



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director

TO: REPRESENTATIVE DEAN KNUDSON

FROM: Anna Henning and Zach Ramirez, Staff Attorneys

RE: Potential State Liability for Debts of the Bradley Center Sports and Entertainment Corporation

DATE: June 9, 2015

You asked whether the state would be liable for debts and obligations incurred by the Bradley Center Sports and Entertainment Corporation in the event that the corporation is dissolved or is otherwise unable to satisfy its debts and obligations. In particular, you requested an analysis of the state's potential liabilities in light of s. 13.48 (41) (c), Stats.

This memorandum provides general information regarding the potential liability associated with the ownership interest conferred under s. 13.48 (41) (c), Stats. We have not reviewed the specific liabilities of the corporation, because a full analysis of all liabilities arising from the corporation's contractual arrangements and business activities exceeds the scope of this memorandum. Although such an analysis may be required before a court could determine the extent of the state's liabilities, for the reasons described below, it appears unlikely that the ownership interest conferred under s. 13.48 (41) (c), Stats., would serve as an independent basis for holding the state generally liable for all debts and obligations of the corporation.

BRADLEY CENTER SPORTS AND ENTERTAINMENT CORPORATION

The Bradley Center Sports and Entertainment Corporation was created under ch. 232, Stats, and is organized as a nonprofit corporation under state law. Among other powers, the corporation may accept loans and enter into contracts.

Among other duties, the corporation must own and operate the Bradley Center facility (including auxiliary structures and facilities) for the benefit of the citizens of the state. It also must adequately provide for the long-term maintenance of the Bradley Center facility. [ss. 232.03 and 232.05, Stats.]

The corporation is prohibited from selling, exchanging, or otherwise divesting itself of the Bradley Center. In addition, the corporation is prohibited from dissolving and winding up its affairs, except as authorized by a legislative enactment. [s. 232.05 (3), Stats.]

Section 232.09, Stats., expressly limits the state's liability with respect to the corporation's debts, obligations, acts, and omissions.

SECTION 13.48 (41), STATS.

Section 13.48 (41), Stats., authorizes the Building Commission to authorize up to \$5 million in general fund supported borrowing to aid the Bradley Center Sports and Entertainment Corporation, in the form of a grant, in the capital maintenance and repair of its sports and entertainment facility. It appears that the state has provided two such \$5 million grants to the corporation, the first in 2009 and the second in 2012.

The statute provides for an ownership interest by the state in the event that the Bradley Center is no longer used as a sports and entertainment facility. Specifically, in the event that the facility no longer has that use, s. 13.48 (41) (c), Stats., provides, "the state shall retain an ownership interest in the facility equal to the amount of the state's grant."

Such ownership interest provisions commonly appear in statutes authorizing state funding, generally to ensure that such statutes are upheld under the public purpose doctrine, a legal doctrine requiring that public funds be spent only for public purposes.¹ Section 13.48, Stats., includes provisions identical to s. 13.48 (41) (c), Stats., that apply to the facilities of 22 other entities.²

DISCUSSION

You asked whether the ownership interest conferred under s. 13.48 (41) (c), Stats., provides a legal basis for state liability for the corporation's debts and obligations. Definitive resolution of that question would require judicial interpretation. However, for several reasons, it appears unlikely that a court would hold that the state is generally liable for all of the corporation's debts and obligations based on the ownership interest conferred under s. 13.48 (41) (c), Stats.

¹ With respect to the public purpose doctrine, generally, see *State ex rel. Warren v. Nusbaum*, 59 Wis. 2d 391, 208 N.W.2d 780 (1973).

