



The Essentials

State Law Issues (Real World Examples)



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Goal:

Frame work to analyze many state law issues that you may face:

- Bond Counsel
- Disclosure Matters

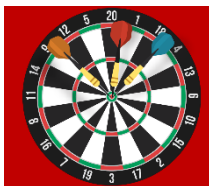


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Bond Counsel Opinion

- **Opinions delivered:**
 - Validity & Enforceability
 - Matters of state law
 - Tax Exemption
 - Federal AND state
- **NABL Standard: “Firmly Convinced”**



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Consequence If Not Valid and Enforceable?

- ***Ultra vires* borrowings void and unenforceable**
- **Washington Public Power Supply System (1983)**
 - No authority for take or pay contracts used to secure the bonds
 - Defaulted on over 2.25 billion of revenue bonds



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Validity & Enforceability

- **Source of Authority:**
 - Dillon's Rule -vs- Home Rule
 - Local charter/ordinances -vs- State Law
 - Local charter/ordinances -plus- State Law

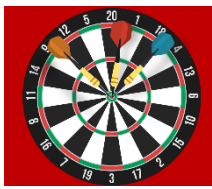


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Validity & Enforceability

- State Law Considerations
 - Authority
 - Purpose/Use of Funds
 - Structure and Security (e.g., general obligation debt, revenue bonds, moral obligations/appropriation bonds, lease obligations, anticipation notes)
 - Instrument Type (e.g., warrant versus bond)



Validity & Enforceability

- State Law Considerations (cont'd)
 - Procedural Requirements
 - Election or Referendum Requirements
 - Open Meeting Requirements
 - Required Findings
 - Quorum Requirements
 - Notice Requirements
 - Number of Readings
 - Public Hearing Requirements



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Validity & Enforceability

- State Law Considerations (cont'd)
 - Term Requirements
 - Principal terms of the instrument (e.g., redemption, maximum maturity, maximum interest rate)
 - Debt Limit
 - Is this obligation “debt”?
 - Is this “debt” subject to the limit?
 - Savings Percentage on Refunding
 - Competitive Sale Requirements



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Validity & Enforceability

- State Law Considerations (cont'd)
 - Public Purpose Doctrine
 - Expanding:
 - Classic public purposes
 - Plus: Economic Development
 - Lending of Credit



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Hypothetical 1

Lovely Lovely

Five years ago, the otherwise quiet citizens of the Town of Lovely (“Lovely”) started to become anxious over declining economic conditions and the loss of jobs to bordering municipalities. During the recent election cycle local merchants and citizens took to Main Street in protest over their local government’s failure to properly incentivize and attract commercial and industrial development. Riding on the platform to *“Make Lovely Lovely Again,”* local salesman Hank Hill was elected Mayor by a landslide. Among the various bad decisions Mayor Hill noted of the prior administration was its failure to offer *“big league”* financial incentives to business and corporations looking to expand into communities like Lovely.

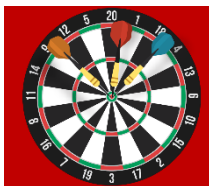


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Hypothetical 1 (Cont'd.)

Strickland Propane, Inc. (“Strickland”) makes and sells propane and propane accessories, and has issued an RFP to over 50 communities, including Lovely, offering to relocate its industrial processing and manufacturing operations - which includes 800 jobs - to the community that offers the best financial incentive package. Mayor Hill is pumped and responds immediately by offering up to \$4,000,000 (*i.e.*, \$5,000 per job) over a 10 year period for each job created at Strickland’s facility if located in Lovely. Strickland accepts the offer and agrees to work with Lovely to “paper” the arrangement. Mayor Hill wants it done by the end of the week. Executives from Strickland are flying down to Lovely and Mayor Hill has arranged for reporters from the *Lovely Gazette* to memorialize the signing.



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Hypothetical 1 (Cont'd.)

