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## Local Finances: Schulz v. State of New York

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**THIRD DEPARTMENT**

Schulz v. State of New York<sup>1604</sup>  
 (decided November 4, 1993)

Taxpayer plaintiffs claimed that the State Constitution<sup>1605</sup> was violated because the financing of a resource recovery facility by the Warren and Washington Counties Industrial Development Agency (hereinafter the “IDA”) “constituted [s]tate aid to a private undertaking” and was a state assumption of IDA’s debt obligations.<sup>1606</sup> The court held that the Constitution was not violated because the monetary aid given to the counties by New York State was a gift.<sup>1607</sup>

Defendant IDA owned a resource recovery facility which was operated by defendant Adirondack Resource Recovery Associates (hereinafter “Adirondack”), a private entity.<sup>1608</sup> The program was funded by bonds issued by the IDA.<sup>1609</sup> The statements and cover pages included in the bond offering expressly stated that the bonds:

shall not be or constitute a debt of the State of New York, the Counties of Warren or Washington or of any other political subdivision of the State . . . nor shall the Bonds be payable out

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1604. \_\_\_ A.D.2d \_\_\_, 603 N.Y.S.2d 207 (3d Dep’t 1993).

1605. N.Y. CONST. art. VIII, § 1 (“No county, city, town, village or school district shall give or loan its credit to or in aid of any individual, or public or private corporation or association . . . .”); N.Y. CONST. art. VIII, § 2 (“No county, city, town, village or school district shall contract any indebtedness except for county, city, town, village or school district purposes, respectively.”); N.Y. CONST. art. X, § 5 (“Neither the state nor any political subdivision thereof shall at any time be liable for the payment of any obligations issued by such a public corporation heretofore or hereafter created, nor may the legislature accept, authorize acceptance of or impose such liability upon the state or any political subdivision . . . .”).

1606. *Schulz*, \_\_\_ A.D.2d at \_\_\_, 603 N.Y.S.2d at 209.

1607. *Id.* at \_\_\_, 603 N.Y.S.2d at 209.

1608. *Id.* at \_\_\_, 603 N.Y.S.2d at 208.

1609. *Id.* at \_\_\_, 603 N.Y.S.2d at 208.

of any funds other than those of the Issuer as expressly provided in the Indenture.<sup>1610</sup>

Moreover, the IDA was obligated to pay the principal and interest due on the bonds.<sup>1611</sup>

Once the facility opened, the Counties of Warren and Washington realized that the tipping fees they were charging dumpers were not enough to cover the costs of the waste disposal fees they were obligated to pay to the facility's operator, Adirondack.<sup>1612</sup> In order to help the counties keep the plant operating, the State Legislature appropriated \$350,000 in the 1992-1993 Aid to Localities Act which went to the facility.<sup>1613</sup> Thereafter, the plaintiffs brought an article 78 proceeding<sup>1614</sup> and alleged that the financing method violated the State Constitution.<sup>1615</sup> Ultimately, the supreme court granted defendants' motion for summary judgment.<sup>1616</sup> Subsequently, taxpayer plaintiffs appealed to the Appellate Division, Third Department.<sup>1617</sup>

The court held that the financing arrangements did not violate the New York State Constitution.<sup>1618</sup> The court stated that "[w]hile it is true that Washington and Warren Counties are contractually obligated to pay the monthly waste disposal fee[.]. .

the Counties' obligation in this regard is contingent upon the continued provision of waste disposal services and, further, that the Counties are not directly liable to the bondholders."<sup>1619</sup>

1610. *Id.* at \_\_\_, 603 N.Y.S.2d at 208.

1611. *Id.* at \_\_\_, 603 N.Y.S.2d at 209.

1612. *Id.* at \_\_\_, 603 N.Y.S.2d at 209.

1613. *Id.* at \_\_\_, 603 N.Y.S.2d at 209.

1614. N.Y. CIV. PRAC. L. & R. §§ 7801-7806 (McKinney 1981). The article 78 proceeding supersedes the common law writs of mandamus, prohibition, and certiorari to review, replacing all three of these devices with a uniform device for challenging, in court, the activities of an administrative agency .

1615. *Schulz*, \_\_\_ A.D.2d at \_\_\_, 603 N.Y.S.2d at 209.

1616. *Id.* at \_\_\_, 603 N.Y.S.2d at 209.

1617. *Id.* at \_\_\_, 603 N.Y.S.2d at 209.

1618. *Id.* at \_\_\_, 603 N.Y.S.2d at 210.

1619. *Id.* at \_\_\_, 603 N.Y.S.2d at 210 (citing *Wein v. City of New York*, 36 N.Y.2d 610, 331 N.E.2d 514, 370 N.Y.S.2d 550 (1975) (validating a contract

Furthermore, the court found that the \$350,000 appropriation from the State Legislature was in fact a “gift of state aid to Washington and Warren Counties.”<sup>1620</sup>

In conclusion, the IDA’s financing agreement, including the bonds, as well as the appropriation of money by the States to help pay the counties’ waste disposal fees were held to be constitutional by the court.

#### ***FOURTH DEPARTMENT***

1963 Elmwood Avenue, Inc. v. Tanzella<sup>1621</sup>  
(decided May 28, 1993)

Petitioner, 1963 Elmwood Avenue, Inc., sought to abate property taxes which had been assessed for the 1989-90 year.<sup>1622</sup> The petitioner claimed that the City had failed to comply with the City of Buffalo’s Resolution 118.<sup>1623</sup> The court held that this resolution violated the New York State Constitution<sup>1624</sup> because

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providing for a city to appropriate a gift of public funds to public corporation, while incurring no liability); *Congdon v. Washington Co.*, 130 A.D.2d 27, 518 N.Y.S.2d 224 (3d Dep’t 1987) (holding that since certain contingencies terminate a counties’ obligation to pay Industrial Development Agency for solid waste disposal and since the county had no liability to the bondholders then the waste disposal agreement was not unlawful), *appeal denied*, 70 N.Y.2d 610, 516 N.E.2d 1223, 522 N.Y.S.2d 110 (1987)).

1620. *Schulz*, \_\_\_ A.D.2d at \_\_\_, 603 N.Y.S.2d at 209 (citing *Comereski v. City of Elmira*, 308 N.Y. 248, 125 N.E.2d 241 (1955) (holding that a city’s gift of public funds for proper public purposes to another public corporation is proper)).

1621. 193 A.D.2d 1110, 598 N.Y.S.2d 414 (4th Dep’t 1993).

1622. *Id.* at 1110, 598 N.Y.S.2d at 415.

1623. *Id.* Resolution 118 directed the “City of Buffalo Common Council” to absolve the petitioner, a private corporation of its “tax liability for that year,” upon a finding that the property owners “conferred a genuine public benefit upon the City of Buffalo by . . . removing dilapidated buildings and clearing the site . . . at no cost to the city of Buffalo.” *Id.*

1624. N.Y. CONST. art. VIII, § 1. This provision provides in pertinent part: “No . . . city . . . shall give or loan any money to or in the aid of any individual, or private corporation . . . .” *Id.*