

### **66.191 Complaint for validation of bonds -- Proceedings.**

- (1) As used in this section, supplementing the definitions of the terms contained in KRS 66.011, "issuer" also includes any person issuing fractionalized interests in bonds and any instrumentality of an issuer and "bonds" also includes obligations.
- (2)
  - (a) An issuer, at any time prior to its issuance or entering into of bonds, 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 bonds, 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:
    1. The levy of taxes or special assessments levied or to be levied;
    2. The lien of those taxes or special assessments;
    3. The levy or charge of rates, charges, rentals, lease payments, or tolls;
    4. Any underlying obligation; and
    5. The proceedings and remedies for the collection of the taxes, special assessments, rates, charges, rentals, lease payments, or tolls, or payments by an issuer.
  - (b) No such action shall be commenced except upon determination of its necessity by the governing body or other authority empowered to adopt the legislation for the issuance of the bonds.
  - (c) The action shall be commenced in the Circuit Court of the county in which the issuer is located in whole or in part or has its principal office.
- (3) The complaint for validation shall contain that which is required by the Rules of Civil Procedure including, without limitation, in ordinary and precise language and by references or exhibits, statements or descriptions of all of the following:
  - (a) The issuer's existence and authority for issuing the bonds;
  - (b) The holding and result of any required election relating to the bonds;
  - (c) If already passed or issued, the legislation, order, or proceeding authorizing the issuance of the bonds and evidence of its passage or issuance;
  - (d) All other essential proceedings taken and proposed to be taken in connection with the bonds;
  - (e) If not set forth in legislation, order, or proceeding already passed or issued, the approximate amount and general proposed terms of the bonds;
  - (f) The county or counties in which the proceeds of the bonds, or any part thereof, are to be expended; and
  - (g) Any other pertinent matters.
- (4) 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 bonds 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 complaint should not be granted and the proceedings and the bonds validated and confirmed as therein.

- (5) At least twenty (20) days before the time fixed in the order for hearing, a copy of the complaint and order, unless waived in writing, shall be served upon the Attorney General. The Attorney General 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 General the issuance of the bonds or any related action, is not lawful or has not been duly authorized, the Attorney General may enter an appearance for the state and assert any defense to the complaint that the Attorney General considers proper. The Attorney General may enter an appearance and assert any support for the complaint that the Attorney General considers proper. No other appearance by or service of the complaint on any other attorney or person other than the Attorney General or persons set forth in this section shall be required.
- (6) The clerk of the court in which the action is commenced shall publish a copy of the order in a newspaper of general circulation in that county and in each other county in which at least ten percent (10%) of the proceeds of the bonds is proposed to be expended. The publication in each county shall be made not less than seven (7) nor more than twenty-one (21) days before the date set for hearing. Upon 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 bonds, or otherwise affected by or interested in the issuance or entering into of the bonds described in the complaint is complete, and the court has jurisdiction of them to the same extent as if these defendants were individually named in the complaint and personally served.
- (7) The Attorney General, 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 which pertain to the matters described in the complaint. Any officer, agent, or employee of the issuer who has charge, possession, custody, or control of any of those records and proceedings shall furnish such authenticated copies of them as the person requests, at that person's expense.
- (8) Upon motion of the issuer, whether before or after the date set for hearing as provided in subsection (4) 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 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 any 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.

- (9) Any property owner, taxpayer, citizen, or person affected by or interested in the issuance or entering into of the bonds may become a named party to the action by pleading to the complaint at or before the time set for the hearing provided in subsection (4) of this section, or thereafter by intervention upon leave of court.
- (10) 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.
- (11) Any party to the action may appeal from a final judgment of a Circuit Court under subsection (10) of this section to the Court of Appeals. The notice of 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.
- (12) All of the following apply to a final judgment of the Circuit Court, as finally affirmed or modified in any appeal, that determines that the issuer or obligor has authority to issue the bonds 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 bonds:
  - (a) 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 subsection (4) of this section.
  - (b) If all procedural steps required to be taken for the completion of the authorization, issuance, sale, and delivery of the bonds 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:
    - 1. The validity of the bonds described in the complaint;
    - 2. 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 bonds; or
    - 3. 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 bonds.
  - (c) 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 bonds 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.

- (13) The costs of each action under this section shall be paid by the plaintiff and may be paid from the proceeds of the bonds, 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.

**Effective:** July 15, 1996

**History:** Created 1996 Ky. Acts ch. 280, sec. 19, effective July 15, 1996.