IN THE SUPREME COURT OF FLORIDA
CASE NO. 66,690



CITY OF SUNRISE, FLORIDA, a municipal corporation,

Appellant,

-vs-

TOWN OF DAVIE, FLORIDA, a political subdivision of the State of Florida, THE STATE OF FLORIDA, and the taxpayers, property owners and citizens of the Town of Davie, Florida, including non-residents owning property or subject to taxation therein and all others having or claiming any right, title or interest in the property to be affected by the issuance of the Bonds, herein described, or to be affected thereby,

Appellees.

ON APPEAL FROM THE CIRCUIT COURT OF
THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA
CASE NO. 85-000727 CY

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# MAIN BRIEF OF APPELLANT

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## INDEX TO BRIEF

## CITATION OF AUTHORITY



**OTHER AUTHORITY:**

## PREFACE

This is an appeal from a Final Judgment validating the Town of Davie, Florida, Water & Sewer Revenue Bonds, Series 1985, in an amount not to exceed $35,000,000, entered by the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, on February 7, 1985.

For purposes of brevity, the following abbreviations will be used hereinafter in identifying the parties and other matters to which reference is made:

Town of Davie, a municipality and political subdivision of Florida: **"Town of Davie"** or **"Appellee"**;

City of Sunrise, a municipal corporation of Florida: **"Sunrise"** or **"Appellant"**;

Town of Davie, Florida, Water & Sewer Revenue Bonds, Series 1985: **"Davie Bonds"**;

City of Sunrise Utility System Revenue Bonds, Series 1973: **"Sunrise Bonds"**; and

Appendix: **"App."** (followed by page reference).

## JURISDICTION

This Court has jurisdiction pursuant to Art. V, Sec. 3(b)(2), Fla. Const., and Sec. 75.08, Fla Stat.

## STATEMENT OF THE CASE

Davie filed its Complaint for Validation of the Bonds on January 10, 1985.

Final hearing was set by the Circuit Court pursuant to its Order to

Show Cause on February 6, 1985.

Sunrise filed it Motion to Intervene, with exhibits attached, on February 6, 1985.

The Circuit Court entered its Order denying Sunrise's Motion to Intervene under date of February 8, 1985.

Sunrise filed its Notice of Appeal on March 7, 1985.

## STATEMENT OF THE FACTS

On January 10, 1985, the Town of Davie filed a complaint seeking validation of the Davie Bonds (App., pp. A1-7). As set forth in the complaint, the purposes of the bond issue are to provide funds to refund outstanding bonds, redeem outstanding notes and to construct additions and extensions of water and sewer utilities components within a geographical area generally comprised largely of lands annexed by Davie through a series of annexations undertaken after Sunrise acquired the Pine Island Utility System and its service area by purchase in 1974. As a result, this same geographical area is currently being serviced with water and sewer utilities by Sunrise, whose southern boundary is contiguous to portions of the northern boundary of the expanded Town of Davie. Since 1974, Sunrise has continued to extend water and sewer utilities and make interconnections within the Pine Island System service areas and make payments therefor to the sellers of the System from the proceeds of the Sunrise Bonds, which were validated, issued and sold by Sunrise in the original principal amount of $30,415,000. By the terms of the acquisition, Sunrise is obligated to the sellers of the Pine Island System to make future interconnections within the service area and to issue its bonds

from time to time to make payments therefor as provided in the purchase contract.

At the final hearing in the bond validation proceedings filed by the Town of Davie, Sunrise interposed its Motion to Intervene setting forth the foregoing facts and circumstances (App., pp. A8-12). At the hearing, the trial court summarily denied the Motion without taking any evidence, testimony or allowing a proffer thereof by Sunrise.

It is from this action by the trial court in denying the Motion of Sunrise to Intervene that this appeal is taken.

## SUMMARY OF ARGUMENT

The factual issues framed by the Motion to Intervene certainly place Sunrise within the position of an interested party as contemplated by Sec. 75.07, Fla. Stat. Sunrise had acquired the Pine Island Utility System and its service area by purchase in 1974 and had issued the Sunrise Bonds to provide funds for the purchase and for payment of future interconnections within the service area so acquired. This service area encompassed portions of the Town of Davie as it then existed, while a large portion of the service area was comprised of unincorporated lands thereafter annexed by the Town of Davie. By virtue of these annexations, the municipal boundaries of the Town of Davie in its westward expansion overlapped the existing service area of the Pine Island System acquired by Sunrise. At some point in time, apparently as the result of the acquisition of these additional land areas, the Town of Davie determined to expand a small utility system it had purchased in 1979 into the areas currently being served by Sunrise. The service area issue became the

subject of numerous discussions between the respective cities, but remained unresolved at the time the Town of Davie undertook to validate the Davie Bonds. It was this issue which was sought to be brought before the Court by Sunrise because of the existence of other bond obligations in the form of the Sunrise Bonds as well as the obligations under the contract by which Sunrise acquired the Pine Island System and its service area.

