

CERTIFICATE

TO THE SUPREME COURT OF ALABAMA

IN RE:)	
)	
CITY OF PRICHARD, ALABAMA)	
)	
Appellant.)	In the United States District
)	Southern District of Alabama
v.)	
)	Civil Action No. 1:10-00622-KD-M
SCOTT A. BALZER, et al,)	
)	
Appellee.)	

Pursuant to Ala. R. App. P. 18, the United States District Court for the Southern District of Alabama, requests the Supreme Court of Alabama to answer a question of law which is deemed determinative of an action before said federal court to which there is no clear controlling precedent in the decisions of the Supreme Court of Alabama.

In support of said certificate, the following facts are shown to the court:

- (1) The style of the case:

In Re: City of Prichard, Alabama, Appellant, v. Scott A. Balzer, et al, Appellee
Civil Action No. 1:10-00622-KD-M

On appeal from the United States Bankruptcy Court, Southern District of Alabama

- (2) Statement of facts:

On October 9, 2009, the City of Prichard, Alabama filed a bankruptcy petition under Chapter 9 of Title 11 of the United States Code. In order to be a debtor under Chapter 9, a municipality must be “specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter.” 11 U.S.C. § 109(c)(2).

Alabama’s statute which authorizes a municipality to file bankruptcy provides:

The governing body of any county, city or town, or municipal authority organized under Article 9, Chapter 47 of this title 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, city or town, or municipal authority organized under Article 9, Chapter 47 of this title 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, and the State of Alabama hereby gives its assent thereto and hereby authorizes each county, city or town, or municipal authority organized under Article 9, Chapter 47 of this title in the state to proceed under the provisions of the acts for the readjustment of its debts.

Ala. Code § 11-81-3 (1975) (as amended).

In response to the bankruptcy petition, a group of the City of Prichard's employees (who are vested in the City's Retirement Plan) sought dismissal of the City of Prichard's petition. The employees allege that the City of Prichard may not be a debtor under Chapter 9 because the City of Prichard is not an entity specifically authorized by State law.

Specifically, the employees' position is that Ala. Code § 11-81-3 makes the refunding or funding bond indebtedness a threshold requirement under Alabama law for a municipality to file under Chapter 9 and that the City of Prichard does not meet this requirement.¹ The Bankruptcy Court agreed and dismissed the City of Prichard's petition. The City of Prichard appealed to the United States District Court.

¹ There is no evidence before the Court that the City of Prichard currently has any debt in the form of refunding or funding bonds.

3) Question of law to be answered:

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 ?

This certificate has been prepared by said federal court.

OFFICIAL SEAL:



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