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Municipal Corporations--Repayment of Advances from Proceeds of Revenue Bonds not within Debt Limitations

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Upon practical considerations the holding is regrettable. The mischief which may result therefrom is readily apparent. Land transfers thought to be valid when consummated may now be attacked upon the ground that the sale was made after the beginning of a term of court at which a judgment was rendered against the vendor and that the purchaser had notice of the litigation. Land titles certified as good may, under this holding, prove to be bad. The result may be to slow up land title certification. The effect on prospective vendors of land against whom litigation is pending may be disastrous. At perhaps the most profitable and convenient time to sell, the vendor, by reason of the suits pending, will find that he cannot convey a clear title. This follows in spite of the fact that no judgment may in fact be later rendered so as to become a lien from the beginning of the term.

The decision leaves many questions hanging. What is included within the terms "fully aware and has actual notice of a suit"? Will any knowledge of a suit pending, however slight, be sufficient? In suits involving the question of marketable title, will the fact that an action is pending against the vendor justify the vendee in refusing to complete the contract of sale?

The case points up the fact that the statutes relating to notice are too uncertain to afford a purchaser protection against the lien of a judgment under the relation back doctrine, or to afford a creditor sufficient protection for his lien under that doctrine during the pendency of the action in which he obtains a judgment. The problems might easily be settled by legislation. One solution might be to require the filing of a notice of lis pendens as a prerequisite to allowing the lien of a judgment to relate back to a time prior to the date of its rendition. As a matter of precaution, attorneys will probably file a notice of lis pendens in every action. Although it will not operate as constructive notice, its presence in the lis pendens record will probably be considered actual notice to anyone examining the records and finding it.

L. L. P.

MUNICIPAL CORPORATIONS—REPAYMENT OF ADVANCES FROM PROCEEDS OF REVENUE BONDS NOT WITHIN DEBT LIMITATIONS.—Action by the United States against the City of Charleston for advances made under War Mobilization and Reconversion Act 1944, 58 STAT. 785. The city received the advances for the purpose of conducting advance planning on the feasibility of constructing and

adding to sewage systems. Repayment of the advances was contingent upon construction of the public work being undertaken, and this in turn was contingent upon the revenue bonds being issued. In 1952 construction was begun. No money has been repaid even though the revenue bonds have been issued. The proceeds of the bonds issued have been depleted so that further issues will be necessary to complete the work. The city contends that repayment of these advances would violate constitutional and statutory debt limitations. *Held,* that the promise to repay the advances does not constitute debt, and that the United States is entitled to reimbursement from the proceeds of the bonds to be issued in the future. *United States v. Charleston,* 149 F. Supp. 866 (S.D. W. Va. 1957).

In this case the court was confronted with the necessity of placing this factual pattern within the general provisions applicable to revenue bonds. The constitution provides that no municipal corporation shall be allowed to incur debt for any purpose or in any amount without providing for collection of taxes to remove such debt within thirty-four years, and that all questions connected with this debt shall be submitted to the people and receive the vote of three-fifths of those voting. W. VA. CONST. art. X, § 8. It has long been established, both in West Virginia and in numerous other jurisdictions, that bonds issued by a municipal corporation, under legislative sanction, to finance a self-liquidating public project do not create debts within the meaning of the constitutional limitations. *Boe v. Foss,* 77 N.W.2d 1 (S.D. 1956); *State v. Dailer,* 140 W. Va. 513, 85 S.E.2d 656 (1955); *Laverento v. Cheyenne,* 67 Wyo. 187 217 P.2d 877 (1950); *Dunn v. City of Murray,* 306 Ky. 426, 208 S.W.2d 309 (1948); *City of Harrison v. Braswell,* 209 Ark. 1094, 194 S.W.2d 12 (1946). The reason for this view is that under the revenue bond type of financing the general credit of the city is in no way affected. *Griffin v. City of Tacoma,* 49 Wash. 524, 95 Pac. 1107 (1908).

