

COA Opinion: Statutory Construction of the Tax Code

13. October 2010 By Jeanne Long

In *LaFarge Midwest, Inc v Detroit*, Nos. 318224, 328284, & 328928, the Court of Appeals held that the statutory language of Mich. Comp. L. 211.7ff(2)(b) should be interpreted so that the phrase “of the local governmental unit” applies to both the “obligations approved by the electors” and “the obligations pledging the unlimited taxing power.”

Plaintiff operates a business on three parcels of land in a renaissance zone and was responsible for payment of ad valorem property taxes on the parcels. The Detroit Public School District, by its electors, imposed a school debt service tax of 13 mills for retirement of bonded debt on Plaintiff for \$116,156,390 in bonds. Plaintiff filed a petition with the Tax Tribunal claiming it is exempt from the school debt service tax based on the Renaissance Zone Act (RZA), Mich. Comp. L. 125.2681 *et seq.* The RZA provides temporary tax relief for entities within renaissance zones, to assist “local governmental units in encouraging economic development.” The Tax Tribunal agreed with Plaintiff, stating that the RZA should be read in conjunction with Mich. Comp. L. 211.7ff. The Tax Tribunal granted Plaintiff’s motion for summary disposition and ordered the City of Detroit to remove the school debt tax from the Plaintiff’s tax bill.

The City of Detroit appealed, arguing that the exemption in Mich. Comp. L. 211.7ff did not apply to Plaintiff because the tax was imposed by school district electors. The Court of Appeals focused on statutory construction in holding that the term “local governmental unit” is applicable to both provisions of Mich. Comp. L. 211.7ff(2)(b). The court emphasized the Legislature’s use of the definite article “the” to describe “the electors” in Mich. Comp. L. 211.7ff(2)(b) and stated that the term applies to the electors of the local governmental unit, as opposed to *any* electors (e.g., those of the school district). As applied, the ad valorem tax was improper because it was not levied for payment of “obligations approved by the electors” of the local governmental unit. The Court of Appeals affirmed the Tax Tribunal’s ruling.

In *dissent*, Judge Kelly would impose the tax against Plaintiff and reverse the Tax Tribunal. Judge Kelly disagreed with the majority’s statutory construction, and she read the phrase “obligations approved by the electors” to include school district electors, or any other body of electors imposing obligations under Mich. Comp. L. 211.7ff. As she would interpret the statute, the exception from Mich. Comp. L. 211.7ff(2)(b) applies to the exemption from the RZA, and the school debt service tax stands.