



Ohio Revised Code

Section 133.70 Complaint for validation of authority to issue or enter into securities.

Effective: October 30, 1989

Legislation: House Bill 230 - 118th General Assembly

(A) As used in this section, supplementing the definitions of the terms contained in section 133.01 of the Revised Code:

(1) "Issuer" also includes any person issuing fractionalized interests in public obligations, an obligor, and, in the case of public obligations, the public issuer.

(2) "Securities" also includes public obligations as defined in division (GG)(2) of section 133.01 of the Revised Code and fractionalized interests in public obligations, both referred to in this section as "division (A)(2) securities."

(B)(1) An issuer, at any time prior to its issuance or entering into of securities, may file a complaint for validation and thereby commence an action for the purpose of obtaining an adjudication of its authority to issue or enter into and the validity of, and security for and source of payment of, the securities, and of the validity of all proceedings taken and proposed to be taken in connection therewith, including, but not limited to, any of the following:

(a) The levy of taxes or special assessments levied or to be levied;

(b) The lien of those taxes or special assessments;

(c) The levy or charge of rates, charges, rentals, lease payments, or tolls;

(d) Any underlying public obligation;

(e) The proceedings and remedies for the collection of the taxes, special assessments, rates, charges, rentals, lease payments, or tolls, or payments by an obligor.



(2) No such action shall be commenced except upon determination of its necessity by the taxing authority or other authority empowered to adopt the legislation or order for the issuance of the securities or, in the case of division (A)(2) securities, the obligor.

(3) Except as provided in division (B)(4) of this section, the action shall be commenced in the court of common pleas of the county in which the issuer, or in the case of division (A)(2) securities, the obligor, is located in whole or in part or has its or a principal office. The tax commissioner and the county auditor of the county in which the action is commenced shall be named as party defendants. Service of summons shall, unless waived, be made upon such parties in the manner provided for service of summons by the Rules of Civil Procedure. The property owners, taxpayers, and citizens of the issuer, or in the case of division (A)(2) securities, the obligor, nonresident owners of property subject to taxation or special assessment for payment of debt charges on the securities by the issuer or obligor, and all other persons affected by or interested in the issuance of the securities, shall be deemed joined as defendants without service to the same extent as if individually named in the complaint.

(4) If the issuer of the securities, or, in the case of division (A)(2) securities, the obligor, is the state or any state agency, such action shall be commenced in the court of common pleas of Franklin county. The tax commissioner shall be named as party defendant, and the taxpayers, property owners, and citizens of the state, nonresident owners of property subject to taxation or special assessment for payment of debt charges on the securities by the issuer or obligor, and all other persons affected by or interested in the issuance of the securities, shall be deemed joined as defendants without service to the same extent as if individually named in the complaint.

(C) The complaint for validation shall contain that which is required by the Civil Rules including, without limitation, in ordinary and precise language and by references or exhibits, statements or descriptions of all of the following:

(1) The issuer's existence and authority for issuing the securities;

(2) The holding and result of any required election relating to the securities;

(3) If already passed or issued, the legislation, order, or proceeding authorizing the issuance of the



securities and evidence of its passage or issuance;

(4) All other essential proceedings taken and proposed to be taken in connection with the securities;

(5) If not set forth in legislation, order, or proceeding already passed or issued, the approximate amount and general proposed terms of the securities;

(6) The county or counties in which the proceeds of the securities, or any part thereof, are to be expended;

(7) If the securities are division (A)(2) securities, the same information referred to in divisions (C)(1) to (4) of this section as to the obligor and its obligations, including any public obligations, relating to the division (A)(2) securities;

(8) Any other pertinent matters.

(D) Except as otherwise provided in this section, all proceedings pursuant to this section shall be governed by, as applicable, the Rules of Civil Procedure and the Rules of Appellate Procedure.

(E) Upon the filing of the complaint, the court shall issue an order in general terms in the form of a notice directed to the state and to "all property owners, taxpayers, citizens, and others having or claiming any right, title, or interest in any property or funds to be affected" by the issuance or entering into of the securities or "affected in any way thereby," requiring the state through the attorney general and all such persons to appear and be heard before the court at a time to be designated in the order, and show cause why the prayer of the complaint should not be granted and the proceedings and the securities validated and confirmed as therein prayed.

(F) At least twenty days before the time fixed in the order for hearing, a copy of the complaint and order, unless waived in writing by the receiving attorney, shall be served upon the prosecuting attorney of the county in which the action is commenced, the prosecuting attorney of each county in which it is proposed to expend ten per cent or more of the proceeds of the sale of the securities, and the attorney general. No more than one copy of the complaint and order need be served upon any one prosecuting attorney. Each such attorney shall carefully examine the complaint and if it appears, or



there is reason to believe, that the complaint is defective, insufficient, or untrue, or if in the opinion of the attorney the issuance of the securities or, if the case, the entering into of the public obligation, is not lawful or they have not been duly authorized, the attorney may enter an appearance for the county, or the state in the case of the attorney general, and assert any defense to the complaint that the attorney considers proper. The attorney may enter an appearance and assert any support for the complaint that the attorney considers proper.

