

THE BOND BUYER

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Jefferson County's Ch. 9 Case to be Argued Before Appellate Court

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BRADENTON, Fla. – Jefferson County, Ala., faces another court test more than two years after its exit from bankruptcy was approved.

The 11th Circuit Court of Appeals in Atlanta has determined that it must hear from attorneys as to why the 2013 bankruptcy case is solid, and should remain in force to protect bondholders.

The appellate court tentatively set oral argument for the week of April 11, then removed it from the calendar. A new hearing date hadn't been announced as of Friday.

Jefferson County had asked to appear before the panel to pursue an appeal of U.S. District Judge Sharon Blackburn's ruling in September 2014.

Blackburn denied the Jefferson County's motion to strike down an appeal by a group of local ratepayers on the county's sewer system challenging the county's bankruptcy plan of adjustment confirmed on Nov. 22, 2013.

The county had argued unsuccessfully that the ratepayer's appeal was moot because the bankruptcy plan was largely consummated in December 2013, when \$1.8 billion of sewer system refunding warrants were sold to write down \$3.2 billion of outstanding debt.

Attorneys for Jefferson County said oral argument would probably be helpful to the appellate court.

"The constitutional, statutory, and equitable principles involved in this appeal are particularly important to governmental entities that may consider Chapter 9 relief now or in the future, as well as to the municipal debt market," they said in a brief last June.

The 11th Circuit Court of Appeals has accepted numerous documents and court cases, including friend of the court briefs from municipal market organizations and Chapter 9 bankruptcy appeal rulings in Detroit and Stockton, Calif.

In Detroit and Stockton, appellate panels in other federal districts dismissed appeals as moot based in part on the fact that those plans had been essentially consummated.

Unlike Detroit and Stockton, Jefferson County ratepayers said their challenge of the county's bankruptcy alleges that the plan violates the Tenth Amendment to the U.S. Constitution, which reserves the power to tax citizens to the states.

The ratepayers contend that a provision in Jefferson County's plan could allow the bankruptcy court to set sewer system rates to service the county's debt.

That provision - a key protection for bondholders who participated in the 2013 refunding deal - allows the bankruptcy court in Alabama to maintain jurisdiction over Jefferson County's restructuring plan as long as the debt remains outstanding.

Blackburn found the provision troubling when she denied Jefferson County's motion to dismiss the ratepayer's appeal.

Although Blackburn said some parts of the county's bankruptcy confirmation order "may be impossible to reverse," she said the portion that cedes the county's future authority to set sewer rates to the bankruptcy court is not one of those parts.

Jefferson County has argued that the bankruptcy court is only a forum for bondholders to enforce the plan and related contracts, and not to set sewer rates.



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