IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:	)	
	)	
JEFFERSON COUNTY, ALABAMA,	)	**Case No.: 11-05736- TBB-9**
a political subdivision of the State of	)	
Alabama,	)	**Chapter 9 Proceeding**
	)	
DEBTOR.	)	
	)	

JOINDER OF ASSURED GUARANTY MUNICIPAL CORP.
IN OBJECTION AND MOTION TO DISMISS
BY THE INDENTURE TRUSTEE

Assured Guaranty Municipal Corp., formerly known as Financial Security Assurance Inc. ("Assured"), a creditor and party in interest[1] in the chapter 9 case of Jefferson County, Alabama (the "County"), respectfully submits this joinder to that certain Objection to Eligibility and Motion to Dismiss Chapter 9 Petition by the Indenture Trustee, dated December 9, 2011 [Docket No. 380] (the "Objection"), and states as follows:

1. Assured joins in the Objection and incorporates herein by reference the legal and factual arguments contained therein.

2. To qualify as a debtor under chapter 9, the County bears the burden of proving, *inter alia*, that it

> is ***specifically authorized***, in its capacity as a municipality or by name, to be a debtor under [chapter 9] by state law . . . .

[1] *See* Assured's Statement of Legal Issues in Support of the Trustee's and Receiver's Motions [Docket No. 146] at p. 5 and fn. 2 and its Supplemental Statement of Legal Issues in Support of the Trustee's and Receiver's Motions [Docket No. 326] at p. 2, fn. 3, as well as the exhibits annexed thereto, establishing that Assured has been appointed as agent and attorney-in-fact for the Trustee and certain holders of the insured warrants and is a secured creditor of the County.

11 U.S.C. § 109 (c)(2) (emphasis added).

3. The sole state law authorization to file a chapter 9 petition cited by the County is set forth in Ala. Code § 11-81-3. On its face, Ala. Code § 11-81-3 only applies to "*bonds*." Specifically, Section 11-81-3 provides:

> The governing body of any county . . . which shall authorize the issuance of refunding or funding ***bonds*** may exercise all powers deemed necessary by the governing body for the execution and fulfillment of any plan or agreement for the settlement, adjustment, refunding, or funding of the indebtedness of the county . . . not inconsistent with the provisions of law relating to the issuance of refunding or funding ***bonds***. Without limiting the generality of any of the foregoing powers, it is expressly declared that the governing body shall have the power to take all steps and proceedings contemplated or permitted by any act of the Congress of the United States relating to the readjustment of municipal indebtedness . . . .

Ala. Code § 11-81-3 (emphasis added). However, the *warrants* issued by the County were issued pursuant to, and are governed by, Ala. Code § 11-28 *et seq*. ("Chapter 28") -- relating to "*Warrants* for Public Construction." Specifically, Section 11-28-2 provides:

> [T]he county shall have the power from time to time to ***sell and issue warrants*** ***of the county*** for the purpose of paying costs of public facilities.

Ala. Code § 11-28-2 (emphasis added).[2] There appears to be no dispute that the County has only issued "warrants" under Chapter 28 and not "bonds" under Ala. Code § 11-81 *et seq*. ("Chapter 81"). The actual titles of these two distinct chapters of the Alabama Code graphically illustrate that they are intended to, and do, apply to very different securities:

[2] Any argument that the term "bonds" in Ala. Code § 11-81-3 includes the sewer "warrants" because Assured's policies are entitled "Municipal *Bond* Insurance Policy" is spurious. Assured's policies are standard form issues and each such policy references the "warrants" as the insured security. Thus, the title of the insurance policies is irrelevant to the question of whether the sewer "warrants" issued by the County under Chapter 28 may be considered "bonds" under Ala. Code § 11-81-3.

Chapter 28

Title 11. Counties and Municipal Corporations.

Subtitle 1. Provisions Applicable to Counties Only.

Chapter 28. Warrants for Public Construction.

Chapter 81

Title 11. Counties and Municipal Corporations.

Subtitle 3. Provisions Applicable to Counties and Municipal Corporations.

Chapter 81. Municipal and County Bonds.

