2018 IL App (5th) 160428-U

NO. 5-16-0428

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

P&S GRAIN, LLC, an Illinois Limited Liability Company, and RONALD E. OSMAN, Individually,	)	Appeal from the Circuit Court of Williamson County.
Plaintiffs-Appellees,	)	
v.	)	No. 10-CH-9
HERRIN COMMUNITY SCHOOL DISTRICT NO. 4, WILLIAMSON, JACKSON, AND FRANKLIN COUNTIES, a School District Duly Established and Existing in Accordance With the Provisions of the Illinois School Code,	)	Honorable Jeffrey A. Goffinet, Judge, presiding.
Defendant-Appellant.	)	

JUSTICE OVERSTREET delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: In construing the Illinois County School Facility Occupation Tax Law (55 ILCS 5/5-1006.7 (West Supp. 2007)), as it was originally enacted, the circuit court properly concluded that the statute's use of the term "financing" in defining phrase "school facility purposes" did not include payment of existing debt obligations incurred for school facility projects that were completed prior to the effective date of the statute.

¶ 2 The plaintiffs, P&S Grain, LLC, and Ronald E. Osman, filed a complaint for declaratory judgment and injunctive relief, alleging that the defendant, Herrin

Community School District No. 4, Williamson, Jackson, and Franklin Counties (Herrin School District), improperly used funds generated from a 1% sales tax that was authorized by the Illinois County School Facility Occupation Tax Law (County School Facility Tax Law) (55 ILCS 5/5-1006.7 (West Supp. 2007)). The parties filed cross-motions for summary judgment, and the circuit court granted the plaintiffs' motion. Herrin School District now appeals from the circuit court's judgment. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 This case presents us with an issue of statutory construction. The statute at issue is the County School Facility Tax Law found in section 5-1006.7 of the Counties Code (55 ILCS 5/5-1006.7 (West Supp. 2007)). The statute became effective on October 11, 2007. Subsection (a) of the statute allows a county board to impose a sales tax up to 1% upon all retail business to provide revenue to be used "exclusively for *school facility purposes*." (Emphasis added.) 55 ILCS 5/5-1006.7(a) (West Supp. 2007); Pub. Act 95-675, § 10 (eff. Oct. 11, 2007). Voters of the county must approve the sales tax through a referendum placed on the ballot of a regularly scheduled county election. *Id*.

¶ 5 After the statute was enacted, Williamson County voters voted to impose the 1% sales tax authorized by the statute. The tax became effective on July 1, 2008. Herrin School District is within Williamson County and began receiving funds generated by the sales tax on October 1, 2008. As of December of 2013, it had received a total of $7,983,688.68 as a result of the 1% sales tax.

¶ 6 Plaintiff P&S Grain is an Illinois limited liability company in the business of selling agricultural products to the general public in Williamson County, Illinois, and its sales are subject to the 1% sales tax. Plaintiff Osman is a resident of Williamson County and regularly purchases tangible personal property that is subject to the 1% sales tax. The plaintiffs brought suit alleging that Herrin School District had improperly used the proceeds it received from the 1% sales tax for purposes that do not qualify as "school facility purposes" as that term was defined in the statute.

¶ 7 Specifically, according to the parties' stipulation of facts, prior to the enactment of the County School Facility Tax Law, Herrin School District had issued five bonds and two purchase debt certificates to raise "funds expended on limited fire safety, refunding bonds, building bonds[,] and other expenses for projects completed prior, in some instances years before, the effective date of the School Facility Tax Law and the imposition of Williamson County's 1% [s]ales [t]ax." The parties agree that the proceeds from these debt obligations were used to fund school facility projects that were completed prior to the effective date of the County School Facility Tax Law.

¶ 8 On April 30, 2008, after the effective date of the County School Facility Tax Law, Herrin School District issued $9.9 million of refunding bonds[1] (hereinafter referred to as "refunding bonds") whose proceeds were used to refund money for the previously issued bonds and purchase debt certificates described above. This appeal centers on Herrin

[1]A refunding bond is "[a] bond which replaces or pays off outstanding bond which holder surrenders in exchange for new security." Black's Law Dictionary 1282 (6th ed. 1990).

