Yakubik

IN THE SUPREME COURT,
STATE OF FLORIDA

FILED
SID J. WHITE
OCT 29 1984
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

~~STATE OF FLORIDA~~, and the Taxpayers, Property Owners and Citizens of Lee County, including nonresidents owning property or subject to taxation therein, et. al.,

Appellants,

vs.

LEE COUNTY, FLORIDA, a political subdivision of the State of Florida,

Appellee.

Case No. 66,004

INITIAL BRIEF OF APPELLANTS

Thomas G. Pelham
Deanna E. Boone
THOMAS G. PELHAM, P.A.
Post Office Box 3924
Tallahassee, FL 32315
Telephone: 904/386-3282

Attorneys for Appellants.

TABLE OF CONTENTS

TABLE OF CITATIONS

PREFACE

For purposes of readability and clarity, the Appellants in this appeal will be referred to collectively as "the Appellants." Appellee, Lee County, will hereinafter be referred to as "Lee County" or "the County." The Fort Myers Beach Sewer District will be referred to as the "FMBSD" or "District," and the South Fort Myers Sewer District will be referred to as the "SFMSD." The Water and Sewer Revenue Bonds, Series 1984, which were validated by the lower court, will be referred to as "the Revenue Bonds" or "the Bonds."

References to the Appendix/Exhibits, Volume I, submitted by Appellants are indicated by (A/E. _____) with appropriate Exhibit letters indicated, and references to the Appendix/Transcript of Hearing, Volume II, submitted by Appellants are indicated by (A/T. _____) with appropriate page numbers inserted. Unless otherwise indicated, emphasis in quoted materials has been added.

STATEMENT OF THE CASE

Appellants seek review of the final judgment of the lower court entered on September 10, 1984, validating the issuance by Lee County of Water and Sewer Revenue Bonds for improvements and additions to the combined and consolidated water and sewer system of the County.

On May 10, 1984, Lee County filed a complaint in the lower court, under Chapter 75, Florida Statutes, for validation of the issuance of not exceeding $13,500,000 of Water and Sewer Revenue Bonds, Series 1984, pursuant to Chapters 153, Part I, and 279, Florida Statutes. (A/E. B)

On May 16, 1984, the lower court issued an order pursuant to Section 75.05, Florida Statutes, directed against the state and the several property owners, taxpayers, citizens and others having or claiming any right, title or interest in property to be affected by the issuance of the Bonds, to appear on June 28, 1984, to show cause why the complaint should not be granted and the bonds validated. (A/E. C)

In response to the show cause order, Appellants filed an answer on June 28, 1984. (A/E. D) Appellants, Michael A. Yakubik, Donald S. Austin, Garrett Reasoner, Peter E. Bright, Elizabeth Stutzman, Portia Von Gunten, Maurice Thommassin, are residents and taxpayers of Lee County, Florida, who reside in and own property within the

Fort Myers Beach Sewer District ("FMBSD" or "District"), Appellant, Citizens Action Fund, Inc., is a Florida not-for-profit corporation whose membership consists of residents and taxpayers of Lee County, Florida, and the FMBSD. (A/E. Q)

The Appellants' answer contained four affirmative defenses. (A/E. D) Due to the complex and extensive nature of the issues raised by Appellants in their answer, the show cause hearing was postponed until August 2, 1984.

Lee County filed a motion on July 10, 1984, to strike Appellants' affirmative defenses. (A/E. E) On July 24, 1984, Appellants filed a motion for leave to amend the answer to add two more affirmative defenses. (A/E. F) Appellants' motion was granted by the trial court on August 2, 1984. Upon the oral motion of Appellants at the bond validation hearing, Appellant, Mr. Fennell Phillips, who is currently a citizen and resident of Lee County, and resides within the FMBSD, but who was not a resident or citizen of Lee County in 1978, was added as a Defendant without objection from the County. (A/T. 5, 81)

After the final hearing was held on August 2, 1984, the trial court entered a Final Judgment on September 10, 1984, validating the Revenue Bonds. (A/E. G) Despite the extent and complexity of the issues and the evidence presented in support thereof, the trial court's order routinely validated the Bonds. Without addressing a single

issue raised by Appellants, the lower court stated summarily on page 4 of the Final Judgment that the Appellants' Answer and Amended Answer showed no cause why the prayer of the Plaintiff should not be granted and disclosed no irregularity or illegality in the proceedings set forth in the Complaint. (A/E. G)

The notice of appeal of the September 10, 1984 final judgment validating the Revenue Bonds was filed by Appellants on October 8, 1984.

STATEMENT OF THE FACTS

This appeal requires consideration of the lengthy history of the FMBSD and Lee County's attempt to combine or merge the FMBSD with the County sewer system and to issue bonds to expand the combined system.

A. CREATION OF THE FMBSD.

By resolution adopted on August 16, 1972, the Lee County Board of County Commissioners ("Board") established and designated a portion of the unincorporated area of Lee County as the Fort Myers Beach Sewer District. The FMBSD consisted of all of Estero Island-Fort Myers Beach and all of San Carlos Island. The Board expressly cited Chapter 153, Part I, Florida Statutes, and more particularly Section 153.08, Florida Statutes, as authority for the creation of the District. The August 16, 1972 resolution provided that construction of sewer facilities to serve the

FMBSD was deemed by the Board to be necessary and advisable for the health, safety and general welfare of the residents and premises located in the District. (A/E. H)

The FMBSD was established and treated by Lee County as a political subdivision of the State of Florida and a local governmental agency. Continuously since the creation of the FMBSD, the Lee County Board of County Commissioners has served as the ex officio governing body of the District and treated the the District as a special district. (A/E. L, M) For example, the Board listed the FMBSD as a "dependent special district" in Lee County's annual financial reports to the Comptroller of the State of Florida in 1982 and 1983. (A/E. P)

B. FINANCING FOR THE CONSTRUCTION OF THE FMBSD SEWER SYSTEM.

The Board obtained approval, by a majority of votes cast by qualified electors residing in the FMBSD at a bond election held on December 5, 1972, to issue general obligation bonds in an amount not to exceed $8,930,000, to finance the estimated cost of constructing the sewer facility to serve the District. The official ballot stated that the bonds would be used to construct a sewer system to serve the FMBSD. According to the ballot, the bonds were to be payable from a special ad valorem tax levied annually on all taxable property within the portion of the unincorporated area of the County designated as the

FMBSD, provided, however, that surplus revenues would be used to lower the level of ad valorem taxes imposed on the FMBSD. (A/E. I)

Bond elections were also held in eight other districts similarly created by Lee County. Voters in seven of the districts rejected the issuance of bonds to construct sewer systems for their districts. Only the voters in the FMBSD and the South Fort Myers Sewer District ("SFMSD") approved the issuance of general obligation bonds to finance a sewer system to serve their districts. (A/T. 84-85)

By resolution adopted on January 13, 1973, the Board authorized the issuance of the general obligation bonds in the maximum amount of $8,930,000, to pay the cost of the acquisition and construction of a sanitary sewer system in the FMBSD. The January 31, 1973 Resolution authorizing the "general obligations of the District" irrevocably pledged the full faith, credit and unlimited taxing power of Lee County "within the District" for prompt payment of the principal and interest on the general obligation bonds. The Resolution provided that special ad valorem taxes would be levied on properties within the FMBSD to finance a sewer system for the FMBSD. (A/E. J)

The general obligation bonds were validated by the circuit court on June 11, 1973, and were finally issued on September 1, 1977. They were designated as the "Fort Myers Beach Sewer District General Obligation Bonds."

