IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

IN RE: OZARK MOUNTAIN SOLID WASTE DISTRICT **No. 3:14-bk-70015**
Chapter 9

ORDER SUSTAINING OBJECTION
TO FILING OF CHAPTER 9 PETITION AND DISMISSING CASE

On January 16, 2014, Ozark Mountain Solid Waste District [the District] filed this chapter 9 case. On March 28, 2014, Bank of the Ozarks, as Trustee for the Bondholders [the Bank], filed an objection to the filing of this case, alleging that the District is not eligible to be a chapter 9 debtor pursuant to 11 U.S.C. § 109(c). The Court held a hearing on May 21, 2014. Jill R. Jacoway appeared on behalf of the District; Lance R. Miller appeared on behalf of the Bank. At the conclusion of the hearing, the Court took the matter under advisement. For the reasons stated below, the Court sustains the Bank's objection and dismisses the case.

Background

The District is one of eight regional solid waste management districts created by the Arkansas legislature in 1989 to remedy landfill capacity problems created by counties and municipalities handling their own solid waste disposal within the confines of their respective locations. Ark. Code. Ann. § 8-6-701. Specifically, the regional solid waste management districts were created to more evenly distribute solid waste throughout the state because "certain areas of the state [were] facing capacity shortages of crisis proportions, while others [were experiencing] a surfeit of capacity with individual disposal facilities which [could not] muster the resources for environmentally responsible operators." *Id.* Each district is overseen by the Arkansas Department of Environmental Quality [ADEQ] and is governed by a board comprised of representatives from each county and city within the district.[1] Ark. Code. Ann. § 8-6-703. The board of each

[1] The board is comprised of county judges and mayors within the District unless the county judge or mayor elects to appoint another representative to serve on the board in his place. Ark. Code. Ann. § 8-6-703(b)(2).

district is statutorily authorized to "fix, charge, and collect rents, fees, and charges of no more than two dollars ($2.00) per ton of solid waste related to the movement or disposal of solid waste within the district . . . ." Ark. Code. Ann. § 8-6-714(a)(1)(A).[2] The board may also charge and collect fees for solid waste disposed of within the district irrespective of whether the waste was generated in the district. Ark. Code. Ann. § 8-6-714(a)(2). Additionally, the board "may levy a service fee on each residence or business for which the board makes solid waste collection or disposal services available." Ark. Code. Ann. § 8-6-714(d). With a majority vote, the board may "require fees or delinquent fees to be collected with the real and personal property taxes of any county within the district." Ark. Code Ann. § 8-6-714(e)(1)(A).

At the May 21 hearing, District board member Tim McKinney testified that part of the District's responsibilities include overseeing grant programs, recycling programs, and waste tire programs.[3] McKinney testified that the District was not statutorily required to purchase and operate a landfill as part of its duties, but that the District made the decision to purchase an existing landfill located in Baxter County, Arkansas in 2005. The District funded the purchase of the landfill with a bond issued by the Bank in the amount of $9,800,000.00 and purchased the related equipment and assets with a second bond issued by the Bank in the amount of $2,500,000.00. According to McKinney, the District experienced problems with ADEQ immediately upon purchasing the landfill because older parts of the landfill were improperly constructed, resulting in the risk that leachate would contaminate the groundwater if the District did not undertake remedial measures.[4] McKinney testified that grants received by the District, as well as the $2.00 per ton tipping fee collected by the District, were exhausted on a monthly basis by the District's

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[2] This is referred to as a "tipping fee."

[3] McKinney is the mayor of Berryville, Arkansas and on the board of the Carroll County solid waste district in addition to serving on the District's board.

[4] Leachate is the liquid produced by rain or other moisture percolating through decomposing solid waste in a landfill.

efforts to remedy the leachate problem. As a result, the District operated at a deficit each month. Compounding the financial difficulties created by the leachate, many of the District's member counties opted to transport their solid waste to less expensive landfills located in other parts of Arkansas or out of state. Despite the District's financial problems, McKinney testified that the board never seriously considered levying the service fee authorized by Arkansas Code Annotated section 8-6-714(d). McKinney testified that there was some concern that the statutorily authorized service fee might be considered an illegal exaction, but that the fee was discarded as a source of revenue primarily because the board considered it a politically unacceptable solution that would likely result in District board members not being reelected to the offices that they held in their respective counties. The District defaulted on its obligations in 2013 and the landfill is no longer operational. The District filed this chapter 9 case on January 6, 2014.

