



## Chapter 9 – More than just Orange County and Detroit

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A Chapter 9 bankruptcy offers protection to a financially-distressed municipality so that it may develop a plan for addressing its debts. A product of the Great Depression, bankruptcy protection for municipalities was first enacted in 1934. However, the Supreme Court held the act unconstitutional as an improper interference with the sovereignty of states. See *Ashton v. Cameron County Water Improvement Dist. No. 1*, 298 U.S. 513 (1936). Congress subsequently passed a revised Municipal Bankruptcy Act in 1937, which was eventually upheld by the Supreme Court. See *United States v. Bekins*, 304 U.S. 27 (1938).

Use of the term “municipality” in the Chapter 9 context typically evokes thoughts of the Orange County filing in the 1990’s or Detroit’s 2013 filing. However, the term “municipality” means much more than cities or counties.

A “municipality” is defined as a “political subdivision or public agency or instrumentality of a State.” 11 U.S.C. § 101 (40). To claim Chapter 9’s protection, a municipality must be specifically authorized to be a debtor by either (1) state law or (2) a governmental officer or organization empowered by state law to authorize the municipality to be a debtor. 11 U.S.C. § 109(c)(2). Any authorization must be unequivocal and with defined limitations – broad, general grants of authority are not enough. See generally *In re Slocum Lake Drainage Dist. Of Lake County*, 336 B.R. 387, 390 (Bankr. N.D. Ill. 2006); *In re County of Orange*, 183 B.R. 594 (Bankr. C.D.Cal. 1995).

While not an exhaustive list, the following have been recognized as “municipalities” who may seek protection under Chapter 9:

- Transit Districts;
- Public Benefit Corporations;
- County Hospitals; and
- Community Improvement Districts.

A municipality under Chapter 9 is more than Detroit – it is also the rural county hospital. While the burden of proving one’s eligibility as a “municipality” is on the debtor, the term “municipality” in a Chapter 9 continues to encompass many diverse entities.

This blog post was drafted by [Courtney Davis Powell](#), an attorney in the Spencer Fane LLP Oklahoma City, OK office. For more information, visit [spencerfane.com](http://spencerfane.com).

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