According to the terms of the Bonds, the amount of the annual tax could be reduced in any year by the amount of the net revenues derived from the operation of the sanitary sewer system and by the amount of the proceeds of special assessments levied against benefited properties actually received in the preceding year and then remaining to the credit of the Sinking Fund for the payment of such principal and interest. (A/E. J)

Because the estimated cost of constructing the sewer facility for the FMBSD had increased from $8,930,000 to $15,900,000, the Board adopted Resolution No. 126-67-44 on June 16, 1977, pursuant to Chapter 153, Florida Statutes, authorizing the issuance of special assessment bonds not to exceed $3,770,000 to pay part of the increased cost. The Resolution provided that the cost of constructing the sewer facilities to serve the FMBSD would be assessed against the lands to be specially benefited by the facilities. According to the Resolution, the facilities were to be constructed "for the benefit of the inhabitants of Fort Myers Beach Sewer District." Furthermore, all of the proceeds of the special assessments and the gross revenues from the operation of the facilities were expressly pledged to the payment of the principal of and interest on the Bonds authorized by the Resolution. The FMBSD applied for and received a local governmental agency loan from the Division of Bond Finance in the amount of $13,958,700.00

to supply a portion of the cost of constructing the sewer facilities. (A/E. K)

The sewer system paid for by and constructed for the inhabitants of the FMBSD was one of only two complete sewer systems in the unincorporated areas of Lee County. The FMBSD system contained both a collection system and a treatment plant. The systems in other parts of the unincorporated areas of the County were incomplete and had collection systems only. Sewage from all of the incomplete county systems was treated at the two City of Fort Myers treatment plants. (A/T. 15)

C. THE PURPORTED CREATION OF THE "COMBINED AND CONSOLIDATED" WATER AND SEWER SYSTEM OF LEE COUNTY.

The Board adopted Resolution 78-5-34 on May 25, 1984, which purported to combine and consolidate the FMBSD sewer system, paid for by and constructed to serve the inhabitants of the District, with the water and sewer systems of the County and the South Fort Myers Sewer District ("SFMSD"). (A/E. N) The "combined and consolidated" system was created only by virtue of the resolution and not pursuant to adoption of an ordinance. No referendum was held on the consolidation question. (A/T. 93-98)

According to the County, Resolution 78-5-34 was adopted primarily for financing purposes, with the idea that consolidating all of the sewer systems in the unincorporated areas of the County into one entity would

place the County in a stronger financial position for future bond issues to finance the construction of a system to serve the entire unincorporated area of the County. The ability to pledge revenue bond issues against the combined revenues from the consolidated systems would strengthen the County's position to obtain lower interest rates, more favorable bond ratings, and bond insurance. (A/T. 15-17, 91)

The County has never made any equitable arrangements concerning the bonded indebtedness of the FMBSD in connection with or pursuant to the creation of the "combined and consolidated" system. In fact, at the bond validation hearing, Lavon Wisher, the County Administrator, and Allan Borwick, Lee County's Senior Budget Analyst with the Office of Management and Budget, both testified that the County made no special provision for altering the obligations for the payment of the general obligation bonds and special assessment bonds issued for the FMBSD when the FMBSD was consolidated with the County system and the SFMSD. (A/T. 93, 114)

D. THE 1984 REVENUE BONDS TO FINANCE IMPROVEMENTS TO THE "COMBINED AND CONSOLIDATED" COUNTY SYSTEM.

The Board adopted Resolution No. 84-4-25 on April 25, 1984, authorizing the issuance of Water and Sewer Revenue Bonds, Series 1984, not exceeding $13,500,000 to finance the construction of additions, extensions and improvements

to the "combined and consolidated water and sewer system" of the County. (A/E. A) More specifically, the Revenue Bonds are to finance construction of a county-wide administrative complex and a new sludge treatment facility. The residents of the County, including residents of FMBSD, will be charged for use of the new treatment facility in accordance with rates to be established by the County. (A/T. 31-32) The Resolution pledges the revenues from the five systems in the unincorporated area of the County which were consolidated in 1978 to create the "combined and consolidated" county water and sewer system, including the FMBSD system, to secure payment of the Revenue Bonds.

The testimony given by Robert H. French at the final bond validation hearing reveals that prior to adopting Resolution 84-4-25, the Board did <u>not</u> publish notice and hold a public hearing on a proposed rate schedule for the proposed new treatment facility, nor did the County ever adopt a resolution containing a preliminary schedule of rates, fees and charges for the proposed facility. (A/T. 33-34) Also, Resolution 84-4-25 does not contain any rate schedule for the facility. (A/E. A)

ARGUMENT

I.

THE LOWER COURT ERRED IN VALIDATING THE BONDS BECAUSE THE BOARD ADOPTED RESOLUTION NO. 84-4-25 IN VIOLATION OF THE RATE SCHEDULE REQUIREMENTS OF SECTION 153.11, FLORIDA STATUTES.

Bonds may lawfully be issued only when statutory authority is complied with, Ingram v. City of Palmetto, 112 So. 861 (Fla. 1927), and substantial compliance with the statutes regulating such issue is essential to the right of a county to issue bonds. Hillsborough County v. Henderson, 33 So. 997 (Fla. 1903).

A petition for validation of governmental securities brings into question the right and authority of the taxing unit to issue the bonds and whether the issuance of the bonds substantially complies with the requirements of the statutes authorizing issuance of the bonds. Proceedings to validate governmental securities determine issues going directly to the power to issue securities and the validity of the proceedings with relation thereto. Speer v. Olson, 367 So. 2d 207, 210 (Fla. 1978); State v. City of Sarasota, 17 So. 2d 109 (Fla. 1944).