School District's use of revenues generated from the 1% sales tax to pay the principal and interest of these "refunding bonds."

¶ 9 The refunding bonds provided for the payment of the principal and interest of the bonds from an *ad valorem* tax or funds received by Herrin School District from the 1% sales tax. Each year after the issuance of the refunding bonds, the *ad valorem* tax was abated; therefore, the revenue that Herrin School District collected from the 1% sales tax was the only revenue that was available and that was used by Herrin School District for the payment of these bonds.

¶ 10 On July 8, 2009, the school board for Herrin School District adopted a resolution to issue up to $20 million in bonds (hereinafter referred to as "alternative revenue source bonds") to finance and refinance various school facility additions and improvement projects, including refunding the previously issued $9.9 million refunding bonds. Again, these bonds provided that the revenue source for their payment would be from an *ad valorem* tax or funds that the school district received from the 1% sales tax. Every year after the issuance of the alternative revenue source bonds the *ad valorem* tax was abated, and the funds for repayment of these bonds came exclusively from the 1% sales tax.

¶ 11 In their complaint, the plaintiffs maintained that, by paying the principal and interest of the $9.9 million revenue bonds and that portion of the $20 million alternative revenue source bonds with funds generated from the 1% sales tax, Herrin School District improperly used the funds for the payment of school facility projects that were completed prior to the effective date of the County School Facility Tax Law. The plaintiffs

maintained that the original language of the statute did not authorize the use of the sales tax revenue for this purpose.

¶ 12 As stated above, the 1% sales tax authorized by the statute could be used only for "school facility purposes." At the time of its enactment, subsection (h) of the statute originally defined the phrase "school facility purposes" as follows:

> "(h) For purposes of this Section, 'school facility purposes' means the acquisition, development, construction, reconstruction, rehabilitation, improvement, *financing*, architectural planning, and installation of capital facilities consisting of buildings, structures, and durable equipment and for the acquisition and improvement of real property and interest in real property required, or expected to be required, in connection with the capital facilities. 'School-facility purposes' also includes fire prevention, safety, energy conservation, disabled accessibility, school security, and specified repair purposes as set forth under Section 17-2.11 of the School Code." (Emphasis added.) 55 ILCS 5/5-1006.7(h) (West Supp. 2007); Public Act 95-675, § 10 (eff. Oct. 11, 2007).

¶ 13 In defense of the plaintiffs' complaint, Herrin School District maintained, in part, that the statute's use of the word "financing" in defining school facility purposes included the "re-financing" of school facility projects that were completed prior to the effective date of the statute. It concluded, therefore, that it did not improperly use any of the revenue generated by the 1% sales tax.

¶ 14 On August 23, 2011, the legislature amended subsection (h) of the County School Facility Tax Law by dividing it into two sub-subsections and adding the language in sub-subsection (ii) as follows:

> "(h) For purposes of this Section, 'school facility purposes' means (i) the acquisition, development, construction, reconstruction, rehabilitation, improvement, financing, architectural planning, and installation of capital facilities consisting of buildings, structures, and durable equipment and for the acquisition and improvement of real property and interest in real property required, or expected to be required, in connection with the capital facilities and *(ii) the payment of bonds or other obligations heretofore or hereafter issued, including bonds or other obligations heretofore or hereafter issued to refund or to continue to refund bonds or other obligations issued, for school facility purposes, provided that the taxes levied to pay those bonds are abated by the amount of the taxes imposed under this Section that are used to pay those bonds.* 'School-facility purposes' also includes fire prevention, safety, energy conservation, disabled accessibility, school security, and specified repair purposes set forth under Section 17-2.11 of the School Code." (Emphasis added.) 55 ILCS 5/5-1006.7(h) (West 2012); Public Act 97-542, § 10 (eff. Aug. 23, 2011).

¶ 15 The parties agree that, after the amendment to the statute, sub-subsection (ii) authorized school districts to use the 1% sales tax revenue to refinance school facility projects that were completed before the effective date of the County School Facility Tax Law. The parties disagree on whether the statute authorized the use of the 1% sales tax

revenue for refinancing prior projects for the period beginning when Herrin School District began receiving the sales tax funds (October 1, 2008) up to the effective date of the amendment to the statute (August 23, 2011).