Findings of Fact and Conclusions of Law

A debtor seeking chapter 9 relief "must satisfy each of the mandatory provisions of § 109(c)(1)-(4), and one of the requirements under § 109(c)(5) to be eligible for relief under the Code." *In re Boise County*, 465 B.R. 156, 166 (Bankr. D. Id. 2011) (citing *Int'l Ass'n of Firefighters, Local 1186 v. City of Vallejo* (*In re City of Vallejo*), 408 B.R. 280, 289 (B.A.P. 9th Cir. 2009)). Section 109(c) provides:

> An entity may be a debtor under chapter 9 of this title if and only if such entity–
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> (1) is a municipality;
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> (2) is 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;
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> (3) is insolvent;
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> (4) desires to effect a plan to adjust such debts; and
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> (5) (A) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in such chapter;
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> (B) has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of

> claims of each class that such entity intends to impair under a plan in a case under such chapter;
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> (C) is unable to negotiate with creditors because such negotiation is impracticable; or
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> (D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title.

11 U.S.C. § 109(c). The debtor bears the burden of establishing that it meets the eligibility requirements enumerated in § 109(c). *In re City of Vallejo*, 408 B.R. at 289. Section 921(c) provides that "[a]fter any objection to the petition, the court, after notice and a hearing, may dismiss the petition if the debtor did not file the petition in good faith or if the petition does not meet the requirements of this title." 11 U.S.C. § 921(c). Despite the permissive language of § 921(c), the courts have construed § 921(c) to require mandatory dismissal of a case if a debtor fails to prove eligibility for chapter 9 relief. *Id.*

To be eligible for a chapter 9, the debtor must be a "municipality." 11 U.S.C. § 109(c)(1). The code defines a municipality as a "political subdivision or public agency or instrumentality of a State." 11 U.S.C. § 101(40). In this case, the Bank does not dispute that the District is a municipality under § 101(40) but contends that the District is not specifically authorized under Arkansas law to be a chapter 9 debtor as required by § 109(c)(2). When a debtor's eligibility for chapter 9 relief is questioned, bankruptcy courts must exercise jurisdiction cautiously. *In re City of Harrisburg, PA*, 465 B.R. 744, 754 (Bankr. M.D. Pa. 2011). The Bank's allegation that the District is not authorized by the state of Arkansas to file a chapter 9 case

> raises important concerns of federalism and respect for the power of the states to manage their internal affairs. Primary among these concerns is the Tenth Amendment to the U.S. Constitution, which provides that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People." U.S. Const. amend. X. Although Congress has the sole power to establish "uniform Laws on the subject of Bankruptcies throughout the United States" (U.S. Const. art. I, § 8), where federal bankruptcy law intersects with the rights of states to regulate the activities of political subdivisions created by the state, principles of dual

> sovereignty as defined by the Tenth Amendment must be considered. Congress has made bankruptcy available to municipalities, but states retain their concomitant rights to limit access by their political subdivisions to bankruptcy relief. [footnote omitted] "In our democracy, people look to and are served by their elected representatives in national, state, and local government, but our federal system only recognizes the dual sovereignty of the United States and the states." *In re City of Bridgeport*, 128 B.R. 688, 691 (Bankr. D. Conn. 1991). Accordingly, federal law does not allow municipalities, which are subdivisions or instrumentalities of a state, to file for bankruptcy without state authorization. *Id.* at 692 (Chapter 9 does not grant a municipality rights and powers independent of the state).

In re City of Harrisburg, *PA*, 465 B.R. at 753-54. States "act as gatekeepers to their municipalities' access to relief under the Bankruptcy Code." *In re City of Vallejo*, 403 B.R. 72, 76 (Bankr. E.D. Cal. 2009). Identifying the entities that a state has specifically authorized to file for chapter 9 relief is key to maintaining the sovereignty of the states within the federal purview of bankruptcy. *In re Las Vegas Monorail, Co.*, 429 B.R. 770, 777 (Bankr. D. Nev. 2010). The authorization required by § 109(c) must be "exact, plain, and direct with well defined limits so that nothing is left to inference or implication." *Suntrust Bank v. Alleghany-Highlands Econ. Dev. Auth.* (*In re Alleghany-Highlands Econ. Dev. Auth.*), 270 B.R. 647, 649 (Bankr. W.D. Va. 2001) (citing *In re County of Orange*, 183 B.R. 594, 604 (Bankr. C.D. Cal. 1995)).

