

Wind Turbine Project Contract: Indiana Supreme Court Addresses Enforceability Issue



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The Supreme Court of Indiana ("S.Ct.") addressed in a recent Opinion issues arising out of a wind turbine contract. See *Performance Servs., Inc. v. Randolph E. Sch. Corp.*, 211 N.E.3d 508, 512 (Ind. 2023).

The question involved the enforceability of a wind-turbine contract entered into by an Indiana school corporation.

Performance Services Inc. ("Performance") and Randolph Eastern School Corporation ("RESC") in 2008 entered into a contract. Performance agreed to construct and operate a wind turbine. It also agreed to:

- Sell the generated power and renewable energy credits on the open market
- Pay all costs of maintaining and insuring the turbine
- Provide RESC access to the turbine for educational purposes.

RESC agreed to pay Performance \$77,000 biannually. The school corporation would also receive credit for each payment based on the percentage of the turbine's net revenue and any surplus. This was projected to potentially total \$3.1 million after twenty-five years.

The State Board of Accountants subsequently notified the parties that Indiana school corporations lack statutory authority to invest in such projects. RESC then sought to void the contract. Performance argued the contract was enforceable.

The Indian Home Rule and Public Investment Act provides that school corporations lack the "power to invest money, except as expressly granted by statute." Ind. Code § 36-1-3-8(a)(11). The term "invest" is undefined. Therefore, the court utilized a general language dictionary to interpret the term.

The dictionary the S.Ct. accessed defines "invest" as "committing money in hopes of obtaining financial return."

The S. Ct. applied this definition to evaluate whether RESC agreed to commit money to the wind turbine project in the hope of gaining financial return. RESC was deemed to have gained an actual benefit. The immediate access to the wind turbines for education purposes was cited.

Of greater importance was the potential future financial benefits for RESC. These financial benefits constitute an illegal investment.

RESC agreed to pay \$77,000 biannually for the next twenty years to Performance to maintain the wind turbines and sell renewable energy credits. Those sales created a long-term financial benefit to RESC.

Therefore, the S.Ct. held the contract between the parties constitutes an investment prohibited by the Indiana Home Rule Act and Public Investment Act.

A copy of the Opinion can be downloaded [here](#).