¶ 16 The plaintiffs filed their complaint on January 20, 2010. The original complaint was superseded by an amended complaint filed on December 1, 2015. The parties subsequently filed a joint stipulation of facts and cross-motions for summary judgment based on the stipulated facts.

¶ 17 In their stipulated facts, the parties defined the contested legal issue before the court as follows: "The sole issue before the Court is whether [the Herrin School District] was allowed by law to utilize funds received from the [1% sales tax authorized by the County School Facility Tax Law] from October 1, 2008, to August 22, 2011, to pay bonds and other obligations for projects completed and funded prior to the effective date of the County School Facility Tax Law and before the amendment to that Act on August 23, 2011, with an effective date of August 23, 2011."

¶ 18 In its motion for summary judgment, Herrin School District noted that the August 23, 2011, amendment to the statute clearly "allows old bonds to be refinanced and be paid by the [1% sales tax]." Herrin School District also noted that, prior to the amendment, the statute defined "school facility purposes" to include the "financing" of school facility projects. Herrin School District argued that the August 23, 2011, amendment to the statute made it clear that the legislature intended for the original statute to allow "the refinancing of the old bonds even though the projects were completed." The

amendment to the statute, Herrin School District continues, was merely a clarification rather than a substantive change in the law.[2]

¶ 19 In their cross-motion for summary judgment, the plaintiffs argued that prior to the amendment to the statute, its language did not allow the use of funds from the 1% sales tax to be used for refunding or refinancing preexisting bonds. The plaintiffs argued that, although the 2011 amendment to the statute allowed this use, the amendment to the statute did not apply retroactively.

¶ 20 On September 8, 2016, the circuit court entered an order granting the plaintiffs' cross-motion for summary judgment and denying the defendant's motion for summary judgment. The circuit court entered a six-page order that included a summary of the procedural setting, findings of fact, and legal analysis of the statutory construction issue presented by the motions. The court noted that both parties focused on the word "financing" contained within the original definition of "school facility purposes" when the statute was enacted. The court concluded that the word, and the context in which it was used, was not ambiguous and that the term did not "encompass the re-payment of a pre-existing loan of any type—whether a bond or conventional debt."

¶ 21 The circuit court also noted the amendment to the statute, which did not include the word "financing," placed "new obligations on a [school district] which uses the funds for past debts, specifically, the abatement of taxes levied." The court concluded,

[2]Herrin School District also raised a statute of limitations defense, which the circuit court rejected, and Herrin School District no longer asserts that defense on appeal.

therefore, that the amendment to the statute was substantive and could not be applied retroactively.

¶ 22 The plaintiffs' motion for summary judgment requested the court to order Herrin School District to make an accounting of all of the bond payments it made with revenue generated with the 1% sales tax from October 1, 2008, through August 22, 2011. The plaintiffs also asked the court to then determine which of those payments were illegally made and order Herrin School District to return the illegal payments to the account in which the sales tax revenues are held. The circuit court's September 8, 2016, order granting the plaintiffs' motion for summary judgment did not include the accounting requested in the plaintiffs' motion, nor did it include a determination of the amount Herrin School District improperly paid or an order to return any payments. In the order, however, the circuit court found "per Rule 304(a) that no just reason exists for delaying either enforcement or appeal." Herrin School District, therefore, now appeals from the September 8, 2016, order.

¶ 23 ANALYSIS

¶ 24 On review, we are faced with the task of construing the County School Facility Tax Law to determine whether Herrin School District improperly used funds from the 1% sales tax during the period of October 1, 2008, to August 22, 2011. This statutory construction issue arises from a summary judgment order. Therefore, our standard of review is *de novo*. *Perry v. Department of Financial & Professional Regulation*, 2018 IL 122349, ¶ 30.

¶ 25 "Summary judgment is proper if, when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, admissions, and affidavits on file demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 93 (2010). Here, the parties have stipulated to the material facts controlling their dispute, and we are left only with the legal question of which party is entitled to a judgment as a matter of law.