Congress gave those municipalities with the power to tax access to bankruptcy relief in 1934. Act of May 24, 1934, Pub. L. No. 251, 48 Stat. 798 (1934). In 1935, the Supreme Court held that the 1934 Act was unconstitutional because it improperly interfered with the sovereignty of the states. *Ashton v. Cameron County Water Improvement Distr. No. 1*, 298 U.S. 513 (1936). Congress addressed the constitutional issue quickly by enacting the Municipal Bankruptcy Act of 1937, Act of August 17, 1937, Pub. L. No. 302, 50 Stat. 653 (1937). The 1937 Act added a specific list of entities that were eligible to file bankruptcy but retained the provision from the earlier act requiring municipal debtors to have the power to tax. *In re Las Vegas Monorail Co.*, 429 B.R. at 778. Two years later, Arkansas enacted legislation that expressed its consent for the municipalities listed by

Congress in the 1937 Act to file bankruptcy. Ark. Code. Ann. §§ 14-74-102 to -103. The preamble to the Arkansas statute indicated an intent by the legislature to allow its municipalities to take unfettered advantage of the bankruptcy legislation enacted by Congress.[5] Arkansas specifically authorized certain entities to file bankruptcy pursuant to Arkansas Code Annotated section 14-74-103, which provides that

> (a) Any and all taxing agencies and instrumentalities named in § 14-74-102 shall have the right and power to:
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> (1) Avail themselves of any and all acts of the Congress of the United States providing for the lending of money to such districts and for the refinancing, refunding, adjustment, or composition of indebtedness of taxing agencies and any amendments or additional laws Congress may adopt in that behalf; and
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> (2) Proceed in the district courts of the United States in bankruptcy or in any other federal courts given like jurisdiction by voluntary proceedings in accordance with those acts of Congress and any amendments thereto.
>
> (b) This chapter expresses the consent of the state for the institution of bankruptcy proceedings by any and all such *taxing agencies* acting through their governing boards.

Ark. Code Ann. § 14-74-103 (emphasis added). Section 14-74-102 [the enabling statute] states:

> The taxing agencies and instrumentalities to which this chapter is

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[5] The preamble to the Arkansas statute states:

> "Whereas, the Congress of the United States has passed laws providing that taxing agencies, including municipal corporations and improvement districts may borrow from Reconstruction Finance Corporation and other Federal agencies and may make compositions of their debts with creditors and refinance and refund their debts and obligations by voluntary proceedings in Federal Courts of Bankruptcy; and
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> "Whereas, it is expedient and advisable that the State cooperate by enabling all such districts to avail themselves of the benefits of said laws passed by Congress[.]

Ark. Code Ann. tit. 14, ch. 74 preamble.

applicable shall be all those recited in those acts of Congress and that may be recited in any amendment thereof, including the following:

All the taxing agencies or instrumentalities hereinafter named, payable:

(A) Out of assessments or taxes, or both, levied against and constituting liens upon property in any of the taxing agencies or instrumentalities; or

(B) Out of property acquired by foreclosure of the assessments or taxes or both; or

(C) Out of income derived by the taxing agencies or instrumentalities from the sale of water or power or both, or any combination thereof; or

(D) From any combination of:

(I) Drainage, drainage and levee, levee, reclamation, water, irrigation, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts, organized or created for the purposes of constructing, improving, maintaining, and operating certain improvements or projects devoted chiefly to the improvement of the lands therein for agricultural purposes; or

(ii) Local improvement districts such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or

(iii) Local improvement districts such as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or

(iv) Public school districts or public school authorities organized or created for the purpose of constructing, maintaining, and operating public schools or public school facilities; or

(v) Local improvement districts such as port, navigation, or other similar districts, organized or created for the purpose

> of constructing, improving, maintaining, and operating ports and port facilities; or
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> (vi) Any city, town, village, borough, township, or other municipality.[6]

