IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,187

STATE OF FLORIDA AND THE SEVERAL PROPERTY OWNERS, TAXPAYERS AND CITIZENS OF BROWARD COUNTY, FLORIDA INCLUDING NON-RESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN, AND OTHERS HAVING OR CLAIMING ANY RIGHT, TITLE OR INTEREST IN PROPERTY TO BE AFFECTED BY THE ISSUANCE OF THE BONDS HEREIN DESCRIBED, OR TO BE AFFECTED IN ANY WAY THEREBY,

Appellants,

vs.

BROWARD COUNTY, a political subdivision of the State of Florida,

Appellee.

On Appeal from the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida

ANSWER BRIEF OF APPELLEE

SUSAN F. DELEGAL,
General Counsel,
Broward County, Florida
Governmental Center
115 South Andrews Avenue
Fort Lauderdale, Florida
33301
(305) 357-7600

Of Counsel:

BROWN, WOOD, IVEY, MITCHELL
& PETTY
One World Trade Center
New York, New York 10048
(212) 839-5300

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PRELIMINARY STATEMENT

This Brief is respectfully submitted on behalf of Broward County, Florida (the "County") in response to the Briefs filed by the State of Florida (the "State") and the Several Property Owners, Taxpayers and Citizens of Broward County, Florida (the "Intervenors", collectively, the "appellants"). The State and the Intervenors have taken this appeal from a Final Judgment

of the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, validating not more than $590,000,000 Resource Recovery Revenue Bonds of the County.

Jurisdiction is vested in the Supreme Court of Florida pursuant to Article V, §3(b)(2), Florida Constitution and §75.08, Florida Statutes, as amended and Rule 9.030(a)(1)(B)(ii) of the Florida Rules of Appellate Procedure.

STATEMENT OF THE CASE AND OF THE FACTS

The County does not disagree with the Statement of Facts and Statement of the Case in the Initial Brief of the State ("S. Br.").[1] However, when necessary, those statments will be supplemented in this brief by references to the relevant portions of the record set forth in the appendices on this appeal.[2]

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[1] The Initial Brief of the Intervenors shall be referred to as "I. Br."

[2] Reference to the Appendix of the State shall be by page number, e.g., (A. 8), and to the Appendix of Appellee by lettered exhibits, e.g., (A. Ex. A, at 1).

POINT I

THE COUNTY IS NOT REQUIRED TO PROCEED AT THIS TIME UNDER PART II, CHAPTER 159, FLORIDA STATUTES

In their briefs, appellants contend that, since the County may ultimately sell or lease the solid waste disposal plants related to the instant overall financing to a private company, the circuit court erred in rendering a judgment that the County might proceed to issue bonds under the authority of Chapter 166, Florida Statutes (See, e.g., S. Br. Point II). Appellants argue that Article VII, Section 10(c), of the Florida Constitution, as implemented by Part II of Chapter 159, Florida Statutes, mandates that industrial development bonds be issued solely under the authority of said Chapter 159 (See id.).

As with their other arguments throughout this proceeding, this argument is based on mischaracterization and on a deliberatly simplistic view of an unusually complex financing, the complexity of which is mandated by the public interest of the citizens of the County in avoiding unnecessary financing expense that would otherwise result from the whirlwind of recent federal tax law changes. To give their argument at least some superficial appeal, appellants ignore material aspects and contingencies of the financing so as to force it into the pigeon hole that best fits their contentions. Thus, for example, they ignore the fact that the overall financing involves several contingent phases, only the first of which is before the Court,

so as to rely on possible later developments and potential aspects of later issues which might bring such later issues within the ambit of Chapter 159 (See, e.g., I. Br. Argument A). The County submits that when all aspects and contingencies of the overall financing related to the instant bond issue are considered, the vacuousness of the appellants' arguments will be clear.

The County freely concedes that for sound economic reasons it intends, if suitable contractual arrangements and safeguards can be negotiated, to sell or lease the plants to a private company, which could have the effect of placing the transaction within the ambit of said Chapter 159 as industrial development bonds (See A. Ex. C, at 93). This, however, is only one of a number of possible ultimate outcomes, all of which are irrelevant to the nature of the instant bonds and the issues in this validation proceeding. Whatever ultimate operating arrangements are made for the plants, the County has acted and will continue to act in a manner consistent with and in compliance with statutory authority.

