

IN THE SUPREME COURT OF FLORIDA

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

Appellants,

v.

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

Appellee.

**FILED**

SID J. WHITE

JAN 28 1985

CLERK, SUPREME COURT

CASE NO. 66,187  
Chief Deputy Clerk

REF. CASE NO. 84-26781CL  
"J" POLEN

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IN THE SUPREME COURT  
OF FLORIDA

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By [Signature]  
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CASE NO: 66,187

STATE OF FLORIDA,  
Appellants, et al  
vs.  
BROWARD COUNTY,  
Appellee.

APPEAL FROM THE CIRCUIT COURT OF  
THE 17TH JUDICIAL CIRCUIT IN AND  
FOR BROWARD COUNTY, FLORIDA

APPELLANTS' REPLY BRIEF

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ISSUE ON APPEAL

POINT I.

THE COUNTY, CONTRARY TO THE CIRCUIT COURT ORDER HAS NOW REPRESENTED TO THE PUBLIC, MARKETED AND SOLD, THE BONDS UNDER THE AUTHORITY OF CHAPTER 159, PART II.

POINT II.

THE COUNTY'S INTENT TO HAVE A VENDOR OPERATE AND MAINTAIN THE RESOURCE RECOVERY FACILITY CAN NOT BE DISPUTED AND THAT THE PUT OR PAY OBLIGATION IS AN ESSENTIAL CLAUSE IN THE REQUEST FOR PROPOSALS AND CONTRACT BETWEEN THE VENDOR AND THE COUNTY.

ARGUMENT

POINT I.

THE COUNTY, CONTRARY TO THE CIRCUIT COURT ORDER HAS NOW REPRESENTED TO THE PUBLIC, MARKETED AND SOLD, THE BONDS UNDER THE AUTHORITY OF CHAPTER 159, PART II.

The county represents to this court as facts certain matters that are not of record and are not substantiated. These appellants endeavor to bring to the court a clear perspective of both the facts and the issues.

The appellants are not at issue with the county's need to market and sell 590 million dollars worth of bonds by December 31, 1984 due to the Deficit Reduction Act of 1984.

The issue with the county is that in their rush to the market they have trampled upon the circuit court order and ignored important legal procedures.

The circuit court entered a final order holding the county could not proceed with issuing these bonds under Chapter 159, Part II, F.S., and further required the county to revalidate the bonds under Chapter 159 before marketing and selling the bonds as Industrial Development Bonds. (I.D.B.'s).

Resolution 84-2053 was the subject matter of the bond validation proceedings below. Following the circuit court's order, the county in December of 1984 adopted a resolution amending resolution 84-2053 and then proceeded to market, issue, and sell a series of 1984 bonds pursuant to Chapter 159, Part II.

In the county's appendix, the December resolution is marked as Exhibit "A". The December resolution, under the definition of "Act", represents that the bonds will be issued pursuant to Chapter 159, Part II of the Florida Statutes. County Appendix Exhibit "A", page I-1.

The resolution further defines "Series 1984 bonds" or "bonds" as meaning collectively the series 1984 "A" bonds, the series 1984 "B" bonds and the series 1984 "C" bonds. County appendix, Exhibit "A", page I-17.

The form of the 1984 "A" series bond is proscribed in the resolution and provides that it is issued pursuant to Chapter 159, Part II of the Florida Statute as follows:

This bond is issued, and the bond resolution was duly adopted under and pursuant to the Constitution and laws of the State of Florida, particularly Part II of Chapter 159, Florida Statutes, as

amended and Section 166.111, Florida Statutes. (Emphasis added).  
County Appendix, Exhibit "A", page II-41, 42.

The December resolution further provides that the form of the 1984 "B" series is issued pursuant to Chapter 159, Part II of the Florida Statutes and states as follows:

This bond is issued, and the bond resolution was duly adopted under and pursuant to the Constitution and laws of the State of Florida, particularly Part II of Chapter 159, Florida Statutes as amended and Section 166.111, Florida Statutes. (Emphasis added).  
County Appendix, Exhibit "A", page II-89.