Ark. Code Ann. § 14-74-102. The list of entities authorized by the enabling statute to file bankruptcy is identical to the list contained in the 1937 Act, except for a handful of minor punctuation differences. (*Compare* Ark. Code Ann. § 14-74-102 *with* 50 Stat. 653 (1937) (amended 1946)). The first paragraph of section 14-74-102 provides that

> The taxing agencies and instrumentalities to which this chapter is applicable shall be *all those recited in those acts of Congress and that may be recited in any amendment thereof . . . .*

Ark. Code Ann. § 14-74-102 (emphasis added). Particularly when section 14-74-102 is read in conjunction with the preamble, it appears that the Arkansas legislature meant to grant the authority to file bankruptcy to any taxing agency or instrumentality that Congress had recited in the 1937 Act, as well as to any taxing agency or instrumentality that Congress might name in subsequent amendments.

In 1946, Congress made its next amendment to municipal bankruptcy legislation, leaving intact the list of specific entities it had already deemed eligible to file bankruptcy, but replacing "taxing agency or instrumentality" with "agency or instrumentality" (while still requiring eligible debtors to be "payable out of assessments or taxes, or both.") Act of July 1, 1946, Pub. L. 481, 60 Stat. 409 (1946). Arkansas did not make a similar amendment to its enabling statute. In 1976, Congress made a change to the eligibility requirements for chapter 9 when it "amended the definition of municipality to something more akin to the current Section 101(40)." *In re Las Vegas Monorail Co.*, 429 B.R. at 780. "In particular, Congress amended Section 81 of the Bankruptcy Act to read: '(8) "petitioner" means agency, instrumentality, or subdivision which has filed a petition under

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[6] Under Arkansas law, "municipality" is defined as "a city of the first class, a city of the second class, or an incorporated town." Ark. Code Ann. § 8-6-203(6).

this chapter.'" *In re Las Vegas Monorail Co.*, 429 B.R. at 780 (citing Bankruptcy Act § 81(8), 11 U.S.C. § 401(8) (as amended in 1976)). "This change greatly reduced the length of the definition, but no loss in coverage was intended." *Id.* As part of the 1976 amendment, Congress also specified that "Any State's political subdivision or public agency or instrumentality which is *generally authorized* to file a petition under this chapter by the legislature, or by a governmental officer or organization empowered by State law to authorize the filing of a petition, is eligible for relief under this chapter . . . ." Bankruptcy Act § 84 (emphasis added). As in 1946, Arkansas did not amend its enabling statute to reflect the changes made by Congress to the eligibility requirements for municipalities. Although Congress made minor revisions to the Bankruptcy Act in 1978 that "changed the designation of the chapters from Roman numerals to Arabic ones, changed 'petitioner' to 'municipality,' and changed the placement of the definition of municipality, the substance of the definition remained the same." *Id.* at 781. It was not until 1994 that Congress made the next substantive amendments to the Bankruptcy Code.

The 1994 amendments left the definition of municipality unchanged, but nonetheless had the effect of narrowing eligibility for chapter 9 relief. *Id.* at 782. "Section 402 of the 1994 Act . . . amended Section 109(c)(2) of the Code by striking 'generally authorized' and inserting 'specifically authorized, in its capacity as a municipality or by name.'" *Id.* (quoting the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 402 (1994)). Although the 1994 amendments made it necessary for states to specifically grant authorization for its municipalities to file bankruptcy, Arkansas made no changes to its enabling statute. Because federal law now requires specific rather than general authorization for a state's municipalities to file bankruptcy, the first paragraph of the enabling statute expressing Arkansas's general consent to the bankruptcy filing of any "taxing agencies and instrumentalities . . . recited in those acts of Congress and that may be recited in any amendment thereof . . ." is insufficient for the Court to find that the state of Arkansas specifically authorized the District to file bankruptcy. *See In re Slocum Lake Drainage Dist.*, 336 B.R. 387, 390 (Bankr. N.D. Ill. 2006) (specific authorization must be "exact, plain, and direct with well-defined limits so that nothing is left to inference or

implication." (citation omitted)). For the Court to find that the District may be a debtor in this case under § 109, it must conclude that the state of Arkansas specifically authorized the District to file bankruptcy either in its capacity as a municipality or by name pursuant to § 109(c)(2).