An explanation of the reasons impelling the County to proceed as it did is essential. Federal and state environmental laws have effectively signalled the end of landfilling as the principal means of solid waste disposal in ecologically

sensitive regions such as South Florida. In recognition of this, the County has developed a plan to meet such disposal needs for the entire County through the construction of two mass burning solid waste disposal plants, one in North Broward County and one in South Broward County. Each plant will include electrical generating facilities to generate electricity from the steam produced by the burning of the solid waste. The electricity will be sold under contract to Florida Power & Light Company, thus substantially offsetting waste disposal costs to County residents (See A. Ex. C, at 74-75). As noted above, and by appellants, the County intends that the plants be owned and operated by a private company or companies if satisfactory contractual arrangements can be negotiated, thus arguably making the bonds to be later issued to finance the plants industrial development bonds both for state law and federal tax law purposes (See, e.g., S. Br. Point II). The reason for electing private ownership and operation is that the participating companies would realize certain federal tax advantages which could induce them to contribute a minimum of 20% of the capital cost of the plants (See Rev. Proc. 75-21, 1975-1 C. B. 715), thereby substantially reducing attendant debt service costs, which again translates into waste disposal cost savings to County residents. In addition, the County would avoid the necessity of establishing and staffing another department of County government.

With these goals in mind, the County has for the past two years been in the process of developing requests for proposals from qualified companies in the field (See A. 304). For reasons not relevant here, the initial responses to such requests were rejected and new requests were submitted. The County was also proceeding to acquire the land necessary for the siting of the plants, to begin contractual negotiations with the municipalities in the County as to the terms and conditions of an interlocal agreement for the disposal of their solid waste, and to make applications for the various permits required for the construction and operation of the plants (See, e.g., A. 316-317; A. Ex. E, at 32-34, 77-78).

Through early 1984, the county intended to take all the steps necessary over a period of time, perhaps extending into late 1985, to enable it to issue industrial development bonds to finance the plants. To that end, the Board of County Commissioners adopted Resolution No. 84-964 on April 19, 1984, declaring its intent to finance the plants through a proposed issue of industrial development bonds (See A. 1-4). However, in order to actually issue and market such bonds, it would also have been necessary (a) to select a company or companies and complete lengthy and complicated construction and waste disposal service contracts, (b) to acquire all land required for the plants, (c) to obtain all Federal, State and local permits required to construct and operate the plants, (d) to enter into interlocal

agreements with most of the twenty-eight municipalities in the County whereby such municipalities would agree to commit their internally generated solid waste to disposal at the plants and to pay for such service, (e) to contract with Florida Power & Light Company for the sale of electricity to be generated by the plants, and (f) to prepare all resolutions, indentures, offering circulars and other documentation required to issue the bonds (See A. Ex. C, at 110-111).

On July 18, 1984 the U.S. Congress passed the Deficit Reduction Act of 1984 which contains volume cap limits on industrial development bonds of the kind proposed to be issued by the County to finance the plants and limitations on investment of bond proceeds and reserve funds. See Pub. L. No. 98-369, §§ 621, 624, 98 Stat. 494, 915-918, 922-924 (1984). Fortunately for the citizens of the County, a further section of said Act provided that bonds could be issued without regard to volume caps and investment limitations if an inducement resolution, or other comparable preliminary approval (an "official action"), had been adopted prior to June 19, 1984 and the bonds were issued by December 31, 1984. See id., § 631, 98 Stat. at 934-937. The County determined that the resolution of April 19, 1984 qualified as "official action" for the purposes of the Deficit Reduction Act, but also determined that the tasks outlined in (a) to (f) above could under no circumstances be accomplished by December 31, 1984.

Not proceeding by December 31, 1984, and thus subjecting the financing to the limitation of the Deficit Reduction Act, would have had a two-fold effect. First, since the plants were projected to cost $590,000,000 and the entire State of Florida volume cap allocation would be approximately three times that amount, based on 1984 allocations [3] (See I.R.C. § 103(n)(1984)), there would have been a serious question as to whether, given the competition from other issuers in the State, the County could secure the needed allocation. Second, since the bond proceeds and the funded debt service reserve funds could not be invested so as to make a profit based on the difference in interest rate between tax-exempt bonds and taxable investments, the County would lose tens of millions of dollars in investment profits which otherwise could be used to reduce the size of the bond issue with consequent reduction in debt service costs, again translating into lower waste disposal costs to County residents.