The only distinction between the principal case and the unusual case on this point is that in the principal case the court was confronted with a situation in which money was advanced prior to the issuance of the revenue bonds. By the terms of the agreement between the city and the government it was quite clear that repayment of these advances was contingent upon two events: (1) the construction being undertaken; (2) the revenue bonds being issued. Both of these contingencies must have occurred before the govern-

ment would be entitled to reimbursement. The city could be compelled to repay the advances only from the special bond proceeds fund so that its general credit was in no way affected.

Not only does the city contend that repayment of the advances would come within the prohibition of the constitution, but also that it is prohibited by statutory limitations. The statute prohibits a city from expending money or incurring obligations unauthorized as to manner or purpose, or in excess of amounts allocated to a certain fund by levy order or in excess of funds available for current expenses. W. VA. CODE c. 11, art. 8, § 26 (Michie 1955). As the court points out, the purpose of the statutory limitations is the protection of tax revenues. Since the city is obligated to pay only from the bond proceeds, the tax revenues are in no way depleted or endangered. Therefore, it seems that repayment of the advances is not prohibited by the statutory limitations.

Cases concerning construction of purely self-liquidating public works have been extended so that it appears to be comparatively rare that such are ever considered to come within the debt provision of the constitution. In *Brangar v. Riverdale,* 396 Ill. 534, 73 N.E.2d 201 (1947), a group of subdivision developers undertook to construct water lines in a new development. The village agreed to pay the developers by giving them 25% of all the water bills collected from that development. The court held that this reimbursement would not create debt within the meaning of the constitution because the project would be supporting itself. An even broader result was reached in *State v. Daytona Beach,* 118 Fla. 29, 158 So. 300 (1934). The city had contracted for a loan of funds from a federal agency to extend and improve their existing water supply, and had issued revenue bonds to repay the money advanced. There was a possibility that the loan of such funds would be declared unconstitutional by the federal government so that the city would become liable for the advances. The court held that this bare possibility would not warrant invalidating the bonds. From these cases it appears evident that the trend is toward expanding rather than narrowing the exemptions from the constitutional debt prohibition.

An additional example of extending the construction of the constitutional debt provisions may also be noted. A city in Alabama had issued general obligation warrants to pay for a new electric system for the city. When the amount derived from the warrants

proved inadequate the city decided to issue electric revenue anticipation bonds to complete the project and to refund 80% of the general obligation warrants. The court held that since the refunding was to be made solely from the revenue of the electric system, issuance of such bonds would not violate the debt provision of the constitution. *Fuller v. City of Cullman,* 248 Ala. 236, 27 So. 2d 203 (1946).

In the principal case the court was not confronted with a situation demanding great extension of the language of the constitutional debt provisions. The money advanced was expended for purposes properly considered a part of the cost of construction. W. VA. CODE c. 16, art. 13, § 8 (Michie 1955). The contingencies upon which repayment was dependent occurred. No obligation to pay other than from the bond proceeds was placed on the city. In light of these facts, it seems evident that the court was justified and correct in its decision.

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NEGLIGENCE—PROXIMATE CAUSE—FORESEEABILITY OF SPECIFIC INJURY.—*P*, a twelve year old boy, was riding in a truck owned and driven by his father. As *D*'s truck, coming in the opposite direction, met and came abreast of the truck in which *P* was riding, a large stone lodged between the left rear dual wheels of *D*'s truck was hurled through the right windshield of the truck in which *P* was riding, injuring *P*. Judgment for *P; D* appealed. *Held,* reversing lower court, that such injury could not be reasonably foreseen and, negligence was not established which was the proximate cause of the injury. *Miller v. Bolyard,* 97 S.E.2d 58 (W. Va. 1957).

No factual precedent was available to the court in deciding this case. No case in any jurisdiction has previously been reported involving a rock definitely lodged in the dual wheels of a truck. In a closely related case, a plaintiff was hit by a stone allegedly lodged between the wheels of defendant's truck. But the plaintiff could not definitely identify the truck and it was not proved whether the stone was wedged between the dual wheels. The court ruled out negligence and decided the case on the ground of the inapplicability of absolute liability. *Randall v. Shelton,* 293 S.W.2d 559 (Ky. 1956). Other cases have involved rocks, gravel, slag, bricks, boards, and other objects lying on the road which have been run over and thrown by vehicle wheels, but liability and negligence have usually been determined on the basis of the speed of the