The Arkansas statute specifically authorizes entities that are "taxing agencies and instrumentalities" payable out of "assessments or taxes, or both" to file bankruptcy. The District admits that it is not a "taxing agency" but contends that it is an instrumentality that is specifically authorized to file bankruptcy for two reasons.[7] First, the District argues that it is specifically authorized under section 14-74-102(A) because the District is payable out of assessments due to its ability to charge for its services under section 8-6-714(d). The District argues that the service fee that it is authorized to charge should be considered an assessment because the District may collect the fees with personal and real property taxes and, if the fees are not paid, they may become liens upon property. In response, the Bank alleges that the fees that the District may charge for its services are not tantamount to the assessments referenced in section 14-74-102(A), irrespective of whether fees that go unpaid may become liens upon property that may be collected with taxes. Second, the District argues that it is specifically authorized to file bankruptcy by name because the District is a "local improvement [district] such as . . . sanitary, or other similar district" enumerated in section 14-74-102(D)(ii). The Bank disagrees that the District is a local sanitary or "other similar district" of the type enumerated in section 14-74-102(D)(ii). In order for the District to be a debtor under chapter 9, the Court must find that the District is payable out of assessments or that the District is specifically authorized to file bankruptcy because it is named in the enabling statute. The Court will examine each potential basis for specific authorization in turn.

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[7] The Court finds that the District is an instrumentality because it was created by an enabling statute, it is managed by a board consistent with the enabling law, it may buy and sell property, sue and be sued, and it is primarily responsible for its own finances. *See First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 624 (1983) (listing indicia of a "typical government instrumentality").

First, the Court must determine whether the District is payable out of assessments. Although section 8-6-714 refers to the District's ability to charge fees, the Court is not bound by the legislature's usage of the word "fee," but looks to the true nature of the levy to determine if it is an assessment. *See Morningstar v. Bush*, 383 S.W.3d 840, 845 (Ark. 2011) (the court looks "to the true nature of the exaction rather than its name to determine whether it is a fee or a tax."). Taxes, assessments, and fees are distinguishable from one another. Governments impose taxes as a means of raising general revenue. *City of Marion v. Baioni*, 850 S.W.2d 1, 2 (Ark. 1993). "Municipal taxes are those imposed on persons or property within the corporate limits, to support the local government and pay its debts and liabilities, and they are usually its principal source of revenue." *City of North Little Rock v. Graham*, 647 S.W.2d 452, 453 (Ark. 1983). "The word 'tax' does not include 'assessments.'" *Rainwater v. Haynes*, 428 S.W.2d 254, 256 (Ark. 1968).

Although assessments may be considered a form of taxation, they are not taxes in the usual sense. *Id.* Assessments are levied to fund local improvements that raise real property values and are, therefore, levied only against the property that has been benefitted by the improvement, in an amount that is proportionate to the increased value of the affected property. *Id.* at 256-57. Assessments may be levied only upon the consent of a majority in value of the property owners to be affected by the assessment and are levied only upon real property affected by the local improvements. *Crane v. City of Siloam Springs*, 55 S.W. 955, 958 (Ark. 1899) (citing Ark. Const. art 19, § 27) ; *see also* Ark. Code Ann. §§ 14-88-201 to -207. The assessor values the affected real property before and after the improvements are made and levies assessments accordingly. Ark. Code Ann. § 14-90-401.

Unlike taxes that raise general revenue and assessments that fund a specific improvement benefitting real property, a fee may be imposed by a municipality "to cover the cost of administering a regulatory scheme or providing a service" pursuant to its police power. *Morningstar*, 383 S.W.3d at 845. Unlike an assessment–which cannot be levied unless it has been approved by a majority in value of the affected property owners–a fee may be

assessed for a service without public approval. *Id.* For the reasons stated below, the Court finds that the District is not payable out of assessments, but is merely authorized to charge fees for providing services.