(G) The clerk of the court in which the action is commenced shall cause a copy of the order to be published once a week for two consecutive calendar weeks, in a newspaper of general circulation in that county and in each other county the prosecuting attorney of which is required to be served under division (F) of this section. The first publication in each county shall be made not less than fourteen nor more than twenty-one days prior to the date set for hearing. Upon the last publication of the order, service upon all property owners, taxpayers, citizens, or others having or claiming any right, title, or interest in or against the plaintiff or property subject to taxation or special assessment for payment of debt charges on the securities or otherwise affected by or interested in the issuance or entering into of the securities described in the complaint is complete, and the court has jurisdiction of them to the same extent as if such defendants were individually named in the complaint and personally served.

(H) The attorneys referred to in division (F) of this section, and any other person made a defendant or his counsel, shall, subject to laws restricting public access to certain records, have reasonable access to all records and proceedings of the issuer and, if division (A)(2) securities are involved, the obligor, which pertain to the matters described in the complaint. Any officer, agent, or employee of the issuer, and in the case of division (A)(2) securities the obligor, who has charge, possession, custody, or control of any of those records and proceedings shall, on request of that person, make available for examination those records and proceedings and shall furnish such authenticated copies of them as the person requests and at that person's expense.

(I) Upon motion of the issuer, whether before or after the date set for hearing as provided in division (E) of this section, the court may enjoin any person from commencing any other action or proceeding contesting the same or related matters as described in the complaint, as the complaint may from time to time be amended. The court may order a joint hearing or trial before it of all such related issues then pending in any action or proceeding in any court in the state, and may order any such action or



proceeding consolidated with the validation complaint pending before it, and may make such order as may be necessary or proper to effect that consolidation and as may tend to avoid unnecessary costs or delays or multiplicity of suits. That order is not appealable.

(J) Any property owner, taxpayer, citizen, or person affected by or interested in the issuance or entering into of the securities may become a named party to the action by pleading to the complaint at or before the time set for the hearing provided in division (E) of this section, or thereafter by intervention upon leave of court.

(K) At the time designated in the order for hearing, the court shall proceed to hear and determine all questions of law and fact in the action and may make such interlocutory orders and adjournments as will enable it properly to try and determine the action and to render a final judgment with the least possible delay.

(L) Any party to the action may appeal from a final judgment of a court of common pleas under division (K) of this section to the court of appeals. The notice of appeal must be filed within ten days of the entry of final judgment by the court of common pleas. The appeal shall take priority over all other civil cases therein pending, except habeas corpus. No oral argument shall be permitted on appeal except at the request of the court on its own motion.

(M) All of the following apply to a final judgment of the court of common pleas, as finally affirmed or modified in any appeal, that determines that the issuer has authority to issue the securities upon the general terms set forth in the complaint for validation and that adjudicates the legality of all proceedings taken and proposed to be taken in connection with the securities and any underlying public obligation:

(1) The final judgment is forever binding and conclusive, as to all matters adjudicated, against the issuer, any obligor, and all other parties to the action, and those in privity with them, whether named in the action or included in the description in the notice provided for in division (E) of this section.

(2) If all procedural steps required to be taken for the completion of the authorization, issuance, sale, and delivery of the securities, and for entering into any underlying public obligation, after the date of the final judgment, are properly taken in accordance with the applicable provisions of law and the



terms of the final judgment, the final judgment constitutes a permanent injunction against any person's contesting, by any action or proceeding, any of the following:

- (a) The validity of the securities and of any underlying public obligation generally described in the complaint;
 - (b) The validity of the taxes, special assessments, tolls, charges, rates, or other levies, or lease payments, or payments by an obligor, authorized, contracted, or covenanted to be imposed, made, or collected for the payment of the debt charges on the securities or of payment obligations under the public obligation;
 - (c) The validity of any pledge of or lien on revenue or property to secure the payment of the debt charges or payment obligations on the securities.
- (3) A final judgment does not permanently enjoin any person not a named party to the action from raising a claim or defense seeking relief in whole or in part from any levy of taxes or special assessments, made or to be made or collected or to be collected against property owned by that person, authorized for the payment of any debt charges or payment obligations on the securities described in the complaint if the claim or defense is based upon a right that such person may have only in his individual capacity as an owner of the property subject to the tax or special assessment, including but not limited to any rights under sections 727.02, 727.15, 727.16, and 727.17 of the Revised Code.
- (N) The costs of each action under this section shall be paid by the plaintiff and may be paid from the proceeds of the securities, except that if a taxpayer, citizen, or other person has contested, intervened in, or appealed the action the court may tax the whole or such part of the costs against that person as is equitable and just.