4. The legislative history of Chapter 28, embodied in the statute itself, shows that it was adopted in 1983, long after Chapter 81, in order to

> authorize each county in the State of Alabama: (i) to sell and issue ***warrants*** for the purpose of financing the costs of . . . any public facilities described in Section 11-28-1.1 . . . and (ii) to sell and issue warrants for the purpose of ***refunding any bonds*** . . . or other instruments evidencing valid debt . . . it being the intention of this chapter that any debt of such county may be refunded by ***warrants issued under this chapter*** irrespective of whether such debt was initially incurred under this chapter or under other provisions of law . . . .

Ala. Code § 11-28-1 (emphasis added). The intended distinction between "warrants" (Chapter 28) and "bonds" (Chapter 81) is abundantly clear.[3]

5. It is notable that nothing in Chapter 28 specifically or otherwise authorizes the County to seek bankruptcy protection to "readjust" warrants issued thereunder. In distinct contrast, as noted in paragraph 3 above, Chapter 81 does contain such express authority in Ala. Code § 11-81-3, but relating only to bonds issued under that Chapter.

[3] The limited references to warrants in Chapter 81, *see e.g.*, Ala. Code §§ 11-81-4 and 11-81-172, permit counties under certain circumstances to refund "bonds" through the issuance of "warrants" and vice versa. This is entirely consistent with Chapter 28, *see, e.g.*, Ala. Code §§ 11-28-1 and 11-28-4 ("[e]ach county may from time to time issue refunding warrants for the purpose of refunding refundable debt . . . .") and if there is any inconsistency between the Chapters then Chapter 28 by its terms clearly controls. Ala. Code § 11-28-7.

6. The Alabama legislature created Chapter 28 with the clear intention to regulate warrants issued thereunder knowing full well that Chapter 81 would continue to regulate bonds. Most importantly, the Alabama legislature chose not to include specific statutory authority in Chapter 28 even remotely similar to the specific statutory authority contained in Chapter 81 codified in Ala. Code § 11-81-3 and in fact stated expressly that "[i]nsofar as the provisions of this chapter [Chapter 28] may be inconsistent with the provisions of any other law concerning actions authorized by this chapter, the provisions of this chapter [Chapter 28] shall control . . . ." Ala. Code § 11-28-7 (emphasis added). The failure of the County to find any statutory authority supporting this chapter 9 petition in Chapter 28 (because there is none) means it has not met its burden of showing that the County "is specifically authorized, in its capacity as a municipality . . . to be a debtor under [chapter 9] . . ." [11 U.S.C. § 109(c)(2)] and thus, this case must be dismissed.

7. Moreover, in the chapter 9 case of *In re City of Prichard, Alabama*, in the United States Bankruptcy Court for the Southern District of Alabama, Case No. 09-15000, the City of Prichard appealed the bankruptcy court's interpretation of Ala. Code § 11-81-3 to the United States District Court for the Southern District of Alabama, Case No. 1:10-cv-00622-KD-M. (City of Prichard, Doc. # 217, Notice of Appeal, at 1), and the District Court certified the following question to the Alabama Supreme Court:

> Whether Ala. Code § 11-81-3 (1975) (as amended) requires that an Alabama municipality have refunding or funding bond indebtedness as a condition of eligibility to proceed under Chapter 9 of Title 11 of the United States Code?

(City of Prichard S.D. Ala., Doc. # 16, at 2-3). The Alabama Supreme Court's ruling may or may not be determinative of the County's eligibility in this case. In the event that the Alabama Supreme Court answers the certified question in any manner other than the negative, Assured

hereby reserves the right to be heard and respectfully requests that it be given additional opportunity to further object and brief the *Prichard* related issues to this Court.[4]

8. For the reasons stated in the Objection and herein, Assured requests that the Court dismiss this chapter 9 case for failure to satisfy the eligibility criteria set forth in 11 U.S.C. § 109(c)(2) and grant such other relief as it deems just and necessary.

This the 9th day of December, 2011.

Respectfully submitted,
Winston & Strawn LLP

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[4] Assured also understands that the Trustee has served on the County a Notice under Rules 30(b)(2) and 30(b)(6) of the Federal Rules of Civil Procedure seeking deposition testimony and documents of the County relevant, *inter alia*, to "the County's statement in the last sentence of footnote 23 on page 41 of its Memorandum in Support of Eligibility (Doc. 10) that 'the County previously authorized the issuance of bonds.'" To the extent such testimony or document production is relevant to the issues discussed herein, Assured reserves the right to be heard and respectfully requests that it be given an opportunity to supplement the arguments set forth herein.