In response to this unanticipated change in law, the County, in consultation with its financial and legal advisors, developed the plan of financing validated by the Court below. Since it was vital that the bonds be issued prior to January 1, 1985, the County would issue the municipal revenue bonds involved here prior to December 31, 1984 and secure the payment of principal and interest by investing the revenue bond proceeds in

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[3] The 1984 ceiling limitation for private activity bonds in Florida was $1,562,400,000 (See Rev. Proc. 84-85 (issued December 12, 1984)).

direct obligations of the United States of America ("Government Obligations") (See A. Ex. C, at 75-77). Until the tasks listed in (a) to (f) above are completed, there can be no use made of the revenue bond proceeds or the Government Obligations for any purpose other than payment of debt service on the instant revenue bonds if for any reason it is determined that the plan to construct the plants must be abandoned (See A. Ex. E, at 81). During this so-called "Escrow Period", the interest on the instant revenue bonds will be paid from the proceeds thereof; however, since the invested bond proceeds bear a significantly higher rate of interest than the interest on the bonds, the amount available in invested bond proceeds is always calculated to be in excess of the amount required at any time to retire the instant revenue bond issue during the Escrow Period, thus providing absolute security to the owners of the bonds (See, e.g., A. Ex. D, at iii).

The County contends that it has authority under Section 166.111, Florida Statutes, to issue revenue bonds secured as described above during the Escrow Period. Section 166.111 provides, in relevant part, express authority to

> borrow money, contract loans, and issue bonds as defined in s. 166.101 ... to finance the undertaking of any capital or other project for the purposes permitted by the State Constitution and may pledge the funds, credit, property, and taxing power ... for the payment of such ... bonds.

Section 166.101 in turn defines, in relevant part, one of the types of bonds that may be issued under said Section 166.111 as "revenue bonds":

> obligations ... which are payable from revenues derived from sources other than ad valorem taxes on real or tangible personal property and which do not pledge the property, credit, or general tax revenue ....

The County submits that the instant revenue bonds, issued and payable from the invested proceeds of the bonds themselves, fall within the definition of "revenue bonds" since they are payable from revenues derived from sources other than those mentioned in Seciton 166.101 and do not pledge the property, credit or general tax revenues of the County.

Because the County has sought only to validate the revenue bonds in these proceedings, this Court need go no further in its review. Subsequent aspects of the financing are not before the Court and, indeed, cannot be fully determined at this time. The Court should not reach to address future issues or assume that the County, in the furtherance of the overall project, will not do what is required to structure the financing to comply with all applicable law. If the resource recovery plants are to be sold, leased and/or operated by private companies and the other surrounding circumstances require that the instant, validated revenue bonds be refunded by the proceeds of industrial development bonds under Chapter 159, all steps will be taken to comply with that statute.

It is entirely possible, however, that the solid waste disposal plants would qualify as capital projects which the County would be permitted to finance under Chapter 166 without reference to Chapter 159. Part II of Chapter 159 in Section 159.43 provides that Part II is "supplemental to and not in derogation of any power of any local agency otherwise conferred." Should the County not be able to make suitable contractual arrangements with a private company or companies, it may well elect to own and operate the plants as public facilities. If such an election is made, then Chapter 166 would be the appropriate statutory authority throughout the life of the bonds. The point to be made and stressed is that while the County may prefer a certain financing mode, it is premature to rule out any possibilities.

Finally, appellants suggest some base intent of the County by stating that the proposal to issue revenue bonds under Chapter 166 during the Escrow Period is a direct attempt to circumvent Article VII, Section 10(c), of the Florida Constitution and Part II of Chapter 159, Florida Statutes. Appellants further allege that the circuit court erred in not requiring the County to proceed now to issue industrial development bonds under authority of Chapter 159. To the contrary, the circuit court recognized the realities of a difficult situation brought about by the passage of the Deficit Reduction Act of 198[illegible] and correctly held that for the Escrow

Period the County is authorized under Section 166.111, Florida Statutes, to issue the instant revenue bonds and secure the same by a pledge of the principal and interest coming due on the Government Obligations (See A. 259, Section 5). Should the tasks outlined in (a) to (f) above be completed in the future, the County, as required by the Judgment entered below, will validate any industrial development bonds it may seek to issue under Part II of Chapter 159 (See A. 260, Section 10). Only at that time, if ever, will it be appropriate to put the County to its proof as to compliance with the requirements of said Part II of Chapter 159.