In this case, the County has failed to comply with the applicable statutory requirements. Resolution No. 84-4-25 authorizing the issuance of the 1984 Revenue Bonds does not contain a schedule of rates, fees and charges, as required under Section 153.11(1) and (3), Florida

Statutes. (A/E. A) At no time prior to the adoption of Resolution No. 84-4-25 did Lee County adopt any resolution setting forth the mandatory rate schedules. Lee County's failure to comply with Section 153.11(1) and (3) requires reversal of the lower court's Final Judgment validating the Bonds.

A. RESOLUTION NO. 84-4-25 VIOLATES THE REQUIREMENTS OF SECTION 153.11(1)(a), FLORIDA STATUTES.

The Board purported to adopt Resolution No. 84-4-25 authorizing the issuance of the Revenue Bonds, pursuant to Part I of Chapter 153, Florida Statutes. Consequently, the validation of the Revenue Bonds requires substantial compliance with the requirements of Chapter 153, Florida Statutes, for the issuance of such Bonds.

Chapter 153 provides the County with the authority to issue water and sewer bonds by resolution of the Board. See Sections 153.06, 153.09 and 153.091, Florida Statutes. Section 153.11(1)(a), Fla. Stat. sets forth the requirement that the Board

> shall in the resolution providing for the issuance of either water revenue bonds or sewer revenue bonds, or both, fix the initial schedule of rates, fees and other charges for the use of and for the services furnished or to be furnished by the facilities, to be paid by the owner, tenant or occupant of each lot or parcel of land which may be connected with and use any such facility by or through any part of the water system of the county.

Importantly, the provisions for fixing the rate schedule in the resolution are not merely directory, but they are strictly mandatory, and their performance is essential to the issuance of water and sewer revenue bonds. Cf. State v. Shields, 140 So. 2d 144 (Fla. 1st DCA 1962).

Under the statutory framework of Chapter 75, validation of the bonds requires proof of the County's authority for incurring the bonded debt, the resolution authorizing the issue and its adoption, and all other essential proceedings had or taken in connection therewith. See Section 75.04, Florida Statutes. Under the statutory framework of Chapter 153, the issuance of the bonds is authorized by resolution of the Board, and it is essential and mandatory that the resolution of the Board fix a schedule of rates, fees and charges.

Hillsborough County v. Henderson, 33 So. 997 (Fla. 1903), involved a bond resolution which did not determine the specific interest rate as required by statute, but instead set a maximum interest rate. The Court held that the bond resolution was fatally defective because it did not comply with the statute. According to the Court, a provision which leaves for future determination the precise rate of interest to be paid, merely limiting the range of discretion to be exercised by those who shall ultimately fix it, cannot be said to determine the rate. 33 So. at 998. The Court observed that if the Board could

lawfully reserve for future determination by itself the interest which the bonds shall bear, it could also reserve any or all of the other matters required to be fixed in the resolution. Id. The Court held that the statute could not be so nullified, recognizing that the resolution for the issue of bonds must determine those things required by law to be fixed therein, and not merely present an alternative for future decision. Id. Accordingly, the Court entered a decree perpetually enjoining the proposed issue of bonds.

Similarly, in City of Ft. Myers v. State, 117 So. 97 (1928), the procedures for issuing public improvement bonds were set forth in a statute which required the adoption of two resolutions. One resolution, containing specified mandatory elements, including the improvements with reference to a bona fide cost estimate, determined that the public improvements should be made. The second resolution provided for issuance of the bonds. Id. at 103. The Court determined that the first resolution did not show on its face that the estimated cost was a reasonable bona fide estimate as required by statute. After determining that the question of whether the resolutions satisfied the statutory requirements was an issue which could properly be tested in a proceeding to validate, Id. at 102, the Court held that not only was the resolution determining to make the public improvements void, but the resolution providing for the bond issue was also void

because it was predicated upon the unauthorized cost estimate and the unauthorized resolution containing the improper estimate. Id. at 103.

The Court regarded the contents of the resolution determining to make the public improvements and the resolution to issue the bonds as determinative of not only the legality and regularity of the bonds in question, but of the power of the City to issue them as well. Therefore, these statutory requirements were "necessary jurisdictional prerequisites to their validity." Id. Accordingly, the decree denying the petition to validate was affirmed.

The Court in Bruns v. County Water-Sewer District, 354 So. 2d 862 (Fla. 1977) held that the failure of the county to comply with the statutory procedures for the creation of the District which was attempting to issue revenue bonds precluded validation of the bonds. The Court rejected arguments that the failure to publish an estoppel notice upon creating the District did not constitute a "legally material irregularity" in the proceedings and that substantial compliance with all other statutory requirements would suffice. Id. at 863. The Court viewed the statutory requirement of an estoppel notice as "imperative to the protections which the statute provides to the public," and reversed the lower court's judgment validating the Revenue Bonds. Id.

Section 153.11 was enacted for the protection of the public by affording to the owners, tenants and occupants

of property served or to be served by the facilities and all others interested in the opportunity to be heard concerning the fees, rates and charges for use of the facilities. See, e.g., Bruns v. County Water-Sewer District, supra. The rate schedule requirement is a statutory directive and is an essential prerequisite to the issuance of the Revenue Bonds. Lee County's failure to comply with Section 153.11 constitutes an irregularity and illegality in the proceedings to issue the Bonds which precluded their validation by the lower court. See, e.g., Hillsborough County v. Henderson, supra; City of Ft. Myers v. State, supra.

B. THE COUNTY FAILED TO COMPLY WITH THE NOTICE AND AND HEARING REQUIREMENTS OF SECTION 153.11, FLORIDA STATUTES, PRIOR TO ADOPTING RESOLUTION NO. 84-4-25.

Section 153.11(3)(a), Florida Statutes, provides:

> No rates, fees or charges shall be fixed under the foregoing provisions of this section until after a public hearing at which all of the users of the facilities provided by this chapter and owners, tenants and occupants of property served or to be served thereby and all others interested shall have an opportunity to be heard concerning the proposed rates, fees and charges. After the adoption by the county commission of a resolution setting forth the preliminary schedule or schedules fixing and classifying such rates, fees and charges, notice of such public hearing setting forth the schedule or schedules of rates, fees and charges shall be given by one publication in a newspaper published in the county at least 10 days before the date fixed in said notice for the hearing, which said hearing may be adjourned from time to

> time. After such hearing such preliminary schedule or schedules, either as originally adopted or as modified or amended, shall be adopted and put into effect and thereupon the resolution providing for the issuance of water revenue bonds and/or sewer revenue bonds may be finally adopted.