¶ 26 Illinois rules for statutory construction are well established. The court's "primary objective in interpreting a statute is to ascertain and give effect to the intent of the legislature." *Solon v. Midwest Medical Records Ass'n,* 236 Ill. 2d 433, 440 (2010). When interpreting the plain meaning of a statute, we consider the statute as a whole, the subject it addresses, and the legislature's apparent intent in enacting it. *Id*. The best evidence of the legislature's intent is the language of the statute, which must be given its plain and ordinary meaning. *Ready v. United/Goedecke Services, Inc.*, 232 Ill. 2d 369, 375 (2008). In fact, when the language of the statute is unambiguous, the courts "give effect to the plain and ordinary meaning of the language without resort to other tools of statutory construction," as it is not the court's "function to rewrite a statute or depart from its plain language by reading into the statute exceptions, limitations, or conditions not expressed therein." *Board of Education of Woodland Community Consolidated School District 50 v. Illinois State Board of Education*, 2018 IL App (1st) 162900, ¶ 9. Accordingly, we will first turn to the language of the statute in effect during the disputed period in question and

determine whether the statute was ambiguous. If not, we will apply the statute as it was written based on the plain and ordinary meaning of its language.

¶ 27 When the legislature first enacted the County School Facility Tax Law, it defined "school facility purposes," in relevant part, as "the *** *financing* *** of capital facilities consisting of buildings, structures, and durable equipment and for the acquisition and improvement of real property and interest in real property required, or expected to be required, in connection with the capital facilities." (Emphasis added.) 55 ILCS 5/5-1006.7(h) (West Supp. 2007).

¶ 28 In construing this statutory language, the circuit court concluded that the legislature's use of the term "financing" was unambiguous, that it must apply the term's plain and ordinary meaning, and that it did not need to resort to other aids of statutory interpretation in order to construe the act. The circuit court concluded that the original language of the statute, prior to its amendment, did not allow the use of sales tax revenue generated pursuant to the statute to pay existing indebtedness incurred prior to the enactment of the statute. We agree.

¶ 29 The circuit court correctly observed that the legislature's use of the word "financing" was key to construing the statute, but the legislature did not define the term in the statute. In addition, we note that neither the parties, the circuit court, or this court have located any case law relevant to defining this term. When a statute does not define a key term, it is appropriate to consult a dictionary to determine the term's plain and ordinary meaning. *People v. Perry*, 224 Ill. 2d 312, 330 (2007) ("In determining the plain meaning of a statutory term, it is entirely appropriate to look to the dictionary for a

definition."); *People ex rel. Lindblom v. Sears Brands, LLC*, 2018 IL App (1st) 171468, ¶ 27. In addition, "[a] court should not consider the statute's words and phrases in isolation but instead should interpret each word and phrase in light of the statute as a whole." *Citibank, N.A. v. Illinois Department of Revenue*, 2017 IL 121634, ¶ 39.

¶ 30 In the present case, the circuit court correctly looked to Black's Law Dictionary for the definition of the term "financing," concluding that the term means (1) the act or process of raising or providing funds; (2) funds that are raised or provided. Black's Law Dictionary 663 (8th ed. 1999). The court concluded that the legislature's use of this term in the statute meant "the act or process or an instance of raising or providing funds." The court also concluded that the term, as used, was "clearly prospective in tense." The court stated, "To give the word 'financing' the definition [Herrin School District] proposes, *i.e.*, the payment of bonds or other obligations previously issued, would require the Court to stretch the word 'financing' beyond its plain and ordinary meaning."

¶ 31 We agree with the circuit court's construction of the plain and ordinary meaning of the word "financing" as that term is defined in Black's Law Dictionary and hold that the legislature's use of the term "financing" in the statute means the act or process of raising funds for *prospective* school projects. The legislature's use of the term, in light of the statute as a whole, references "financing" as the task of raising funds for prospective school facility projects, including capital facilities and/or the acquisition or improvement of real property "required, or expected to be required." Nothing within the language of the statute suggests that "financing" includes raising funds for the payment of preexisting

debts for projects and acquisitions that had been completed prior to the effective date of the statute.

¶ 32 Because we believe that the language of the statute is unambiguous, we need not refer to other aids of statutory construction beyond the statute's plain language. In addition, because the statute is unambiguous, we reject Herrin School District's undeveloped argument, citing *Owens v. Department of Human Rights*, 403 Ill. App. 3d 899, 928 (2010), that the statute is unconstitutionally vague.