For these reasons, the instant revenue bonds were appropriately issued and validated under Chapter 166, rather than Chapter 159. Accordingly, the Judgement of Validation should be affirmed.

POINT II

THE ARGUMENTS MADE BY APPELLANTS WITH RESPECT TO THE ADEQUACY OF NOTICE AND THE NATURE OF THE BONDS ARE WITHOUT MERIT

The State's main point consists of an attempt to cause confusion in these proceedings and then to use such self-created confusion as grounds for opposing validation. Together with related arguments scattered through the Intervenors' brief, this point continues the pattern established by appellants below of confusing the authorized revenue bonds issued under Chapter 166, Florida Statutes, and the possible future issue of industrial development bonds under Chapter 159, Florida Statutes. Appellants understand full well, and have understood from the start, the differences between the two.

Appellants recognize that the only subject of this proceeding is the Chapter 166 revenue bond issue pursuant to Resolution No. 84-2053, that only such issue was validated below, and that there is no notice requirement for a resolution to authorize this issue. They know further that an issue of industrial development bonds under Chapter 159 is only a future possibility, is not the subject of this validation proceeding, has not been validated, and that any consideration of questions related to such an issue would be premature and would involve no case or controversy. Their use of quotations from the instant Resolution taken out of their proper context in order to drag the

potential Chapter 159 industrial development bond issue into this proceeding and then claim that it was the subject of the instant Resolution, as well as the validation below, is patently misleading and shows the lack of any meritorious grounds for opposing this issue of revenue bonds validated under Chapter 166.

The general and unfocused arguments in Point I of the State's brief make that point difficult to address specifically or substantively. It appears, however, that the thrust of the point is that inadequate notice was given to the parties, and to the public, that the Resolutions cited and this validation proceeding would authorize the issuance of revenue bonds under Chapter 166, rather than industrial development bonds under Chapter 159. In the first instance, no authority is or can be cited establishing a requirement of notice for a resolution authorizing a Chapter 166 offering, such as the instant Resolution[4]. Moreover, it is clearly incorrect that neither the Resolutions nor the Complaint in this proceeding gave notice of the issuance of revenue bonds under Chapter 166, as opposed to industrial development bonds under Chapter 159. The very titles of the Resolutions, quoted by the State, belie the State's

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4 Notice was in fact given, and arguably required, with respect to Resolution No. 84-964 (See A. 224-225, A. 254-256). In the circumstances of the adoption of that Resolution, however, the issuance of bonds in the form of industrial development bonds alone was contemplated (See discussion in Point I, supra). Moreover, that Resolution was adopted long before the determination of the form of financing adopted by the instant Resolution. Thus, the notice of Resolution No. 84-964 was neither misleading nor inadequate.

contention in that regard. Thus, the title of Resolution No. 84-964 indicates that it is merely "...DECLARING THE INTENTION OF BROWARD COUNTY TO PROVIDE FINANCING BY THE PROPOSED ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS..." (A. 1, emphasis added). The instant Resolution states in relevant part that it is "AUTHORIZING THE ISSUANCE of...BROWARD COUNTY RESOURCE RECOVERY REVENUE BONDS..." Unlike Resolution No. 84-964, the instant Resolution contains no reference to "INDUSTRIAL DEVELOPMENT REVENUE BONDS", pertaining instead, to municipal revenue bonds (A. 10). Moreover, the body of the instant Resolution clearly distinguishes between the possible issuance of "industrial development bonds", specifically defined as such in Section 1(c) therein (A. 12), and the revenue bonds contemplated by the Resolution itself, defined in Section 3 therein (See A. 19 et seq.). Section 1(a) of the instant Resolution also specifically cites Section 166.111, Florida Statutes as an authority for the issuance of the revenue bonds5 (A. 10).