It is undisputed that the Lee County Board satisfied none of the rate schedule requirements in Section 153.11. The Board failed to adopt any resolution setting forth the preliminary schedule or schedules of rates, fees and charges for use of the services to be furnished by the facilities. No public hearing was held by the Board to provide the users of the facilities and other interested persons the opportunity to be heard concerning the rates, charges and fees. No notice was ever published by the Board setting forth a schedule of rates, fees and charges, and announcing a public hearing date on the proposed rate schedule. (A/T. 33-34)

Lee County failed completely to comply with any of the procedures for fixing a rate schedule in Resolution No. 84-4-25. Not only does the County's complete failure to comply with the statutory proceedings set forth in Sections 153.11(1) and (3) for the issuance the Bonds preclude validation of the Bonds, see, City of Ft. Myers v. State, supra, but it also evidences Lee County's total disregard of the rights of the public to be served by the facilities to an opportunity to be heard concerning the rates, fees and charges for use of the system. See Bruns

v. County Water-Sewer District, supra. Without the adoption of the mandatory rate schedules in the manner required by Section 153.11(1) and (3), issuance of the Revenue Bonds renders the statute a nullity and leaves for the future discretion of Lee County the amount of the rates to be charged. This the County cannot do. See Hillsborough County v. Henderson, supra. Accordingly, Lee County lacks the power to issue the Revenue Bonds due to the County's failure to include the mandatory rate schedules. See City of Ft. Myers v. State, supra.

City of Miami v. State, 190 So. 774, 787 (Fla. 1939) instructs that a court should not "validate that which might result in validity; it is required to validate that which is to be valid." Without the mandatory rate schedules, Resolution 84-4-25 and the issuance of the bonds are unquestionably invalid, and the decree of the lower court validating the Revenue Bonds must be reversed.

II.

THE BOARD LACKS AUTHORITY TO ISSUE THE SERIES 1984 REVENUE BONDS FOR THE "COMBINED AND CONSOLIDATED" SYSTEM" WHICH WAS CREATED IN VIOLATION OF CHAPTER 153, PART II, FLORIDA STATUTES.

The Board lacks authority to issue bonds to finance improvements to the "combined and consolidated" water and sewer system of the County which was created in violation of Chapter 153, Part II, Florida Statutes. More specifi-

cally, the Board consolidated the FMBSD in violation of the requirements of Sections 153.53(9) and 153.62(3) and (8), Florida Statutes. The Board's violation of these statutory provisions deprives the Board of the authority to issue the Revenue Bonds.

A. THE ILLEGALITY OF THE CREATION OF THE "COMBINED AND CONSOLIDATED" SYSTEM DIRECTLY AFFECTS THE VALIDITY OF THE SERIES 1984 REVENUE BONDS.

In a challenge to the issuance of water and sewer district revenue bonds under Chapter 153, a proper issue for determination in the bond validation proceeding is whether there is lack of authority to issue revenue bonds because the district was not created in compliance with Chapter 153. Bruns v. County Water-Sewer District, 354 So. 2d 862 (Fla. 1978).

Bruns involved an appeal from the circuit court's judgment of validation of the bonds of a water and sewer district. The dispositive issue was whether the district lacked authority to issue revenue bonds because it was not created in compliance with Chapter 153. Because of the failure to follow essential procedural steps in the creation of the district, the Supreme Court reversed the order validating the bonds on the ground that the illegally created district was not authorized to issue the bonds.

Boca Ciega Sanitary District v. State, 161 So. 2d 529 (Fla. 1964) also involved an appeal from a decree validating district revenue bonds. The Supreme Court decided

the issue of the validity of the creation and establishment of the district, including the exclusion or inclusion of lands therein, in the bond validation proceeding.

Similarly, Appellants' challenge to the creation of the "combined and consolidated water and sewer system" by virtue of the adoption of Resolution No. 78-5-34 directly relates to the authority of the County to issue the Revenue Bonds for the purpose of financing the acquisition and construction of additions, extensions and improvements to the "combined and consolidated water and sewer system." The question of whether the "combined and consolidated water and sewer system" was created in compliance with the applicable statutes is therefore properly raised in a Chapter 75 bond validation proceeding.

B. THE APPLICABILITY OF CHAPTER 153, PART II, TO THE CREATION OF THE "COMBINED AND CONSOLIDATED" SYSTEM OF LEE COUNTY.

In determining whether the "combined and consolidated water and sewer system" of the County was properly created from the Fort Myers Beach Sewer District, the County System and the SFMSD, Chapter 153 must be carefully reviewed regarding the establishment, operation and dissolution of water and sewer districts. Chapter 153 consists of two parts, the first dealing with County water and sewer system financing, and the second part governing sewer and water districts. Section 153.08, contained in Part I, authorizes the issuance of water and sewer

district general obligation bonds and provides that the county commission may establish within the County such water and sewer districts as it may deem necessary. However, Section 153.08 does not prescribe any method for creating, operating, consolidating or dissolving such districts.

A comprehensive statutory scheme for creating, operating, consolidating, and dissolving water and sewer districts is found in Part II of Chapter 153, which was adopted in 1959, four years after the adoption of Part I. Part I, and especially Section 153.08, must be construed with Part II, to ascertain the Board's powers with regard to the FMBSD.

Several well-established rules of statutory construction provide guidance in construing Parts I and II of Chapter 153. The first and most fundamental rule of statutory construction is that "legislative intent is the polestar by which the court must be guided, and this intent must be given effect even though it may contradict the strict letter of the statute." State v. Webb, 398 So. 2d 820, 824 (Fla. 1981). Second, where two statutes operate on the same subject without positive inconsistency, courts must construe them so as to preserve the force of both without destroying their evident intent, if possible. Wakulla County v. Davis, 395 So. 2d 540 (Fla. 1981). Third, a law should be construed together and in harmony with any other statute relating to the same

purpose, even though the statutes were not enacted at the same time. Id. at 542. Fourth, if the meaning of a statute is at all doubtful, the law favors a rational, sensible construction. Id. Fifth, the principles of statutory construction dictate that the entire statute under consideration must be considered in determining legislative intent, and effect must be given to every part of the section and every part of the statute as a whole, and then, from a view of the whole law in pari materia, the court should determine legislative intent. State v. Gale Distributors, Inc., 349 So. 2d 150 (Fla. 1977).

Sixth, while statutes relating to the same subject should be construed to achieve consistency to the extent possible, if conflicting provisions appear in different statutes or in different provisions of the same statutes, additional principles of statutory construction dictate which provisions must prevail. A general rule of statutory construction is that a more specific statute covering a particular subject is controlling over a statutory provision covering the same subject in more general terms. Keisel v. Graham, 388 So. 2d 594 (Fla. 1st DCA 1980). A corollary principle which applies when conflicting provisions appear in different statutes, is that the last expression of legislative will is the law, so that the last in point of time or order of arrangement prevails. Id. at 596. Thus, where the statutes are inconsistent,

the last expression of legislative will prevails. See Askew v. Schuster, 331 So. 2d 297, 300 (Fla. 1976).

