any governmental agency electing to issue bonds or notes under this chapter or any other chapter of the Kentucky Revised Statutes, shall be brought within thirty (30) days from the date on which notice of the adoption of said ordinance or resolution is published in accordance with KRS Chapter 424, and if such action challenging the validity of same is not brought within such time, such action shall be forever barred.

The action was therefore not commenced within the period allowed by law, and is forever barred, as the trial court held. Although appellants make argument that the passage and/or notice of consideration and passage were fraught with error, there is nothing in the record except bare pleadings and allegations to rebut the verified records of the fiscal court and the affidavits of the newspaper publisher. Appellees=motion to dismiss,

treated as a summary judgment motion (CR 12 and 56) was therefore proper. We find it unnecessary to consider the other contentions raised by appellants.

The judgment of the Gallatin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Marcus S. Carey  
Erlanger, Kentucky

Meredith L. Lawrence  
Warsaw, Kentucky

BRIEF FOR APPELLEE GALLATIN  
COUNTY:

Stephen P. Huddleston  
Warsaw, Kentucky

BRIEF FOR APPELLEE KENTUCKY  
SPEEDWAY, LLC

Richard G. Meyer  
Deters, Benzinger, & LaVelle,  
PSC  
Covington, Kentucky