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5 There is no merit to the suggestions by the State that the reference to this section of Chapter 166 was intended only to pertain to the possible issuance of "Special Obligation Bonds" mentioned later in the instant Resolution (A. 22). Nothing in the context of the reference to Section 166.111 suggests such a limitation. To the contrary, that section is relied on with specific reference to the issuance of "revenue bonds" (A. 11), the same term such "Special Obligation Bonds" used later in defining the "revenue bonds" being authorized, and later validated, by the instant Resolution (A. 19). The even later definition of "Special Obligation Bonds" contains no such reference to "revenue bonds". Moreover, it clearly provides that such "Special Obligation Bonds" are to be secured by a state created and granted fund of moneys collected from the half-cent sales tax (not revenues), and it distinguishes "Special Obligation

Similarly, the Complaint in this validation proceeding provided full and adequate notice of the nature of the bonds being validated. Thus, the title of the Complaint refers in relevant part to "RESOURCE RECOVERY REVENUE BONDS OF BROWARD COUNTY" rather than industrial development bonds (A. 32). It then distinguishes, in a manner virtually indentical to that of the instant Resolution, between "industrial development bonds", defined in paragraph IV therein (A. 34), and "revenue bonds", defined and referred to in paragraphs XVI, XVIII, XXIII therein (A. 39 et seq.) and elsewhere throughout. Like the instant Resolution, paragraph II of the Complaint places reliance on Section 166.111, Florida Statutes (A. 33). Likewise, the published notice of the Complaint refers in relevant part to "RESOURCE RECOVERY REVENUE BONDS OF BROWARD COUNTY", rather than industrial development bonds (A. 74)[6].

Bonds" from the revenue bonds being issued (and authorized by Section 166.111). Finally, the definition indicates that the issuance of the "Special Obligation Bonds" is merely a future contingency (A. 22). In other words, a fair and thorough reading of the instant Resolution as opposed to the piecemeal quotation of excerpts taken out of context found in the State's brief, establishes that Chapter 166 was cited as authority for the actual issuance of the revenue bonds, rather than the possible issuance of Special Obligation Bonds.

6 Even if the Complaint and related notice were misleading as appellants suggest, no prejudice resulted therefrom. All issues related to the issuance of revenue bonds under Chapter 166 were tried and briefed below (See, e.g., A. 328, 334, 337-340, 343, 347, 352; A. 221-238). Appellants do not point to any argument that was not made because of inadequate notice, nor do they point out any prejudice resulting therefrom.

Perhaps the best proof that the nature of the revenue bonds was adequately described in the Resolutions and the Complaint can be found in the answers filed by the State itself. Notwithstanding contrary arguments in its brief, the State's answers consistently refer to "revenue bonds", rather than industrial development bonds (A. 81-85). The very premise of the State's initial point on appeal is that such a distinction is not only meaningful but is one which should properly be made in any legal document. Moreover, in its Supplemental Answer, the State specifically recognized in paragraphs 1, 4 and 5 that authorization for the validated bonds was premised by the County, at least in part, on Section 166.111, Florida Statutes (A. 84-85). The State nonetheless quotes segments from the instant Resolution out of context so as to suggest that it appeared to be authorizing the issuance of industrial development bonds. As discussed above and in Point I, the instant Resolution authorizes the issuance of revenue bonds, not industrial development bonds, and says so in as many words. Thus, there can be no doubt that, until the need for argument on this appeal, neither the State nor anyone else was in any way misled by the Complaint in this proceeding or by Resolutions with regard to the nature of the revenue bonds at issue.

The findings and Judgment of the circuit court further establish that there was no lack of adequate notice or ultimate understanding as to the issues of law and fact addressed below

(A. 259-260). Any confusion earlier caused by appellants was resolved at the hearing on validation[7]. This is reflected in the findings of the circuit court addressing, and rejecting, arguments made with respect to the issuance of revenue bonds under Chapter 166 (A. 359-370). This is evident especially in the court's finding that the bonds being validated were revenue bonds authorized by Section 166.111, without reliance at all on the County's alternative basis for issuance under Chapter 159 (A. 370). Similarly, the Judgment itself addresses and validates revenue bonds under Chapter 166 alone (A. 253, 259-261).

It is clear that the Judgment of validation was entered only after full and complete notice to the parties and the public, and that it properly held that the validated bonds were revenue bonds issued under the authority of Chapter 166, Florida Statutes, pursuant to the provisions of the instant Resolution. Accordingly, appellants' arguments to the contrary should be rejected and the Judgment affirmed.

