



REPORT TO VILLAGE OF CHATHAM

*Independent Legal Review of Initial Questions
Regarding South Sangamon Water Commission*

January 10, 2017

Holland & Knight Retained to Undertake an Independent Legal Review of Three Defined Questions

- » Whether the South Sangamon Water Commission was properly established
- » Whether there are any issues associated with the bonds issued by the Commission
- » The Village of Chatham's obligations associated with the Commission

Whether the Commission Was Properly Established

- » Water Commissions are created under state law
- » Created by two or more municipalities adopting a resolution or ordinance
 - Any 2 or more municipalities, . . . may acquire either by purchase or construction a waterworks system or a common source of supply of water, or both, and may operate jointly a waterworks system or a common source of supply of water, or both, and improve and extend the same, as provided in this Division 135.
 - The corporate authorities of the specified municipalities desiring to avail themselves of the provisions of this Division 135 shall adopt a resolution or ordinance determining and electing to acquire and operate jointly a waterworks system or a common source of supply of water or both, as the case may be.

Whether the Commission Was Properly Established

- » Village of New Berlin Ordinance No. 09-01, adopted January 21, 2009
- » Village of Chatham Ordinance No. 09-02, adopted January 27, 2009
- » Same key points
 - To “acquire and operate jointly with” the other Village “a common source of supply of water”
 - To establish the Commission
 - Village of Chatham to “fund the startup costs of the Commission” and then be reimbursed from Commission revenue bond proceeds
 - Chatham to transfer ownership of well sites, treatment plant sites, easements, plans, specifications, etc., it acquires to Commission to obtain reimbursement (“Project Expenses”)

Whether the Commission Was Properly Established

- » Same key points (continued)
 - Rates charged to Villages “should be the same at the respective points of delivery”
 - Points of delivery to be agreed upon by Villages and Commission, and located within the respective corporate limits of each Village
 - If Commission is rescinded before revenue bond issued, “New Berlin will have no responsibility with respect to” startup costs of Commission or Chatham’s Project Expenses
- » Based on these facts, Commission properly created and existing under Illinois law

Whether the Commission Was Properly Established

- » Rescission of ordinances establishing a commission allowed in two instances:
 - “at any time prior to the issuance and sale of revenue bonds” or
 - “after the rescinding municipality has no outstanding obligation to pay a proportionate share of the costs of development, construction or operation” of the Commission

- » Based on facts we will discuss in next part, neither of these circumstances exist today

Issues Associated with Commission Bonds

- » Five Series Issued by Commission
- » \$7,000,000 Commission Water Revenue Bonds, Series 2010A [refunded]
- » \$23,505,000 Taxable General Obligation Bonds (Alternate Revenue Source), Series 2010B (Build America Bonds-Direct Payment)
- » \$3,090,000 Tax Exempt General Obligation Bonds (Alternate Revenue Source), Series 2010C
- » \$1,820,000 Taxable General Obligation Bonds (Alternate Revenue Source), Series 2010D
- » \$5,200,000 Water Commission Subordinate Revenue Bond, Series 2011
- » Anticipated New Bond Issue for \$500,000 (2017)

Issues Associated with Commission Bonds

- » Authority to Issue Alternate Revenue Source Bonds
 - Two revenue pledges—water system revenue and real state tax revenue
 - Double-barreled bonds or alternate bonds
- » New Section 11-135-4.5 of Illinois Municipal Code
 - Added by Public Act 96-0907
 - Allows water commissions to issue alternate bonds if following Section 15 of Local Government Debt Reform Act—various procedures, including ability of voters to trigger “back door referendum” of voters
 - Legislative debates show intent to allow SSWC to issue alternate bonds for the Chatham-New Berlin project

Issues Associated with Commission Bonds

- » Village Commitment to Pay Initial Construction Costs
 - Section 11-135-1, paragraphs 8-9 authorize Village to obligate itself to pay a proportionate share of construction cost
- » Requirements
 - Adopt an ordinance declaring intent: Ord. 10-16 passed April 13, 2010
 - Fix the maximum amount of share for which it is obligated: \$6,300,000, which is 90% of SSWC proposed bond (Series 2010A), plus 90% of interest on the bond (Section 3 of Ord. 10-16)
 - Period over which Village proposes to pay: One payment, due date January 1, 2012 (Section 3 of Ord. 10-16)

