

KROKIDAS & BLUESTEIN

ATTORNEYS

CLIENT ALERT

Important Massachusetts Supreme Judicial Court Decision on Structuring of Real Estate Holdings By Public Educational Institutions and Charter Schools

The recent decision of the Massachusetts Supreme Judicial Court in Board of Assessors of Bridgewater v. Bridgewater State University Foundation (SJC No. SJC-11031) clarifies in a beneficial way how the real estate holdings of public educational institutions and charter schools may be structured. The Bridgewater case examined whether real estate owned by Bridgewater State University Foundation (the “Foundation”) for the benefit of Bridgewater State University (the “University”), a Massachusetts state university, was eligible for real estate tax exemption. Krokidas & Bluestein submitted an amicus brief in this case supporting the Foundation’s position on behalf of the Massachusetts Charter Public School Association and the University Of Massachusetts Foundation, Inc., which was joined by the University Of Massachusetts and the Massachusetts Community College System. Relying in part on Krokidas & Bluestein’s amicus brief, the Court held that the Foundation was eligible for real estate tax exemption.

The Foundation is a charitable foundation, organized and operated pursuant to a Massachusetts statute which authorizes such organizations to support public educational institutions. The Foundation permits the University to use its real estate rent-free, and under an operating agreement between the Foundation and the University, and the Foundation holds, manages and invests its assets solely for the benefit of the University. The University occupies all of the Foundation’s properties other than a portion of one of the Foundation’s buildings (which the Foundation occupies). The Court confirmed that the Foundation was entitled to the real estate tax exemption set forth in Massachusetts General Laws Chapter 59, § 5, Clause 3, for real property owned and occupied by a charitable organization. The Court held that, because the Foundation was organized exclusively to benefit the University and the University was also entitled to the tax exemption for real property it owned, a literal construction of the exemption statute denying the exemption to the Foundation because it did not occupy the property in question led to an “absurd or unreasonable” result.

In its amicus brief, Krokidas & Bluestein provided the Court with examples of the many ways in which using private foundations to own and develop real estate for public universities and charter schools is highly beneficial -- and without which the development and operation of real estate by these institutions might prove exceedingly difficult. In addition, the amicus brief advised the Court of the many public institutions and charter schools that have structured their real estate holdings in the manner addressed in the Bridgewater case in reliance on the notion that such arrangements were entitled to property tax exemptions. The Court specifically acknowledged these points in its decision.

Although the Bridgewater decision concerned a public higher education institution, we believe that the rationale of the decision should also support the ability of charter schools to continue to utilize a foundation structure for real estate ownership purposes. If you are interested in discussing the impact of the Bridgewater case on your charter school or other educational institution, please feel free to call or email Janet Lundberg (617-482-7211; jlundberg@kb-law.com).