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7 Thus, the evidence and argument at the hearing clearly addressed the issuance of revenue bonds under Chapter 166. (See references cited in n.6, supra). Under Rule 1.190(b) of the Florida Rules of Civil Procedure, any deficiency in the Complaint was deemed corrected by amendment to conform to the evidence. Indeed, although not required, the rulings, findings and Judgment of the circuit court effectively recognized and allowed such amendment.

POINT III

THE COUNTY HAS THE AUTHORITY TO ACT AS A MUNICIPALITY AND THUS TO ISSUE MUNICIPAL REVENUE BONDS UNDER CHAPTER 166

Appellants' attempts to subject these revenue bonds to the requirements of Chapter 159 clearly result from their own recognition of the total lack of merit in arguing the County's lack of authority to proceed under Chapter 166. Thus, in Point III of its brief, the State argues that the County lacks the authority to operate as a municipality and consequently to issue municipal revenue bonds under Chapter 166. Appellants similarly urged this argument on the circuit court, but to no avail. The circuit court relied on well established precedents of Florida law with respect to charter county powers and rejected appellants' contentions. Both the Florida Constitution and the relevant decisions of this Court support the holding below and rebut entirely the State's arguments.

Article VIII of the Florida Constitution provides in relevant part that a charter county "shall have all powers of local self-government not inconsistent with general law or with special law approved by vote of the electors" (See Art. VIII, § 1(g), Fla. Const.). This Court has broadly construed the constitutional provisions granting county powers. For example, this Court has held that a county's right to exercise municipal powers necessarily includes the powers to levy and collect taxes

and to borrow money. See State ex rel. Dade County v. Brautigram, 224 So.2d 688 (Fla. 1969). Similarly, this Court had held that because a home rule county is vested with the rights and prerogatives of a regular municipality, it is empowered to do everything necessary to carry on a central metropolitan government. State ex rel. Dade County v. Dickinson, 230 So.2d 130 (Fla. 1970). Most important, however, is this Court's holding in State ex rel. Volusia County v. Dickinson, 269 So.2d 9 (Fla. 1972). In that decision, this Court held that charter counties and municipalities are categorically the same and thus, a charter county is automatically a metropolitan entity for self government purposes. See 269 So.2d at 9. It was on the basis of Volusia that the circuit court herein affirmed the County's authority to issue the instant revenue bonds (A. 364-365).

The court below accepted unrebutted testimony that the County is a charter government (A. 365; A. Ex. B, at Section 1.03). The circuit court dismissed as immaterial any suggested distinction between home rule charters, the government structure involved in Volusia, and charter governments, such as that in Broward County (A. 364-365). Instead, the circuit court relied on Volusia and applied its holding to the County's power to issue revenue bonds under Chapter 166 (Id.).

Appellants' narrow reading of Volusia, as set out in Point III of the State's brief, is unjustified by the broad language of Volusia and by subsequent case law. Appellants contend that

Volusia's lumping together of "charter counties and municipalities" was for the specific purposes of Article VII, Section 9(a), of the Florida Constitution, relating to the power to levy and collect taxes. This reading simply ignores later case law in which this Court held that the State Constitution has delegated to counties broad powers, especially with respect to the authority to enact ordinances authorizing revenue bond issues, so as to avoid special bills before the State legislature. See, e.g., State v. Orange County, 281 So.2d 310 (Fla. 1973). While appellants correctly point out that Volusia cites Section 9(a) of Article VII of the Florida Constitution, they have disregarded the wide scope of this Court's deductive reasoning:

> ... Article VIII provides a charter county 'shall have all powers of local self-government not inconsistent with general law....' This all inclusive language unquestionably vests in a charter county the authority to levy any tax not inconsistent with general or special law as is permitted municipalities [emphasis supplied].
>
> Read together, Sections 9(a) ... and 1(g) ... clearly connote the principle that unless precluded by general or special law, a charter county may without more under authority of existing general law impose by ordinance any tax in the area of its tax jurisdiction a municipality may impose [emphasis added].
>
> ... As we have noted, similar authority is logically reposed in any county becoming a home rule charter county by the all-inclusive language of Article VIII of the 1968 Revised Constitution. Non-charter counties, on the other hand, shall only have the power of self-government as is provided by general or special law. Section 1(f), Article VIII, State Constitution [emphasis added].

269 So.2d at 11. Thus Volusia reasons from the broad rule to the specific power encompassed therein. Appellants' attempt to limit the case otherwise is in blatant disregard of the overall opinion.