The December resolution as to the form of the 1984 "C" series bonds provides that it is issued pursuant to Chapter 159, Part II as follows:

This bond is issued, and the bond resolution was duly adopted under and pursuant to the Constitutional laws of the State of Florida, particularly Part II of Chapter 159, Florida Statutes, as amended and Section 166.111, Florida Statutes. (Emphasis added).  
County Appendix, Exhibit "A", page II-138.

The county has filed in its Appendix a copy of the official prospectus of the series 1984 "A" bonds. County's Appendix Exhibit "D". The official statement in the prospectus provides that the 1984 "A" bonds are issued pursuant to Chapter 159, Part II and states:



The Series 1984 A bonds will be issued pursuant to the Constitution and laws of the State of Florida, particularly Chapter 159, Part II and Section 166.111, Florida Statutes as amended (collectively, the "Act") and Resolution No. 84-2053 of the Board of county Commissioners adopted on September 4, 1984, as supplemented and amended by the Supplemental Resolution of the Board of County Commissioners adopted on December 18, 1984, (collectively, the "Resolution"), authorizing the issue of the series 1984 A Bonds. (Emphasis added).  
County's Appendix, Exhibit "D", page 1.

The record as appears in the December resolution of the county, and in the official prospectus of the county's 1984 "A" series bonds unequivocally demonstrates that these bonds are marketed, issued and sold pursuant to Chapter 159, Part II of the Florida Statutes. These irreconcilable statements obviously conflict with the county's answer brief representing that they are not proceeding under Chapter 159.

The county in representing to the public that these are 159, Part II, I.D.B. bonds is contrary to the circuit court's order requiring the county to return to that court for validation of the bonds pursuant to Chapter 159. The county at this time does not have a vendor and has not complied with requirements of Chapter 159, Part II. In

the absence of compliance with Chapter 159, Part II, and having represented to the public that they are proceeding under Chapter 159, Part II the county's bond issue now having been marketed and sold should be declared by this Court as null and void.

POINT II.

THE COUNTY'S INTENT TO HAVE A VENDOR OPERATE AND MAINTAIN THE RESOURCE RECOVERY FACILITY CAN NOT BE DISPUTED AND THAT THE PUT OR PAY OBLIGATION IS AN ESSENTIAL CLAUSE IN THE REQUEST FOR PROPOSALS AND CONTRACT BETWEEN THE VENDOR AND THE COUNTY.

This Court on many occasions has held that an important issue to the public will be resolved and is not moot if the question will be reoccurring. This Court in Sadowski v Shevin, 345 So.2d 303 (Fla. 1977) appropriately held:

Although the questions raised in this cause have become moot with the passing of the qualifying time and the election, we feel constrained to retain jurisdiction and resolve the question as to the constitutionality vel non of Section 106.15(1), Florida Statutes, since this is a matter of great public importance in the administration of the law and is of general interest to the public. Cf. DeHoff v Imeson, et al., 153 Fla. 553, 15 So.2d 258 (1943), Tau Alpha Holding Corporation, et al v Board of Adjustments of City of Gainesville, et al., 126 Fla. 858, 171 So. 819 (1937), Pitt v. Belote, et al., 108 Fla. 292, 146 So. 380 (1933), State ex rel. Railroad Com'rs v Southern Telephone & Construction Co., 65 Fla. 67, 61 So. 119 (1913), Clark v State, 122 So.2d 807 (Fla.3rd DCA, 1960), De Coningh v City of Daytona Beach, 103 So.2d 233 (Fla.1st DCA, 1958).

Accord Plante v Smathers, 372 So.2d 933 (Fla. 1979);  
Ansin v Thurston, 101 So.2d 808 (Fla. 1958); Curles v  
County of Clay, 395 So.2d 355 (1st DCA).