The District is statutorily authorized to charge two types of fees–a tipping fee and a service fee. When the District was operational, it charged the tipping fee authorized by section 8-6-714(a)(1)(A) for the movement and disposal of solid waste within the District. The District does not argue that the tipping fee is an assessment. However, in addition to the tipping fee, the District was authorized to (but did not) collect a service fee from each residence and business within the District pursuant to section 8-6-714(d) for making solid waste collection or disposal services available. Although the District was allowed, by majority vote, to "require fees or delinquent fees to be collected with the real and personal property taxes of any county within the district," the fees are not statutorily tied to any improvement to real property or increased value of real property. Ark. Code Ann. § 8-6-714(e)(1)(A). The District contends that its ability to require the county tax collector to collect the District's service fees with taxes pursuant to section 8-16-714(e)(1)(A) means that the service fees are really assessments. However, the District cited no authority supporting a transformation from fee to assessment based upon the vehicle employed for the fees' collection, and the Court located none. The Court finds that the District's ability to have the county tax collector collect the District's service fees simultaneously with personal and real property taxes does not change the service fee into an assessment. Had the District imposed the service fee, collecting it with real and personal property taxes was not mandatory but was merely an option. Additionally, the service fee could have been imposed without public approval (unlike an assessment, which requires the approval of the majority in value of affected property owners). Finally, the service fee does not relate to an increased value in real property due to an improvement to real estate–the hallmark of an assessment. Because the District admits that it is not payable out of taxes, and the Court finds that the District is not payable out of assessments, the Court must determine if the District is specifically authorized to file bankruptcy by name.

The District argues that it is named in section 14-74-102(D)(ii) because it is included in the specific authorization granted to "[l]ocal improvement districts such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names[.]" Ark. Code Ann. § 14-74-102(D)(ii). However, local improvement districts in Arkansas must be created in compliance with the procedures set out in Arkansas Code Annotated §§ 14-86-201 to -303. To form a local improvement district, notice must be sent by certified mail, return receipt requested, to all real property owners within the boundaries of the proposed improvement district notifying the property owners of the proposal to form an improvement district, the purpose and power of the proposed improvement district, the names of the organizers of the proposed improvement district, and the date, time, and place of the hearing to be held regarding the formation of the proposed improvement district. Ark. Code Ann. § 14-86-303. The District in this case was not formed pursuant to this procedure, but was instead created under section 8-6-701 to remedy environmental concerns stemming from the disparity in the separate county's respective abilities to accommodate and dispose of their own solid waste. Further, as discussed above, the District is payable from fees, not the assessments that are consistent with an improvement district. Finally, even if the District were an improvement district, it is regional, not local. Arkansas, historically, does not

> overlook the word "local" in the phrase "local improvements." On the contrary, we attach much importance to it. The use of this phrase limits the power to authorize assessments in cities and towns to those public improvements which are local in their nature, and intended for the convenience and accommodation of the local public, or some portion thereof, and which confer a special benefit upon the real property assessed.

Crane, 55 S.W. at 958. Therefore, the Court finds that the District is neither local nor an improvement district as named and specifically authorized to file bankruptcy in section 14-74-102.

Additionally, although the Bank did not object to the District's bankruptcy filing on this basis, the Court finds that the District did not meet the requirement of filing this case in good faith pursuant to § 921(c). Despite being authorized to collect a service fee from

residences and businesses within the District, the District never imposed the service fee even though the tipping fee was being exhausted on a monthly basis in an effort to contain the leachate problem. The service fee would have afforded the District an influx of revenue each month, but it opted not to exercise its statutory right to collect the fee–largely because the board members believed that imposing the service fee would be unpopular with the counties in the district and would result in the board members failing to be reelected to their respective county positions. Good faith required that the District access the service fee to attempt to resolve its financial straits prior to seeking chapter 9 protection. *See, e.g., In re Sullivan County Reg'l Refuse Disposal Dist.*, 165 B.R. 60 (Bankr. D.N.H. 1994).

Conclusion

For the reasons stated above, the Court finds that the state of Arkansas has not specifically authorized the District to file bankruptcy under 11 U.S.C. § 109(c)(2).[8] Additionally, the Court finds that even if the state of Arkansas had specifically authorized the District to file bankruptcy, the District did not file this case in good faith as required under 11 U.S.C. § 921(c). Therefore, the Court finds that the case must be dismissed.

IT IS SO ORDERED.

Ben Barry
United States Bankruptcy Judge
Dated: 08/05/2014

cc: Jill R. Jacoway, attorney for Ozark Mountain Solid Waste District
Lance R. Miller, attorney for Bank of the Ozarks
All creditors and interested parties

[8] Because the Court dismisses the case due to the District's failure to qualify as a debtor under § 109(c)(2), the Court need not discuss whether the District carried its burden of proof regarding the remainder of the requirements enumerated in § 109(c).