Application of these rules to Parts I and II of Chapter 153 lead to the conclusion that the requirements of Part II govern the FMBSD and its consolidation with the SFMSD and the County sytsem. Section 153.08 provides generally that the Board has the power to establish such water and sewer districts as it may deem necessary. However, neither Section 153.08 nor any other provision of Part I of Chapter 153 contains any other provisions governing the creation, operation, powers, merger or dissolution of water and sewer districts. In other words, Section 153.08 is the only provision in Part I which makes any reference to water and sewer districts.

On the other hand, Part II of Chapter 153, which became effective approximately four years after the adoption of Part I, specifically and expressly governs water and sewer districts. A clear expression of the legislative intent as to the purpose of Part II is demonstrated by the title "County Water and Sewer Districts." Section 153.08 and Part II of Chapter 153, both dealing with water and sewer districts, must be construed together to the extent possible so as to preserve the force of both without destroying their evident intent. As these provisions relate to the same subject matter, i.e., sewer and water districts, they should be construed in harmony even though

they were not enacted at the same time. See Wakulla County v. Davis, 395 So. 2d 540 (Fla. 1981); Mann v. Goodyear Tire and Rubber Company, 300 So. 2d 666 (Fla. 1974). If there is any conflict, the provisions of Part II, which are both more specific and the latest expression of legislative will, supersede the provisions of Part I.

It is illogical that a district might be created under the very general provisions of Section 153.08, and not be subject to the provisions of Part II which contains detailed specific procedures for the operation and consolidation of water and sewer districts. Furthermore, it is inconceivable that in enacting Part II, the Legislature intended that, after establishing a water and sewer district, a county might merge or consolidate districts in a manner which is contrary to the statutorily mandated procedure set forth in Part II, particularly Section 153.53(9).

C. SECTION 153.53(9), FLORIDA STATUTES, APPLIES TO THE CONSOLIDATION OF THE FMBSD WITH THE SFMSD AND COMBINED WATER AND SEWER SYSTEM OF LEE COUNTY.

Section 153.53(9) contains the procedures for combining or consolidating sewer districts such as the FMBSD, and provides:

> (9) The owners of not less than 50 percent of the property within any proposed or established water and sewer district may at any time petition for a referendum calling for any two or more said districts which are contiguous to be combined and be supervised by a single board elected as hereinabove

> described. However, if the board of county commissioners shall deem such a combination to be reasonably necessary for the purpose of providing the improvements authorized by this chapter, it may approve same, subject to referendum requirements, notwithstanding that the territories to be combined and included in the new district are not contiguous. Said referendum shall be conducted in substantially the same manner as a referendum to create a single district.

Clearly, a referendum is required before the Board may consolidate districts under Chapter 153.

Lee County attempted to create the "combined and consolidated" water and sewer system of the County by merely adopting Resolution No. 78-5-34. Citing Chapter 153, Part I, Florida Statutes as authority, Resolution 78-5-34 purported to combine and consolidate the Fort Myers Beach District System with the County System and the SFMSD to create a single county-wide system serving the entire unincorporated area of the County, referred to as the "combined and consolidated water and sewer system." At no time prior to the creation of the "combined and consolidated" system did Lee County ever conduct a referendum as required under Section 153.53(9), Florida Statutes. (A/T. 93-98)

D. THE "COMBINED AND CONSOLIDATED" SYSTEM OF LEE COUNTY WAS CREATED ILLEGALLY IN VIOLATION OF SECTION 153.53(9), FLORIDA STATUTES.

When the meaning of a statute is at all doubtful, the law favors a rational, sensible construction. Wakulla County v. Davis, 395 So. 2d 540, 543 (Fla. 1981). In

construing Chapter 153 in its entirety, the only sensible interpretation dictates that once a district is created under Chapter 153, the district laws of Part II govern the operation and consolidation of districts.

After creating the FMBSD in 1972, and issuing District general obligation bonds and special assessment bonds, the Board attempted to merge the District into a county system without following statutorily mandated procedures for merging or dissolving districts. More specifically, the Board consolidated FMBSD with the county system in violation of the referendum requirement of Section 153.53(9), F.S. The "combined and consolidated" system of Lee County was created merely by adoption of Resolution 78-5-34 and without ever holding a referendum.

Where Section 153.53(9) clearly requires a referendum for combining districts, the Board could not properly create the "combined and consolidated water and sewer system" by adopting a resolution combining the FMBSD with the South Fort Myers Sewer District and the County System, and by disregarding the referendum requirements.

Since the Board did not hold a referendum, the attempt to create the combined county water and sewer system by adopting Resolution 78-5-34 was totally ineffective and unauthorized. For this reason, the County lacks the authority to issue the Revenue Bonds to finance the illegally created system due to the failure to satisfy the

essential referendum requirements of Section 153.53(9). See Bruns v. County Water-Sewer District, supra.

E. THE BOARD HAS FAILED TO MAINTAIN EXCLUSIVE JURISDICTION AND CONTROL OF THE FMBSD SEWER SYSTEM FOR THE BENEFIT OF THE FMBSD IN VIOLATION OF SECTIONS 153.62(3) AND (8), FLORIDA STATUTES.

The Board, which serves as the ex officio governing body of the FMBSD, violated Sections 153.62(3) and (8) when it created the "combined and consolidated" system of the County. Without either an effective dissolution or merger of the FMBSD with the County and the SFMSD, the Board essentially misappropriated the District's sewer system to its own use in violation of the Board's own responsibilities as the District's governing body as set forth in Section 153.62.

As the governing body of the FMBSD, the Board had the responsibility under Section 153.62(3) to acquire, operate and maintain a water and/or sewer system within the FMBSD and to have the exclusive control thereof, for and on behalf of the District. Furthermore, under Section 153.62(8), the Board had the responsibility for and on behalf of the District, of exercising exclusive jurisdiction, control and supervision over any water system or sewer system or both, or any part thereof, owned, operated and maintained by the District for the benefit of the District.

Consolidation of the FMBSD with the County system and the SFMSD, by the Board, as the ex officio governing body of the Distrct, constituted an unlawful delegation of the District's exclusive jurisdiction, control and supervision over its water and sewer systems pursuant to Chapter 153. See Kixmiller v. City of Naples, 317 So. 2d 101 (Fla. 2d DCA 1975). The Board not only failed to carry out its responsibilities under Sections 153.62(3) and (8), but acted totally in contravention of these provisions by illegally attempting to transfer jurisdiction, control and supervision of, as well as the authority to operate and maintain, the FMBSD's sewer system, to the combined system for the benefit of the entire county rather than for the FMBSD.