The county would represent to this Court that it is not sure whether or not a private vendor will own or operate the facility, and whether that contract will require a put or pay obligation of the county. The Appellants would represent to this Court that the record is clear and unequivocal that the county has no intention whatsoever to operate or maintain this facility and that their intention has consistently and always will be to have a private vendor own and operate the facility.

Thomas Henderson, the project director, stated at the hearing before the lower Court that the county plans to own the underlying land to the project. The improvements to the land, and the resource facilities will be designed, owned and operated by a private vendor. The testimony of Henderson follows:

Q For the record, would you state your name and address, please?

A It's Thomas M. Henderson, 2825 Northeast 22nd Street, Fort Lauderdale, Florida.

. . . .

A At the present time, the County plans to have the project, the land underlying the project owned by the

County and the improvements to the land, including the two resource recovery facilities designed, owned, and operated by private vendors.

Q Has that vendor been selected yet?

A No. What the County has done --

Q Tell me the arrangement.

A We are in the midst of selecting a vendor, We have gone through and received qualification papers from a numbe of vendors that are in this business, including analyzing their technical expertise, and having prequalified, the commission -- the commission has prequalified three vendors which are currently in the process of preparing formal proposals to the County. State's Appendix, page 303,304.

The county in the December, 1984 resolution made clear the project is intended to be constructed operated and installed by a private vendor. The December resolution in determining the meaning of project states that the term project is defined to mean "the project described in brief and general terms in Exhibit 'A' to resolution number 84-2053, and any modifications thereto, substitutions therefore, additions thereto and deletions therefrom. County Appendix, Exhibit "A" page I-15.

In resolution 84-2053 the county has stated that it:

proposes to make the necessary arrangements with a corporation qualified to construct and operate solid waste disposal and conversion facilities (herein called the 'company') for the acquisition, construction and installation by the company of the solid waste disposal system of solid waste disposal and conversion facilities described in brief in general terms in Exhibit 'A' hereto (herein called the 'project'), which will be located at one or more sites in Broward county, and will be of the character of projects permitted by, and accomplished for the purposes of the act. State's Appendix, page 11.

Any representations to this Court that the county will not contract with the vendor are neither supported by the record nor the facts nor the resolutions adopted by the commissioners.

The "put or pay obligation" is in the request for proposals for the vendors. The county has not denied the "put of pay obligation" is in the request for proposals. This obligation is a continuing issue between these appellants and the county. The appellant just as the county does not seek or want to continue to waste taxpayer's dollars, incur continuing costs and waste valuable judicial time and labor on this issue. The matter has been briefed and is of great importance to the more than 1 million residents of Broward County. Accordingly the appellants request the court to decide and dispose of the issue.

CONCLUSION

The county's December resolution and bond prospectus clearly shows the county has marketed, issued and sold these bonds as I.D.B.'s under Chapter 159, Part II. The court should declare the county's bond issue as null and void as contrary to the circuit court order and not in accordance with Chapter 159, Part II.

The validity of the "put or pay obligation" is a continuing dispute between the parties. In the interest of costs, time and judicial economy, the court should determine the obligation is illegal and allow the parties to resolve their differences.

Respectfully submitted,

  
J. ROBERT MIERSCHIN, JR.  
Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 24th day of January, 1985, to CHRISTINA SPUDEAS, ESQ., Assistant State Attorney, Economic Crime Unit, 200 S.E. 6th Street, Ft. Lauderdale, Florida, SUSAN F. DELEGAL, ESQ., General Counsel, Suite 423, Governmental Center, 115 South Andrews Avenue, Ft. Lauderdale, Florida 33301 and to MARVIN QUITNER, ESQ., 4330 West Broward Boulevard, Plantation, Florida.

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BY

  
\_\_\_\_\_  
J. ROBERT MIERTSCHIN, JR.