¶ 33 Herrin School District argues that the statute's language prior to the amendment was ambiguous and that we should, therefore, construe the statute considering other tools of statutory construction, including its legislative history. However, we believe that the statute's legislative history supports the circuit court's and the plaintiffs' construction, not Herrin School District's.

¶ 34 With respect to legislative history, one important construction aid is "the rule that an amendment to a statute creates a presumption that the amendment was intended to change the law." *Ready*, 232 Ill. 2d at 380. Here, this presumption is confirmed by the substance of the statutory amendment. The substance of the legislature's amendment to the statute evidences its intent to change the law to allow use of the sales tax revenue that was not previously authorized under the statute as originally enacted.

¶ 35 As noted above, the parties agree that the amendment to the statute, specifically sub-subsection (ii), allows the use of the 1% sales tax revenue for paying preexisting debt obligations related to school facility projects that were completed prior to the effective date of the County School Facility Tax Law. As the circuit court noted, the amendment to

the statute authorizing this use did not define this new authority by using the term "financing." This indicates that the legislature's use of the term "financing" in the original statute (and in sub-subsection (i) after the amendment) is not the same "school facility purpose" that the legislature defined in sub-subsection (ii) of the amended statute. They are separately defined purposes.

¶ 36 Also, as the circuit court correctly observed, the amendment to the statute in sub-subsection (ii) placed new obligations on school districts seeking to utilize sales tax revenue for this newly defined purpose. The amended statute requires that the taxes levied to pay the prior bonds must be abated by the amount of the sales taxes imposed to pay the bonds. This new obligation is not attached to the term "financing" as used in sub-subsection (i). The language of sub-subsection (ii), therefore, is not simply a clarification of the term "financing" as originally used, but is an entirely new substantive addition to the statute. Accordingly, the legislative history evidences a substantive change in the law when the statute was amended, and the "school facility purpose" defined in sub-subsection (ii) was not available to the school districts prior to the amendment.

¶ 37 Finally, we note that, because the amendment to the statute was a substantive change, the amendment cannot be applied retroactively in order to authorize Herrin School District's use of the sales tax revenue prior to the amendment.

¶ 38 "The question of whether an amendment [to a statute] applies retroactively depends on whether the amendment makes a substantive change or a procedural change to the law." *Doe Three v. Department of Public Health*, 2017 IL App (1st) 162548, ¶ 32. Illinois courts have applied a three part test to determine the retroactive application of a

statutory amendment. *Id*. ¶ 33. First, the court determines whether the legislature clearly indicated that the amendment applies retroactively. *Id*. If not, the court must determine whether the amendment is procedural or substantive in nature. *Id*. "Only those amendments that are procedural in nature may be applied retroactively." *Id*.

¶ 39 Here, the amendment is silent about its retroactive application. Therefore, we turn to the issue of whether it is substantive or procedural in nature. Generally, a procedural change in the law prescribes a method of enforcing rights or involves pleadings, evidence, and practice. *Ores v. Kennedy*, 218 Ill. App. 3d 866, 871 (1991). A substantive change in the law generally establishes, creates, defines, or regulates rights. *Id*.

¶ 40 The circuit court concluded that the amendment to the statute was substantive, not procedural, and we agree. On appeal, Herrin School District does not challenge this aspect of the circuit court's ruling; therefore, we need not delve into much analysis on this issue. We believe that it is important to note, however, that because the legislature made a substantive change to the law, we cannot retroactively apply the change without an indication from the legislature of its intent that it apply retroactively. *Harraz v. Snyder*, 283 Ill. App. 3d 254, 259 (1996) ("As a general rule, an amendatory statute will be construed prospectively rather than retroactively; the presumption of prospectivity is rebuttable, but only by the act itself which, either by express language or necessary implication, must clearly indicate that the legislature intended a retroactive application.").

¶ 41 CONCLUSION

¶ 42 For the foregoing reasons, we affirm the circuit court's order granting the plaintiffs' motion for summary judgment, and we remand for further proceedings.

¶ 43 Affirmed; cause remanded.