

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

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—

- (1) is a municipality;
- (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;
- (3) is insolvent;
- (4) desires to effect a plan to adjust such debts; and
- (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;
- (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