The Board's breach of its duties to the FMBSD further demonstrate the invalidity of the Board's attempted creation of the "combined and consolidated water and sewer system," and thus the improper basis upon which the Board currently seeks to issue the Revenue Bonds.

III.

ALTERNATIVELY, THE BOARD LACKS AUTHORITY TO ISSUE THE REVENUE BONDS FOR THE "COMBINED AND CONSOLIDATED" SYSTEM WHICH WAS CREATED IN VIOLATION OF CHAPTER 165, FLORIDA STATUTES.

Assuming arguendo that Chapter 153, Part II, does not apply in this case, the Revenue Bonds still should not be

validated. The Board lacks authority to issue bonds to finance additions, extensions and improvements to Lee County's "combined and consolidated water and sewer system" which was created in violation of Chapter 165, Florida Statutes. Chapter 165 contains the mandatory and exclusive procedures for merging, consolidating or dissolving dependent special districts such as the FMBSD. The creation of Lee County's combined and consolidated system resulted from the illegal merger, consolidation or dissolution of the FMBSD with the County system and the SFMSD. Thus, this illegally created entity cannot provide a basis for the issuance of the Revenue Bonds. See Bruns v. County Water-Sewer District, supra.

A. THE FMBSD IS A DEPENDENT SPECIAL DISTRICT AS DEFINED IN CHAPTER 165, FLORIDA STATUTES.

Chapter 165, Florida Statutes, sets forth standards and procedures for forming, merging or dissolving units of local government, including special districts. Section 163.031(1), Florida Statutes. A special district is defined by Section 165.031(5) as a local unit of special government created pursuant to general or special law for the purpose of performing prescribed, specialized functions, including municipal service functions, within limited boundaries. The term includes dependent special districts, meaning a special district the governing head of which is the governing body of the county, ex officio

or otherwise, or the budget of which is established by such local government authority. See Section 200.001(8)(d), Florida Statutes. The merger and dissolution provisions of Chapter 165 are applicable even to a special district which was created prior to the enactment of Chapter 165. See, e.g., Fire Control Tax District No. 7, Trail Park v. Palm Beach County, 423 So. 2d 539 (Fla. 4th DCA 1982).

The FMBSD is a dependent special district as defined in Chapter 165, Florida Statutes. It was created by resolution in 1972 pursuant to Chapter 153, Florida Statutes, for the purpose of contructing sewer facilities to serve residents and premises located within the District. The FMBSD was created as a political subdivision which exercised essential governmental functions and had the power to sue and be sued, to contract, to purchase, hold, lease or otherwise acquire or convey real property for the purposes set forth in Chapter 153. See Section 153.60, Florida Statutes. Continuously during the existence of the FMBSD, the Lee County Board served as the ex officio governing board of the District. See Section 153.60, Florida Statutes.

The fact that the FMBSD possesses all of the characteristics of a dependent special district under Chapter 165 has been recognized by the Board. For example, the Board has instituted and defended lawsuits on behalf of the FMBSD, applied to the Florida Division of Finance for

a local governmental loan on behalf of the District as a "political subdivision" of Lee County, and listed the FMBSD as a "dependent special district" in Lee County's annual financial reports to the Comptroller of the State of Florida in 1982 and 1983. (A/E. P)

B. CHAPTER 165 PROVIDES THE EXCLUSIVE PROCEDURE FOR CONSOLIDATING OR COMBINING THE FMBSD WITH THE COUNTY WATER AND SEWER SYSTEM.

Pursuant to Chapter 165, the merger of a county with special districts requires the adoption of a concurrent ordinance, and the merger of two or more special districts requires either the passage of a concurrent ordinance or the adoption of a resolution by the governing bodies of each unit to be affected. Section 165.041(4), Florida Statutes. In addition, Section 165.071(2), F.S., provides that any merger of special districts "shall provide for the determination of the proper allocation of the indebtedness [of the special district] so assumed and the manner in which said debt shall be retired."

Section 165.051 provides that a special district may be dissolved only by a special act of the Legislature or by an ordinance of the governing body of the special district, approved by a vote of the qualified voters. Under Section 165.061(4), setting forth standards for dissolution of special districts, the dissolution of a special district must include an equitable arrangement in relation to bonded indebtedness.

Chapter 165, Florida Statutes, was enacted in 1974, after the adoption of Chapter 153, for the purpose of "providing viable and useful general law standards and procedures for forming and dissolving . . . special districts in lieu of any procedure or standards now provided by general or special law." Section 165.022, Florida Statutes. Section 165.022 expressly provides that Chapter 165 constitutes the exclusive procedure for forming or merging or dissolving special districts and that any provision of a general or special law in conflict with the provisions of Chapter 165 are ineffective to the extent of such conflict.

The principles of statutory construction further support the applicability of Chapter 165 procedures over Chapter 153 concerning the merger or dissolution of special districts. As the more recent indication of the legislative intent and the more specific law regarding the merger or dissolution of special districts, Chapter 165 is controlling over earlier enactments relating to the same subjects, such as Chapter 153. See Askew v. Schuster, 331 So. 2d 297 (Fla. 1976); Keisel v. Graham, 388 So. 2d 594 (Fla. 1st DCA 1980).

In Fire Control Tax District, No. 7, Trail Park v. Palm Beach County, supra, the Court considered the interrelationship of Chapter 165 special district law with Chapter 63-1747, Laws of Florida, providing for establishment of fire control districts. The County Commission

attempted, pursuant to Chapter 63-1747, Laws of Florida, to modify the boundaries of one fire district with another by merely adopting a resolution. The court determined that because the change to the boundaries of the fire control district was a situation within the purview of Chapter 165, Chapter 165 procedures governed the boundary change. The Court ruled that Chapter 165 superseded Chapter 63-1747, Laws of Florida, to the extent that the latter permitted boundary modifications by resolution only, recognizing the exclusivity of Chapter 165 procedures to special districts.

Accordingly, the provisions of Chapter 165, Florida Statutes, govern the merger or dissolution of the FMBSD. Indeed, counsel for Appellee even admitted in closing arguments in the trial court that "the provisions of Chapter 165, the formation of governments act, will certainly apply" to the merger or dissolution of FMBSD. (T. 149)

C. THE CREATION OF THE "COMBINED AND CONSOLIDATED" COUNTY SYSTEM VIOLATED CHAPTER 165.

The "combined and consolidated water and sewer system" which resulted from the adoption of Resolution No. 78-5-34 by Lee County, was created by merging the existing county systems with the FMBSD and the South Fort Myers Sewer District. In order to effect this consolidation, the special districts either had to be merged with each other and with the County or they had to be dissolved.