Since the Davie Bonds are predicated upon revenues to be collected from services provided within a geographical area in which Sunrise is providing such services, certainly the claim of service exclusivity of Sunrise would have some bearing upon the validity of the underlying revenue premises of the Davie Bonds and deserved the trial court's consideration to determine if the result of the proceedings would be a duplication of uilities services or direct interference with prior contractual and bond obligations of Sunrise.

**ARGUMENT**

The issues posited by Sunrise in its Motion to Intervene are not frivolous, but real concerns which may ultimately affect the security of two municipal bond issues. Although the trial court may exercise its discretion in determining whether a further hearing to take testimony is necessary in validation proceedings, the court should consider all that is offered at the hearing in reaching a final determination. See, e.g., **Rianhard v. Port of Palm Beach District**, 186 So.2d 503 (Fla. 1966). It is submitted that such is contemplated by Chapter 75, Fla. Stat., which provides for intervention in Sec. 75.07:

**75.07. Intervention; hearings**

> Any property owner, taxpayer, citizen or person interested may become a party to the action by moving against or pleading to the complaint at or before the time set for hearing. At the hearing the court shall determine all questions of law and fact and make such order as will enable it to properly try and determine the action and render a final judgment with the least possible delay.

Sunrise sought to be heard in an effort to resolve not only the issue of the integrity of its service area as related to revenues anticipated to support the Davie Bond issue, but was entitled to a determination of the issues presented in order to be accorded the opportunity to proceed in an appropriate manner to protect its interests.

In conjunction with the issue of the security of the respective bond issues, it was sought to be pointed out to the court by Sunrise that the utilities project to be undertaken by Davie with the proceeds of the Davie Bonds clearly evidenced that it would create a duplicity or overlapping of utilities services in a manner proscribed by law. Sec. 180.06, Fla. Stat., as cited in the Motion to Intervene, provides in pertinent part as follows:

> However, a private company or municipality shall not construct any system, work, project, or utility authorized to be constructed hereunder in the event that a system, work, project or utility of a similar character is being actually operated by a municipality or private company in the municipality or territory immediately adjacent thereto, unless such municipality consents to such construction. (emphasis added).

While no case directly in point could be found, this language was

recited in support of a ruling in favor of an existing utility system in the case of **City of Pinellas Park v. Cross-State Utilities Co.**, 205 So.2d 704 (Fla. 2 DCA, 1968). In that case, Cross-State Utilities Company brought suit against the City of Pinellas Park for declaratory judgment and injunction to halt the expansion by the city of its water and sewer facilities into an area in which the utility claimed an exclusive franchise with Pinellas County to provide these services. After hearing, the trial court entered summary judgment for the utility, and the city appealed. The appellate court upheld the trial court's granting of judgment in favor of the utility finding that it had constructed and was operating and maintaining its own water and sewer system in the territory immediately adjacent to the city, and further finding that the utility had not consented to construction of a system or other utility by the city within the franchise area. The trial court had concluded that the city did not have the authority to create a zone or area extending from its corporate limits to construct the water or sewer system, nor could the city construct such system by virtue of the statutory prohibition of Sec. 180.06, Fla. Stat.

Appellant is aware of that body of decisional law which delineates the scope of judicial consideration in bond validation proceedings and defines matters determined to be "**collateral**" issues. It is submitted, however, that these determinations result from decisions reached after a consideration of the issues--the requirement of Sec. 75.07, Fla. Stat., that "(a)t the hearing the court shall determine all questions of law and fact . . .".

## CONCLUSION

It is not enough merely to consider all allegations which do not emanate from a direct attack upon the authority of the issuer to validate and issue bonds as **"collateral issues"** when the interests of two municipalities and their respective bond obligations, one existing and the other anticipatory, are concerned. At the least, in the interests of all parties, the trial court should provide an opportunity to be heard as contemplated by Sec. 75.07, Fla. Stat.

For the above reasons, it is respectfully submitted that the trial court erred in summarily denying intervention, and this cause should be remanded for hearing or appropriate proceedings in determination of the issues raised by the Motion to Intervene of Sunrise.

Respectfully submitted,

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By 
Arthur B. Parkhurst

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Main Brief of Appellant was mailed this 27th day of March, 1985, to **BARRY W. WEBBER, ESQ.**, City Attorney for Town of Davie, Post Office Box 8549, Hollywood, Florida 33084; **CLIFFORD A. SCHULMAN, ESQ.**, Greenberg, Traurig, Askew, Hoffman, Lipoff, Rosen & Quentel, P.A., Special Counsel for Town of Davie, 1401 Brickell Avenue, PH-1, Miami, Florida 33131; and **FREDERICK J. DAMSKI, ESQ.**, Assistant State Attorney, Economic Crime Unit, 200 Southeast Sixth Street, Fort Lauderdale, Florida 33301.

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