The State argues further in Point III of its brief that the powers granted to municipalities and charter governments are separate and distinct since they are granted by separate and distinct provisions of the State Constitution. In support for this view, it asserts that a statute "excludes from its operation all things not expressly mentioned." This empty contention ignores the fact that Section 1(g), Article VIII, of the Florida Constitution grants to charter governments, such as the County's, all the powers of local self-government. Furthermore, as described above, this Court in Volusia broadly interpreted the powers of charter governments. The circuit court found that Volusia remains good law and appellants have not argued otherwise (A. 365). Their remaining contention in Point III is, therefore, merely another attempt to cloud the otherwise clear issue of the County's authority.

For these reasons, appellants' arguments respecting the County's authority to act under Chapter 166 should be rejected and the Judgement of Validation affirmed.

POINT IV

THE ISSUES RAISED BY THE APPELLANTS WITH RESPECT TO THE PROSPECTIVE PLEDGE OF THE HALF-CENT SALES TAX TO SPECIAL OBLIGATION BONDS ARE WITHOUT MERIT

Appellants' argue that the County's contingent agreement to issue special obligation bonds secured by the half-cent sales tax distributed to the County pursuant to Chapter 218, Part VI, Florida Statutes, constitutes a proscribed lending of credit within the meaning of Article VII, Section 10, of the Florida Constitution. Again, the appellants' arguments rely on a selective view of the nature of the instant financing. The County has a different view and submits that consideration of all relevant facts surrounding the challenged provision and its contingent nature support the Judgment entered below.

In order to proceed with the obtaining of the permits required as a condition precedent to the acquisition and construction of the plants, it was necessary that the County acquire the land on which the plants would be situated so that the permit applications could relate to specific sites. Since it was recognized that an undertaking as complicated and expensive as the one proposed might at some point have to be abandoned or postponed despite the obvious need and the County's commitment, there had to be a way in which the County could convert the short-term indebtedness it proposed to incur to cover such land acquisition and allied costs to a manageable long-term bond issue

secured in such a manner that the short-term lender would be willing to advance the land acquisition loan. The method proposed was contained in Section 4 of the instant Resolution 84-2053 (A. 12, et seq.),[8] and provided in effect that, to the extent the escrowed bond proceeds were inadequate to retire the bonds, the amount of the deficiency would be met by special obligation bonds secured by the proceeds of the state's half-cent sales tax. This provision was not limited to the payment of short-term land acquisition indebtedness because it was important to retain some flexibility if other capital costs had to be met prior to the conversion to industrial development bonds qualified under Part II of Chapter 159. The fail-safe mechanism regarding the proper issuance of the special obligation bonds for a qualified capital project as required by Chapter 218, Part VI, Florida Statutes[9] was the necessity for an approving bond counsel

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8 All references to the authority to issue special obligation bonds or to pledge the half-cent sales tax were deleted from the instant Resolution by Resolution No. 84-3097, Supplemental to the instant Resolution and adopted by the Board of County Commissioners of the County on December 18, 1984, pursuant to which $521,175,000 Resource Recovery Revenue Bonds were issued on December 27, 1984. A certified copy of the supplemental Resolution is included in the County's Appendix hereto. The County believes that the repealer contained in Section 1305 of the supplemental Resolution operates to moot the arguments expressed in Point IV of the State's brief and repeated as Issue B of the brief submitted by the Intervenors (See A. Ex. A, at XIII-5).

9 Section 218.64. Local government half-cent sales tax; uses; limitations -

* * *

opinion to accompany an issue of special obligation bonds, as well as a probable validation of the bonds as a condition to marketing. It should further be noted that, upon conversion of the revenue bonds to industrial development bonds qualified under Chapter 159, the authority to pledge the half-cent sales tax would be of no further force or effect and the circuit court below so held (A. 260, Section 11). This removes any suggestion that the industrial development bonds could be payable from other sources than the revenues derived from the sale, operation or leasing of the plants, as required by Chapter 159.

Thus, the County would submit that the once-proposed obligation to issue special obligation bonds was not a lending of credit to any private interest since, if the Chapter 159 conversion were to take place, such special obligation bonds would not be issued and the half-cent sales tax would not be involved in any part of the transaction. It would only be in the case of the abandonment of the acquisition and construction of the plants that special obligation bonds would be issued and, under those circumstances, the purpose of the issuance of such bonds would be the acquisition of a capital project, viz., land for County use, within the meaning of Chapter 218, Part VI, Florida Statutes.