However, at no time did the Board adopt an ordinance as required by Section 165.041(4). (A/T. 90, 97-99) The County also made no provision for the proper allocation of the indebtedness of the FMBSD as required by Section 165.071(2), Florida Statutes. Consequently, the attempted merger of the FMBSD with the SFMSD and the County is invalid.

Alternatively, if the County sought to dissolve the FMBSD when it adopted Resolution No. 78-5-34, the attempted dissolution was also invalid. No ordinance was adopted and approved by referendum (A/T. 97-99), and no special act of the legislature was enacted as required by Section 165.051(1), Florida Statutes. The testimony at the bond validation hearing reveals that the County made no equitable arrangement regarding the bonded indebtedness of the FMBSD as required by Section 165.061(4)(c). Thus, the attempted dissolution of the FMBSD is invalid.

Without a valid or effective merger of the County systems with the FMBSD, or dissolution of the FMBSD, the County lacks the power and authority to issue the Revenue Bonds and pledge the resources and revenues from the FMBSD to support and secure the bonds. See e.g., Bruns v. County Water-Sewer District, supra.

IV.

THE REVENUE BONDS SHOULD NOT BE VALIDATED BECAUSE THEY VIOLATE PRIOR BOND PROVISIONS.

The Revenue Bonds violate prior bond provisions because the Bonds improperly pledge revenues of the FMBSD which are already pledged to prior bond issues. Because the Board has not exercised its authority in accordance with the intent and purpose of the prior legally binding bond provisions, the decree of the lower court validating the Revenue bonds should be reversed.

A purpose of bond validation proceedings under Chapter 75, Florida Statutes, is to test the power of the County to incur the proposed debt, and to determine not only whether the issuing body has the authority to issue the bonds, but whether the County has exercised such authority in accordance with the intent and purpose of the law. State v. Suwannee County Development Authority, 122 So. 2d 190 (Fla. 1960). Whether a bond issue violates prior bond covenants is an issue which relates to the County's authority to issue the bonds and whether the County has exercised its authority in accordance with the intent and purpose of the law. A determination of whether the bond issue violates prior bond covenants also constitutes evidence pertaining to alterations of District plans subsequent to its creation, and therefore may properly be considered by the Court in a Chapter 75 bond validation

proceeding. See Boca Ciega Sanitary District v. State, 161 So. 2d 529 (Fla. 1964).

Since the creation of the FMBSD in 1972 and prior to the 1978 consolidation with the county system, the Board, as the governing body of the district, has authorized the issuance of general obligation bonds in 1973 and special assessment bonds in 1976 to finance the construction of a sewer system to serve the District. The resolutions authorizing these bond issues contained provisions pledging both the revenues derived from the operation of the FMBSD sewer system and the special assessments levied against the properties located within the District pursuant to the bonds. The Revenue Bonds which the County is attempting to validate in this case purport to pledge the same revenues and special assessments already pledged by these prior bond issues and therefore violate the prior bond covenants.

The general obligation bonds authorized by the January 31, 1973 resolution were to be payable from a special ad valorem tax levied annually on all taxable property within the District, and were approved by a majority of votes cast by qualified electors residing in the District. The resolution authorizing the "general obligations of the District" contained the following provision:

> Section 12: There is hereby created a Sinking Fund to be held and administered by the County solely for the purpose of

> paying the principal of and interest on the bonds as they become due. In each year while any of such bonds are outstanding there shall be levied and collected a special ad valorem tax upon all taxable property within such district over and above all other taxes authorized or limited by law, sufficient in amount to pay the principal of and interest on such bonds as the same shall become due, provided, however, that the amount of the annual tax may be reduced in any year by the amount of the net revenues derived from the operation of the sanitary sewer system and by the amount of the proceeds of special assessments levied against benefited properties, actually received in the preceding year and then remaining to the credit of the Sinking Fund for the payment of such principal and interest.

Accordingly, Section 12 required the levy and collection of a special ad valorem tax upon all of the taxable property in the District in each year any of the bonds were outstanding, but specifically pledged the special ad valorem taxes solely to the payment of the principal of and interest on the general obligation bonds as they become due and pledged the net revenues of the FMBSD to reduce the amount of the special taxes.

The Board adopted Resolution No. 126-67-44 on June 16, 1977, which indicated that the cost of constructing the sewer facilities "[f]or the benefit of the inhabitants of Fort Myers Beach Sewer District" had increased significantly, and authorized the issuance of special assessment bonds not to exceed $3,770,000 to pay for a portion of the estimated cost, which had increased from $8,930,000 to $15,900,000. Resolution 126-67-44 provided that the

portion of the cost of the facility financed by the bonds would be assessed against the lands to be specially benefited by the facility and provided further, in Article I, paragraph 1.02(c), that:

> It is deemed necessary and desirable to pledge the proceeds of the special assessment and the gross revenues to be derived by the Issuer from the operation of the project to the payment of the principal of and interest on the bonds herein authorized. No part of such special assessments and revenues will be pledged or hypothecated except with respect to the bonds herein authorized.

In Article I, paragraph 1.02(c) of the Resolution, the Board pledged the proceeds of special assessments against the properties in the FMBSD and the revenues from the operation of the facility, solely to the payment of the bonds authorized therein.

By Resolution No. 77-8-20 adopted on September 14, 1977, the Board amended and supplemented the January 31, 1973 Resolution. Section 12 was amended and supplemented as follows:

> The issuer hereby covenants and agrees that in each year while any of the bonds are outstanding the issuer shall cause to be levied and collected a tax, without limitation as to rate or amount, on all taxable property within such district, over and above all other taxes authorized or limited by law sufficient in amount to fully pay the principal of and interest on the bonds as the same shall become due. Such tax shall be assessed, levied and collected in the same manner and at the same time as other taxes of the issuer are assessed, levied and collected, and all of the proceeds thereof shall be deposited by the issuer into a sinking fund, hereby created, to be held and administered by the issuer solely for the purpose of paying the principal of and interest

on the bonds as the same shall respectively become due.