Issues Associated with Commission Bonds

- » Fraud Allegations Due to Size of Facilities
 - Assertion that SSWC bonds should be rescinded or unwound based on project description in authorizing ordinances (SSWC Ord. Nos. 10-22 and 11-12)
- » Description in SSWC Ord. Nos. 10-22 and 11-12
 - “A new water well field and new water treatment facilities located east of the Village of Rochester, Illinois designed to treat 3.3 million gallons per day of water....”
 - But claims are that other sources describe the initial capacity as only 2.2 MGD

Issues Associated with Commission Bonds

- » Official Disclosure Requirements of SEC
 - Continuing Disclosure Undertaking (“CDU”) by SSWC
 - “Material events” must be disclosed and posted on EMMA, the Electronic Municipal Market Access system
- » Project Description in Disclosures Filed
 - SSWC Certified Annual Financial Reports (“CAFR”) filed for fiscal years ending April 30, 2011 and 2012
 - Sizing of system explained
 - Both CAFRs filed with EMMA

Issues Associated with Commission Bonds

- » CAFR Disclosures (both 2011 and 2012)
 - A new water well field and treatment plant to be located east of the Village of Rochester, Illinois.
 - The plant is designed to provide 1.25 gallons [sic] per day (“MGD”) on an average day and 2.2 MGD on a peak day at start up. At ultimate build out in year 2029, the plant is designed to provide average daily use of 1.9 MGD with a peak demand of 3.3 MGD.
 - The plant is being designed to enable it to be doubled in size if and when the need arises.
 - The well field is designed to supply this average and peak daily demands with one well out of service.

Issues Associated with Commission Bonds

- » Remedies for Insufficient Disclosures
 - Rights are with underwriter or registered bond owner
 - Default under the CDU “shall not be deemed a default under the [Bond] Ordinance”
 - Sole remedy under the CDU for non-compliance is “an action to compel performance”
 - SEC may also seek to enforce its disclosure rules against SSWC
- » Based on these facts, not sufficient evidence or basis to justify rescission or invalidation of Bonds

Village's Obligations Associated with Commission

- » Appointment of a Commissioner
 - Mayor or President of Village, “with the approval of the corporate authorities, shall appoint a commissioner”
 - Commissioner must be elector or chief administrator of appointing municipality
 - The appointed commissioners “shall constitute a commission and public corporation”
 - Six-year staggered terms

Village's Obligations Associated with Commission

- » Payments by Municipalities to Commission
 - Water Revenues and Real Estate Taxes
- » Water Revenues (Series 2010B, 2010C, 2010D and Series 2011)
 - Wholesale Water Contracts (March 2010)
 - “All requirements” = must purchase “all potable water to be resold by Village to retail customers of Village’s water system” (except if curtailment of Commission supply)
 - Initial Term Expires later of *December 31, 2040* or “5 years after expiration of the original issue of bonds”
 - Prepayment of initial bond issue does not shorten initial termination date

Village's Obligations Associated with Commission

» Water Revenues—State law

- Municipalities in commission “shall contract with the commission for water” where common water supply
- Rates and charges = cover enumerated costs, including “principal of and interest on all revenue bonds of the municipalities from the revenues of the waterworks system”
- “Any holder” of a SSWC Bond under Division 11-135 may enforce these requirements, including:
 - Must be a contract between SSWC and villages
 - Payment and collection of sufficient rates
 - Application of revenues to expenditures

Village's Obligations Associated with Commission

- » Real Estate Taxes (Series 2010B, 2010C and 2010D)
 - 2010 Intergovernmental Agreement between SSWC and Chatham and New Berlin requires that Villages:
 - Authorize, acknowledge, agree and approve the tax levy
 - Fully and completely cooperate with levy, extension and collection of real estate taxes, if needed to pay Bonds
 - Fully binding obligations of Villages
 - No right to terminate/cancel/rescind IGA
 - No right to withhold payments from SSWC
 - No right of reduction or set-off
 - Absolute and unconditional obligation to pay in full
 - Cannot terminate while Series 2010B, 2010C and 2010D Bonds outstanding

Village's Obligations Associated with Commission

- » Intergovernmental Agreement for Maintenance
 - 2012 Agreement between SSWC and Chatham
 - Village to perform various functions for SSWC
 - Maintain all SSWC transmission lines/works
 - Read SSWC water meter
 - Read SSWC wholesale and interconnect meters (not New Berlin's)
 - Provide "certified operator for transmission lines/works
 - Perform retail customer billing for SSWC
 - Initial term ends 12/31/17; automatically renews annually unless 180 days notice of termination prior to termination date

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