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(3) A local government is authorized to pledge proceeds of the local government half-cent sales tax for the payment of principal and interest in any capital project.

Accordingly, the circuit court correctly held that there was no proscribed lending of credit involved in the issuance of the instant revenue bonds, and its Judgment should be affirmed.

POINT V

THE ARGUMENTS MADE BY THE INTERVENORS AS TO A "PUT AND PAY OBLIGATION" ARE WITHOUT FACTUAL BASIS OR MERIT

The Intervenors raise the issue of whether a "put and pay obligation" of the County to a private corporation would be an unlawful pledge of credit. In order to raise this bogus issue, the intervenors have invented a financing contract whereby the "City" [sic] under a "put or pay obligation" will be obligated to supply a minimum of 1,095,000 tons of garbage per year to a private contractor. This fancy continues with ruminations about tipping fees, the consequences of loss of energy revenues and even speculation about a total annual tipping fee cost of $23,000,000 to be borne by the County. There is nothing in the record to suggest that any of these purported facts are anything more than conjecture. The County does acknowledge that at some future time, coincident with any qualification of the financing under Chapter 159, there could be contractural arrangements with a private company or companies. At that time, there would be another validation proceeding in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, perhaps to be followed by an appeal to this Court. But right now, there is no tipping fee or agreements respecting the same, there is no obligation to deliver quantities of solid waste and there is no energy sales agreement. Indeed, there is nothing defining the

ultimate contractual arrangements. The arguments put forth, therefore, are totally groundless and premature and the County finds their introduction inexplicable.10

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10 Furthermore, the arguments put forth by the Intervenors are beyond the scope of this, or any, validation proceeding. The statutory purpose of validation proceedings is to determine a public body's "authority to incur bonded debt or issue certificates of debt and the legality of all proceedings in connection therewith..." § 75.02, Fla. Stat. (Supp. 1979). This Court has long held that such statutory language limits the scope of validation proceedings and prohibits consideration therein of "collateral" issues. See, e.g., City of Fort Myers v. State, 95 Fla. 704, 117 So. 97 (1928) (legality of assessments to repay bonds is collateral issue); State v. City of Miami, 116 Fla. 516, 157 So. 13 (1934) (tax status of bonds is collateral issue); DeSha v. City of Waldo, 444 So.2d 16 (Fla. 1984) (need for expansion of city's water and sewer system is collateral issue). This Court has emphatically stated that validation proceedings are not to be used to decide issues "not going directly to the power to issue the securities and the validity of the proceedings with relation thereto." State v. City of Miami, 103 So.2d 185, 188 (Fla. 1958). Intervenors' arguments are not at all related to the County's authority to issue the revenue bonds that are the subject of the instant validation proceedings, but rather relate solely to hypothetical and collateral matters of future administration. Their arguments are frivolous at best, and yet another example of the overall attempt by appellants to obfuscate the real issues in these proceedings.

CONCLUSION

The County respectfully submits that, for the reasons set forth above, this Court should affirm the entry Final Judgement of Validation entered below.

Dated: December 31, 1984.

Respectfully submitted,

SUSAN F. DELEGAL
General Counsel,
Broward County, Florida

By: Susan F. Delegal
SUSAN F. DELEGAL
General Counsel

Governmental Center
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

305-357-7600

Of Counsel:

BROWN, WOOD, IVEY, MITCHELL
& PETTY
One World Trade Center
New York, New York 10048

212-839-5300

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was mailed and sent by Federal Express this 31st day of December, 1984, to the Office of the State Attorney, CHRISTINA SPUDEAS, Esq., Assistant State Attorney, Broward County Courthouse, 201 S.E. 6th Street, Room 720, Fort Lauderdale, Florida 33301, to J. ROBERT MIERTSCHIN, JR., ESQ., 2801 Ponce de Leon Boulevard, Coral Gables, Florida 33134 and to MARVIN QUITNER, Esq., 4330 West Broward Boulevard, Plantation, Florida.

BROWN, WOOD, IVEY, MITCHELL
& PETTY
Of Counsel
One World Trade Center
New York, New York 10048
212-839-5300

By: Paul Windels III
PAUL WINDELS, III