

SUPREME COURT OF SOUTH CAROLINA

O'Brien v. South Carolina ORBIT, 380 S.C. 38

668 S.E.2d 396 (2008) · No. No. 26533 · Decided August 18, 2008

SUMMARY

The Supreme Court of South Carolina held that the City of Charleston could not invest public funds for other post-employment benefits in the ORBIT trust because the trust invested in equity securities, violating Article X, § 11 of the South Carolina Constitution. The court also concluded that applicable statutes did not authorize the investment and ordered ORBIT dissolved with invested funds returned to its members. Justice Pleicones agreed that municipalities could not participate in ORBIT but dissented from the majority's reasoning regarding the trust's validity and the remedy.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Beatty; Chief Justice Toal; Justice Moore; Justice Waller; Justice Pleicones
JURISDICTION	South Carolina
DECIDED	August 18, 2008
DOCKET	No. 26533
DISPOSITION	other
PROCEDURAL POSTURE	Original-jurisdiction declaratory judgment action brought directly in the Supreme Court of South Carolina challenging the constitutionality and legality of the City of Charleston's proposed investment in the ORBIT trust.
STANDARD OF REVIEW	The court exercised original jurisdiction over the declaratory judgment action and interpreted the South Carolina Constitution and statutes de novo.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of South Carolina; precedential.
PARTIES	Thomas Francis O'Brien, Jr. v. South Carolina ORBIT, Joleen Deames, Steffanie C. Dorn, Belinda Harper, Charlie Potts, Phillp Robey, David Vebaun, David N. Williams, the City of Charleston, the Municipal Association of South Carolina

TOPICS

constitutional law municipal law trusts statutory interpretation declaratory judgment

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Article X, section 11 of the South Carolina Constitution prohibits a municipality from investing public funds in a trust that invests in equity securities.
2. Whether South Carolina statutes authorizing investments by political subdivisions permit the City to invest public funds in ORBIT or in a trust whose portfolio includes equity securities.
3. Whether ORBIT should be dissolved and the funds invested in it returned to its participating members.

HOLDINGS

1. Article X, section 11 prohibits a municipality from investing public funds in equity securities, and the municipality may not evade that prohibition by transferring the funds to a trust that invests in equity securities.
2. South Carolina statutes do not authorize a political subdivision to invest public funds in a private investment trust whose portfolio includes equity securities; the statutory list of authorized investments is exhaustive in this context.
3. Because ORBIT's obvious purpose was to invest public funds in equity securities in an attempt to circumvent constitutional restrictions, the majority deemed the trust illegal, ordered it dissolved, and required the return of invested funds to its members.

KEY QUOTATIONS

“The use of a trust to circumvent the constitutional mandate is unavailing.” (39)

“A clear reading of Article X holds that a municipality cannot invest in equity securities.” (43)

“The veneer of a trust does not change that.” (45)

“Because it is unconstitutional for the City to invest in equity securities, it is likewise unconstitutional for the City to invest in a trust that then invests in equity securities.” (46)

FACTUAL BACKGROUND

The City of Charleston sought to fund its retiree other post-employment benefits and comply with GASB Statement 45 by contributing public funds to the irrevocable ORBIT trust. ORBIT was established to invest municipal funds for future benefits, including in publicly traded stocks, securities, and equity-based funds. The City intended to participate only if the trust portfolio included equity securities, and O'Brien, a City employee and future OPEB recipient, challenged the arrangement as unconstitutional and unlawful.

PROCEDURAL HISTORY

O'Brien filed the action on August 14, 2007, seeking declarations that the City's participation in ORBIT was unconstitutional, unlawful, ultra vires, and contrary to public policy. The Supreme Court granted review pursuant to its original jurisdiction and entered judgment for O'Brien.

DISPOSITION

other

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