Anything contained in this resolution to the contrary notwithstanding, however, the amount of such annual ad valorem tax may be reduced in any year by the amount of net revenues derived from the operation of the sanitary sewer system and by the amount of the proceeds of special assessments levied against the properties benefited by the construction of such system which the issuer shall have irrevocably elected to apply to the payment of the principal of and interest on the bonds and which shall be available for such application after all of the requirements of the issuer's resolution adopted June 16, 1977, authorizing issuance by the issuer of $3,770,000 principal amount of special assessments bonds, shall have been fully complied with. The issuer will enter into a trust agreement with a bank or trust company doing business in the state of Florida and having trust powers (the "trustee"), whereby such trustee shall be irrevocably instructed to hold in a special account all such surplus revenues and special assessments which this issuer shall elect to deposit with the trustee for such purpose and apply the same solely to the payment of the principal of and interest on the bonds as the same shall respectively become due and payable. The issuer may reduce the amount of the annual tax required by this section in any year by the amount which shall be held by the trustee in such account and not then committed for the payment of principal of or interest on the bonds corresponding to any portion of such tax for any prior year.

At the bond validation hearing, Appellee did not dispute that the special ad valorem taxes authorized by the January 31, 1973 Resolution must be used solely for the purpose of paying the principal of and interest on the District General Obligation Bonds as they become due. Appellee did not dispute that the proceeds of the special assessments authorized by Resolution 126-67-44 and the

gross revenues from the operation of the FMBSD sewer facilities were pledged solely to the payment of the principal of and interest on the FMBSD Special Assessment Bonds. Appellee did not dispute that, under Resolution No. 77-8-20, after the FMBSD bonds have been fully paid and Resolution No. 126-67-44 has been fully complied with, all of the surplus special assessments and revenues must be used solely for the purpose of paying the principal of and interest on the FMBSD General Obligation Bonds, and then that the annual special ad valorem tax be reduced by the special assessments and revenues not committed for the payment of the FMBSD General Obligation Bonds.

In the lower court, Appellee obtained validation of the 1984 Revenue Bonds which violate the prior bond covenants. Resolution No. 84-4-25 authorizing the Series 1984 revenue bonds provides in section 3, paragraph C.:

> The revenues derived from the operations of the facilities are not now pledged or encumbered in any manner except to the payment of the principal and interest on the outstanding parity obligations and to the payment of the principal of and interest on the Issuer's outstanding Special Assessment Bonds, dated March 11, 1982. The lien of the holders of the Issuer's outstanding Special Assessment Bonds on such revenues is junior and subordinate to the lien of the holders of the obligations herein authorized as the outstanding parity obligations.

Section 3, paragraph D of Resolution 84-4-25 provides, in pertinent part:

> The estimated net revenues to be derived from the operation of the facilities will be sufficient to pay all of the principal of and

> interest on the obligations to be issued hereunder, and the parity obligations, as the same become due, administrative expenses relating solely to the construction and acquisition of the project; interest upon the obligations herein authorized, prior to, during construction and for a period not to exceed one (1) year after the completion of construction; discount, if any, upon the sale of the obligations; initial funding of the Reserve Account and such other costs and expenses authorized and the construction and acquisition of the project and the placing of same in operation.

The bond itself, as proposed by Resolution No. 84-4-25, provides:

> This bond and the interest thereon are payable solely from and secured by a prior lien upon and pledge of the net revenues derived by the County from the operation of the facilities on a parity with the outstanding Water and Sewer Revenue Bonds, dated November 1, 1976; Water and Sewer Revenue Bonds, Series 1978, dated May 1, 1978; Water and Sewer Revenue Bonds, Series 1979A, dated April 3, 1980, and Water and Sewer Revenue Bonds, Series 1979B, dated January 29, 1982, of the County (hereinafter called "Parity Bonds") and any additional parity bonds hereinafter issued, all in the manner provided in the Resolution.
>
> * * *
>
> It is further agreed between the County and the holder of this bond that this bond and the obligation evidenced thereby shall not constitute a lien upon the facilities, or any part thereof or on any other property of or in the County, but shall constitute a lien only on the net revenues derived from the operation of the facilities in the manner provided in the Resolution.

The Board is attempting, by the issuance of the 1984 Revenue Bonds, to pledge the revenues of the FMBSD sewer facilities, which have already been pledged first to

the payment of the FMBSD special assessment bonds, then to the payment of the FMBSD general obligation bonds, and finally, to the reduction of the special ad valorem taxes authorized by the January 31, 1973 Resolution. If the Revenue Bonds are validated, they will be issued on a legally and financially unsound and unsupportable basis. Such action by the Board violates the prior bond covenants and resolutions and the law amounting to an unlawful exercise of the Board's authority, and therefore constitutes grounds for denying validation of the 1984 Revenue Bonds. State v. Sarasota County, 372 So. 2d 1115, 1118 (Fla. 1979).

CONCLUSION

Substantial compliance with the rate schedule requirements set forth in Section 153.11, Florida Statutes, is essential to the validity of the 1984 Revenue Bonds. Lee County's complete failure to comply with any of the Section 153.11(1) and (3) requirements constitutes an illegality and irregularity in the essential Bond proceedings which require reversal of the lower court's Final Judgment validating the Revenue Bonds.

Lee County is attempting to issue Revenue Bonds to finance the "combined and consolidated" water and sewer system of the County which was illegally created as a result of the unlawful merger or dissolution of the FMBSD in violation of Section 153.53(9), and Chapter 165, Florida Statutes, and the failure of the Board to maintain exclusive control and jurisdiction of the District's sewer system on behalf of the FMBSD in violation of Section 153.62(3) and (8), Florida Statutes. The illegal manner in which the County system was created constitutes a fatal irregularity in the essential bond proceedings and undermines Lee County's authority to issue the Revenue Bonds to finance facilities to serve the unlawfully combined system.

Validation of the Revenue Bonds was also improper because the Revenue Bonds violate legally binding provisions of the general obligation bonds and special

assessment bonds previously issued in 1977 to finance the construction of the FMBSD. The Revenue Bonds pledge revenues from the FMBSD sewer system which have already been pledged to the payment of those prior bond issues. Thus, the pledging of the unavailable revenues to pay the Revenue Bonds constitutes an unlawful exercise of the Board's authority.

The foregoing illegalities and irregularities in the essential bond proceedings and in the Revenue Bonds themselves overwhelmingly demonstrate the invalidity of the Bonds and the Board's lack of authority to issue the Bonds, and clearly support and require reversal of the lower court's Final Judgment validating the Bonds.

THOMAS G. PELHAM, P.A.

Deanna Boone

Thomas G. Pelham
Deanna E. Boone
Post Office Box 3924
Tallahassee, Florida 32315
Telephone: (904) 386-3282

Attorneys for Appellants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to James G. Yaeger, Esq., Post Office Box 398, Ft. Myers, Florida 33902 and Martin Der Ovansian, Esq., Post Office Box 399, Ft. Myers, Florida, 33902 this 29th day of October, 1984.

Deanna Boone
Attorney