² Those entities include: the Swiss Cultural Center in New Glarus; the Milwaukee Police Athletic League; the Hmong Cultural Center in Dane County; the Bond Health Center in the City of Oconto; the Children's Hospital in Wauwatosa; the Kenosha Public Museums; the AIDS Network; the Grand Opera House in Oshkosh; the Aldo Leopold Climate Change Classroom; the L.E. Phillips Memorial Public Library in Eau Claire; the Marshfield Clinic; the Children's Hospital of Wisconsin Family Justice Center; Domestic Abuse Intervention Services, Inc.; the Medical College of Wisconsin; Alliant Energy Center; K I Convention Center in Green Bay; the Maritime Center of Excellence; the Norskedalen Nature and Heritage Center; the AIDS Resource Center of Wisconsin; the Lac du Flambeau Indian Tribal Cultural Center; the Madison Children's Museum; and the Myrick Hixon EcoPark in the City of La Crosse.

First, the statutory language suggests that the Legislature intended the state ownership interest in the Bradley Center (and the 22 other entities for which s. 13.48, Stats., provides an identical ownership interest) to be relatively narrow. The statutory language expressly limits the state's ownership interest to be "in the facility" and "equal to" the amount that the state has provided in grant funding to each entity. Additionally, the statutory language does not appear to provide for a general transfer of other assets or liabilities to the state.

Second, with respect to the Bradley Center, a reviewing court would likely analyze the Legislature's intent in light of ch. 232, Stats., the chapter of statutes that deals exclusively with the corporation. When enacting s. 13.48 (41) (c), Stats., the Legislature did not amend s. 232.09, Stats., which provides that the state has no liability with respect to any debt or obligation of the corporation. It is likely that a court would attempt to interpret s. 13.48 (41) (c), Stats., in a manner that avoids any conflict with the broad statement of limited liability under s. 232.09, Stats., and, thus, would not interpret s. 13.48 (41) (c), Stats., to make the state generally liable for the corporation's debts.

Finally, although s. 13.48, Stats., does not define the particular type of ownership interest it confers in the facilities of the corporation and the 22 other entities, a June 4, 2015 memorandum prepared by the Department of Administration and provided by your office characterizes the ownership interest as a reversionary interest. A reversionary interest is a property interest in which the privilege of possession is in the future and not the present. If the ownership interest authorized under s. 13.48 (41) (c), Stats., is a reversionary interest, then common law principles appear to allow the state to decline the property interest, if it chooses to do so. In general, under Wisconsin law, a party cannot be forced to accept ownership of property. [*Jackson County v. State Department of Natural Resources*, 2006 WI 96, at ¶29.] Additionally, because a reversionary interest does not become an enforceable right until the relevant contingencies are satisfied, prior to the time the Bradley Center ceases to be used as a sports and entertainment facility, the Legislature would likely retain the option to amend s. 13.48 (41) (c), Stats., to modify the interest conferred. [*Samuel C. Johnson 1988 Trust v. Bayfield County*, 520 F.3d 822, 831 (7th Cir. 2011).]

CONCLUSION

For the reasons discussed above, it appears unlikely that a court would hold the state financially responsible for all debts and obligations of the Bradley Center Sports and Entertainment Corporation solely on the basis of the ownership interest conferred under s. 13.48 (41) (c), Stats. However, factors such as the nature and terms of the corporation's liabilities, and existence of other parties with potential claims, may affect a court's analysis regarding the role of that ownership interest with respect to specific liabilities of the corporation.

In addition, it could be argued that, despite the express limitation of state liability under s. 232.09, Stats., the state's relationship with the corporation or actions taken by the state may provide a basis for liability with respect to some, or all, of the corporation's debts and obligations. In the absence of a judicial decision that directly addresses that argument, it is difficult to determine whether a court might find it persuasive. In some past cases, the Wisconsin

Supreme Court has upheld statutory separations between the state and corporate entities created to fulfill public purposes. [See, e.g., *State ex rel. Thomson v. Giessel*, 65 N.W.2d 529 (Wis. 1954); but see *State v. Beaver Dam Area Development Corporation*, 2008 WI 90, at ¶¶ 184-85 (Prosser, J., dissenting).] However, it is at least possible that a court would hold the state liable for some debts or obligations of the corporation on grounds other than the ownership interest conferred under s. 13.48 (41) (c), Stats.

If you have any questions, please feel free to contact us directly at the Legislative Council staff offices.

AH:ZR:ty