Mayor Hill summons you to his office and asks for you to prepare a *“one pager”* development agreement for him to sign documenting the agreement. He needs it today or by tomorrow morning. When you ask about council approval he assures you they’re on board. They’ve already all met to discuss the deal and agreed unanimously to do it. He further adds with a grin - *“besides, as Lovely’s new CEO the only approval that matters is that of yours truly!”* He also notes the *“lawyer-types”* from Strickland said they’ll need an opinion that the development agreement is valid and enforceable. Mayor Hill speculates that the opinion *“shouldn’t be that hard”* and is happy to *“pay you for an hour or two for however long one of those letters takes to type-up”*.



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Hypothetical 1 (Cont'd.)

Query – What state laws and issues are at play here? How might this be analyzed in a Dillon’s rule jurisdiction compared to one with home rule?



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Hypothetical 2

Ned Stark is the Executive Director of the Port Authority of King's Landing (the "Port Authority"), which is located in the State of Westeros. Under the Westeros state law that created the Port Authority, the Port Authority is authorized to undertake capital projects in and for the benefit of the City of King's Landing. Westeros state law specifically authorizes municipalities to issue general obligation bonds for road projects without an election, subject to approval by two-thirds of the governing board at a meeting properly noticed, a 30-day reverse referendum, and certain debt limitations.



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Hypothetical 2 (Cont'd.)

In the past, the Port Authority has limited its projects to those specifically located in the City of King's Landing. However, Westeros Governor Robert Baratheon has proposed a road that would run from the Town of Winterfell, which is located in the northern portion of the State, directly into King's Landing (the "Road Project"). To fund the Road Project, the Governor has asked the Port Authority to issue bonds.



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Hypothetical 2 (Cont'd.)

Ned advises the Governor that the authority of the Port Authority is limited to projects within its jurisdiction, which is coterminous with the City of King's Landing. He further advises the Governor that he doesn't believe the Port Authority can undertake the Road Project or issue bonds therefor. Ned directs his attorneys at the law firm of Baelish & Varys to research the issue. The attorneys provide a memo, labeled draft, stating that state law expressly authorizes the Port Authority to bond for certain types of projects, but that the Road Project is not authorized. The draft memo identifies the risk of a possible challenge by bondholders and investors in connection with the Road Project. Ned presents the draft memo to the Governor.



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Hypothetical 2 (Cont'd.)

After receiving considerable pressure from Governor Baratheon, Ned directs Baelish & Varys to revise the memo to indicate that because the Road Project leads directly into King's Landing, the Road Project is consistent with state law. Baelish & Varys agree that this is a possible construction of the statute and they prepare a final memo to this effect. The final memo also states:

It is important to note that this statutory construction is not without doubt and may raise questions in the minds of some. The analysis veers away from the traditional model used by the Port Authority in determining whether it can undertake a project pursuant to existing ... legislation. The looser the statutory construction means the greater the risk of a successful challenge by the bondholders and investors.



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Hypothetical 2 (Cont'd.)

Ned takes the Road Project to the Board of Commissioners of the Port Authority (the “Board”), but does not provide the Board with information about the state law concerns. A majority of the Board approves the Road Project and the issuance of bonds. The next day, the Port Authority prints an Official Statement to offer general obligation bonds for the Road Project. The Official Statement states that the bonds are issued “only for purposes for which the Port Authority is authorized to issue bonds.” The bonds are scheduled to close later that month.



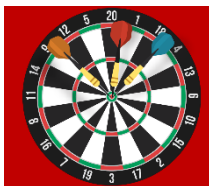
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Hypothetical 2 (Cont'd.)

Discussion Questions:

Can Baelish & Varys give a bond counsel opinion as to the validity of the bonds? What state law issues may prevent them from giving such an opinion? If the state law issues do not prevent giving the opinion, how would those issues be resolved? What due diligence should Baelish & Varys undertake to determine whether the bonds are validly issued?



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Hypothetical 2 (Cont'd.)

Would the issues be different if the bonds were issued by a City rather than the Port Authority? What if that City were in a home rule state as opposed to a Dillon's rule state?

Does the Official Statement adequately address the issues? What disclosure would be appropriate in the official statement? See SEC Release No. 10278, dated January 10, 2017.