

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001620-MR

JOEY ROBERTS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN, JUDGE
ACTION NO. 01-CI-01540

COUNTY DEBT COMMISSION;
WARREN COUNTY FISCAL COURT;
MICHAEL BUCHANON,
WARREN COUNTY JUDGE-EXECUTIVE;
MICHAEL CAUDILL,
WARREN COUNTY ATTORNEY AS
REPRESENTATIVES OF TAX PAYERS
OF WARREN COUNTY; AND
INTER-MODAL TRANSPORTATION
AUTHORITY, INC.

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: GUIDUGLI AND SCHRODER, Judges; and JOHN D. MILLER,
Special Judge.¹

¹ Senior Status John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

GUIDUGLI, JUDGE. Joey Roberts ("Roberts") appeals from an opinion and order of the Franklin Circuit Court which upheld a decision of the Warren County Debt Commission ("CDC"). The CDC affirmed a decision of the State Local Debt Officer ("SLDO") approving a request of Warren County and the Inter-Modal Transportation Authority ("ITA") to issue \$25,000,000 in bonds to develop an airport and industrial park complex in Warren County. For the reasons stated herein, we affirm the opinion and order of the Franklin Circuit Court.

This action centers on the effort of Warren County to develop an airport and industrial park complex. As part of this effort, Warren County created the ITA in 1998. Warren County, in conjunction with and through the ITA, then sought the issuance of \$25,000,000 in bonds to fund the development. Pursuant to KRS 66.310, the county and ITA sought approval for the bond issuance from the SLDO. The SLDO approved the request.

Roberts, a Warren County resident, appealed the decision of the SLDO to the CDC. The matter proceeded before a CDC hearing officer who, upon taking proof, upheld the SLDO's decision. After the CDC affirmed the hearing officer, Roberts appealed to the Franklin Circuit Court.

On June 27, 2002, the Franklin Circuit Court rendered an opinion and order which forms the basis of the instant appeal. The circuit court held in relevant part that the CDC's

decision was supported by substantial evidence, and further found that the statutory prerequisites for the bond issue had been satisfied. It went on to dispose of other arguments raised by Roberts, including exceptions presented to the CDC which were allegedly ignored, whether the proper burden of proof was applied, and whether a related lease agreement was properly approved by the SLDO and CDC.

Roberts now argues that the circuit court was clearly erroneous in upholding the decision of the CDC. Specifically, he maintains that CDC improperly concluded that Warren County would have a maximum debt exposure of no more than 30% of any deficiency under the lease agreement. He argues that such a conclusion was contrary to the evidence, and relies upon it as a basis for seeking reversal of the order on appeal.

As the parties are well aware, the standard of review is whether the SLDO's findings of fact are supported by any substantial evidence. KRS 66.310(5). That is to say, the findings shall be reversed only if there is no substantial evidence in support thereof. Id.

On the issue at bar, testimony exists in the record that Warren County will bear no more than 30% of a debt service shortfall. See Tr. Vol. II, pp.139-140. Testimony was adduced that nine county governments, including Warren County, plus the City of Bowling Green, had passed resolutions forming interlocal

agreements to share any debt service shortfall, and that these agreements would not, as Roberts asserts, leave Warren County with 100% of any potential debt service shortfall. More important, though, is that KRS 66.310 does not require that Warren County's potential debt service shortfall liability be limited to 30%. Rather, it merely provides that a reasonable expectation must exist that the debt service payments can be made when due. Thus, while substantial evidence exists in support of the SLDO's finding on this issue, even in the absence of such evidence, this issue would not form a basis for tampering with the SLDO's decision.

Roberts next argues that the circuit court was clearly erroneous in affirming the CDC's decision since the CDC's decision as a whole was not based on substantial evidence. He also maintains that no substantial evidence exists that the bond debt could be serviced without seriously restricting other county expenditures.

As the circuit court properly noted, KRS 66.310(3) provides that the SLDO

. . . shall withhold his approval if he believes the financial condition and prospects of the county do not warrant a reasonable expectation that interest and principal maturities can be met when due without seriously restricting other expenditures of the county; if, in his discretion, the issue of bonds will not serve the best interests of both the county

issuing the bonds and a majority of its creditors; or if it appears that the bonds or the issuance thereof will be invalid.

The circuit court addressed each of these factors in turn, along with the evidence in support thereof. As to the first requirement, i.e., whether the county's financial condition warranted a reasonable expectation that the debt can be serviced without seriously restricting other expenditures, the hearing officer cited evidence that the county possessed a \$10,000,000 account balance; that its lease with ITA only obligated it to service 30% of a potential shortfall; that the debt service payments would be \$1,000,000; and, that the first payment would not be due until the sixth year after the bond issuance. These findings are supported by substantial evidence in the record, and satisfy the first requirement of KRS 66.310.

The second requirement is that the bond issue must be in the best interest of the county and a majority of its creditors. On this issue, the hearing officer noted that the development would satisfy the county's need for additional employment opportunities, provide potential competitiveness for industrial development, and that no evidence existed that the bond issue was not in the best interest of the county's creditors. The third requirement, i.e., whether the bond issue

was valid, was not contested below and therefore not addressed by the circuit court.

In examining this evidence, we must conclude that it satisfies the statutory requirement for the bond issue and constitutes substantial evidence in support of the SLDO and CDC's decision.

Lastly, Roberts briefly argues that the circuit court committed clear error in upholding the CDC decision since the record did not contain the terms of the lease for which approval was sought. He notes that KRS 66.310(2) requires that the county obtain the approval of the SLDO to enter into the lease, and that the SLDO shall ". . . hold a hearing for the purpose of considering the terms of the lease" Roberts maintains that the county's Petition for Approval to the SLDO did not contain the terms of the lease, and that the CDC erred in approving the terms of a lease that it never reviewed.

We find no error on this issue. While the Petition did not contain specific lease terms, it clearly did state that the counties and cities engaged in the project would enter into a lease for the purpose of paying the debt service on the bond issue. More specific testimony on this issue was adduced before the SLDO and is set forth in the record. The SLDO was apprised of the general terms and purpose of the lease, and we cannot

conclude that the circuit court erred in concluding that the SLDO's review of the lease satisfied KRS 66.310(2).

For the foregoing reasons, we affirm the opinion and order of the Franklin Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Thomas J. FitzGerald
Frankfort, KY

BRIEF FOR APPELLEE, COUNTY DEBT
COMMISSION:

F. Chris Gorman
Louisville, KY

BRIEF FOR APPELLEES, WARREN
COUNTY AND WARREN COUNTY
JUDGE-EXECUTIVE:

Frank F. Chuppe
Louisville, KY

BRIEF FOR APPELLEE, INTER-MODAL
TRANSPORTATION AUTHORITY:

Charles E. English
Bowling Green, KY