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\$3,750,000

**Public Finance Authority
Revenue Bond (St. John's Evangelical Lutheran Church), Series 2020**

CONSTITUTIONAL ANALYSIS

The St. John's Evangelical Lutheran Church Project has a total Sources and Uses budget of \$4,150,000.00 for the entire Project. Additional fundraising by St. John's Evangelical Lutheran Church of \$400,000.00 shall be contributed to the Project to fund parts of the project for religious use. No bond funds will be used for religious uses.

St. John's Evangelical Lutheran Church agrees that the Bond financing will never be used (a) primarily for sectarian instruction or study or as a place of devotional activities or religious worship or as a facility used primarily in connection with any part of the program of a school or department of divinity for any religious denomination or the training of ministers, priests, nuns, rabbis or other similar persons in the field of religion, or (b) in a manner that is prohibited by the Establishment of Religion Clause of the First Amendment to the Constitution of the United States of America and the decisions of the United States Supreme Court interpreting the same or by any comparable provisions of the Constitution of the State and the decision in the Supreme Court of the State interpreting the same, and will permit the Public Finance Authority and the National Exchange Bank to make inspections of any of the financed property.

Constitutional Analysis/Authority

Establishment Clause Cases: Many schools with religious affiliations have looked to tax exempt bonds to finance capital programs, including primary and secondary schools and colleges and universities. The issuance of municipal bonds for the benefit of a school sponsored by or affiliated with a religious organization raises important issues under the Establishment Clause of the First Amendment to the U.S. Constitution (the "U.S. Establishment Clause") and under similar or dissimilar religion clauses in state constitutions.

1. Supreme Court 1. Everson v. Board of Education in Everson v. Board of Education, 330 U.S. 1 (1947), involved a program that the New Jersey Board of Education had created to reimburse parents for public bus fares paid to send their children to public schools. When the reimbursements were extended to parents sending children to Catholic parochial schools, the program was challenged as an unconstitutional establishment of religion in violation of the U.S. Establishment Clause. The U.S. Supreme Court ultimately upheld the subsidies. The Court recognized that the subsidies might enable some children to attend parochial schools who might otherwise be unable to do so and further recognized that parents might be hesitant to send their children to parochial schools if they were cut off

from “such general government services as ordinary police and fire protection, connections for sewage disposal, public highways and sidewalks.” The Court stated that the U.S. Establishment Clause does not require the government to withhold such benefits from parochial schools and that, in fact, the “First Amendment requires the state to be neutral in its relations with groups of religious believers and nonbelievers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions, than it is to favor them.” In the opinion for the Court, Justice Black stated that the First Amendment erected a “wall of separation between church and State”.

2. Johnson v. Economic Development Corp. of the County of Oakland In Johnson v. Economic Development Corp. of the County of Oakland, 241 F. 3d 501 (6th Cir. 2000) the plaintiff alleged that the defendant (the “EDC”) violated the U.S. Establishment Clause by issuing tax-exempt revenue bonds to finance the construction of buildings at the Academy of the Sacred Heart (the “Academy”), an independent Roman Catholic elementary and secondary school. The federal district court had granted summary judgment for the EDC.

The Sixth Circuit rejected the plaintiff’s argument that government funds reach the coffers of the Academy because the issuance of the bonds relieves the Academy of costs it would otherwise have borne and the Academy is thereby free to devote those resources toward its sectarian activities. The court noted that this argument has been consistently rejected by the Supreme Court. The Sixth Circuit also ruled that the issuance of the bonds does not create an excessive government entanglement. To determine whether there is excessive entanglement, the court looks at (1) the character and purpose of the institution that is benefited; (2) the nature of the aid that the state provides; and (3) the resulting relationship between the government and religious authority. The Sixth Circuit then specifically considers the nature of the institution to determine whether it is pervasively sectarian. Based on the facts and circumstances and considering factors substantially similar to those considered by the Virginia Supreme Court, the Sixth Circuit concluded that the Academy is not pervasively sectarian. The Sixth Circuit held that there is no entanglement because government entanglement is a one-time matter; the Academy is not aimed more at sectarian rather than secular education, and the government aid is not used for the religious purposes of the Academy.

3. Gilliam v. Harding University In Gilliam v. Harding University, No. 4:08-CV-00363 BSM, 2009 WL 1795303 (E.D. Ark. June 24, 2009), the United States District Court upheld the issuance of tax-exempt bonds to benefit a private Christian university, connected with the Churches of Christ. For each bond issued, the city board required that Harding University agree that the facilities financed would not be used for “sectarian instruction, a place of worship, or in connection with any part of the program of a school or department of divinity of any religious indoctrination.” The court reasoned that the city did not act with the purpose of advancing or inhibiting religion and the aid did not have the primary effect of doing so. The burden was on the plaintiff to show that the aid resulted in governmental indoctrination, and the Court found that the plaintiff did not carry its burden because the

tax-exempt bond financing was available to any institution financing a public facility, whether religiously affiliated or not, the financing was neutral in nature. The Court also found that the bonds did not create an excessive entanglement because they were not financing facilities used for sectarian purposes. Accordingly, the court held that the financing did not violate the U.S. Establishment Clause or its counterpart in the Arkansas Constitution.

Conclusion

St. John's Evangelical Lutheran Church agrees that the Bond financing will never be used primarily for sectarian instruction or study or as a place of devotional activities or religious worship or as a facility used primarily in connection with any part of the program of a school or department of divinity for any religious denomination or the training of ministers, priests, nuns, rabbis or other similar persons in the field of religion.

Therefore, the bonds do not create an excessive entanglement, because they are not financing facilities used for sectarian purposes. This Bond financing does not violate the U.S. Establishment Clause and cannot be denied on that basis.