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Receiver Not Dismissed in Jefferson County Bankruptcy

The judge in the bankruptcy case of Jefferson County has refused to dismiss the court-appointed receiver, saying he instead will consider if the law permits him to limit the powers of the receiver. The receiver has been appointed by the court to run the county's sewerage system, the main course of Jefferson County's financial problems. The receiver wants to raise sewerage rates by 25%, but the county opposes such a move. Instead, the county wants to resume control over the sewerage rates for its 126,000 residents.

US Bankruptcy Judge Thomas Bennett said, "No matter what happens (in the hearing) today or tomorrow, I am not removing the receiver". However, should the judge limit the powers of the receiver, who acts on behalf of the bondholders to whom the county owes \$3 billion, the county would have more say in the running of the sewerage system.

The bankruptcy law has a provision known as automatic stay. This is where the law prevents creditors from filing lawsuits against any property of the debtor. Thus, in the case of Jefferson County, the bondholders are prohibited from doing anything to the sewerage system. If the bankruptcy judge ousts the receiver, it would give the County more bargaining power.

But according to the receiver John S. Young Jr., the bankruptcy law does not determine his ability to raise the sewerage rates or run the system. Calling the sewerage system the bondholders' "biggest potential remedy, (their) biggest potential solution to the problem", Young said relieving him of his position as receiver would cause the bondholders to forfeit their biggest ace in the pack.

In contending to remain in his position as receiver, Young argued that the automatic stay provision is not applicable in this case. This is because municipal bankruptcies (like the one Jefferson County filed) are governed by Chapter 9 of the Bankruptcy Code, not Chapter 11 as in the case of companies. And under Chapter 9 of the Code, there is no power vested in creditors to force the receiver to hand over any property of the debtor to them.

In addition, Young also contended that his position is protected by the 10th Amendment of the Constitution that states that powers not held by the federal government is vested in the state government and since he is appointed by the state court, a federal court judge cannot dismiss him.

The tussle over the control of sewerage rates is made acute by the fact that the bonds are non-recourse debts, in which bondholders can only be repaid out of revenue from the sewerage system and not through any other means.

Jefferson County is the 12th county to file a Chapter 9 bankruptcy this year. Other municipal bankruptcy filings were by Boise County, Idaho; Central Falls, Rhode Island, and Harrisburg, Pennsylvania. The rest were special purpose districts, or public-benefit corporations eligible to use Chapter 9. Jefferson County's bankruptcy is the largest municipal bankruptcy, a record previously held by Orange County, California.