

IN THE SUPREME COURT OF THE
STATE OF FLORIDA

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ORLANDO UTILITIES COMMISSION,

Appellant,

CASE NO. 66,959

vs.

STATE OF FLORIDA, et al.,

Appellees.

BRIEF OF AMICUS CURIAE
of
ORLANDO REGIONAL MEDICAL CENTER, INC.

On Appeal from the Ninth Judicial Circuit of
Florida in and for Orange County

(Case NO. CI 85-3765)

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STATEMENT OF THE FACTS

Orlando Regional Medical Center, Inc. (the "Medical Center") is a Florida not-for-profit corporation located in Orlando, Florida, owning and operating three acute care hospitals consisting of 1119 licensed beds and serving more than 100,000 patients per year, making it the largest hospital facility in the Central Florida area. Opening as Orange Memorial Hospital in 1918, the Medical Center has been serving the City of Orlando, Orange County and the Central Florida area continuously since that time.

The Medical Center offers a broad range of primary, secondary and tertiary inpatient, outpatient and ancillary services along with personal care and individual attention. Specialized treatment provided includes medicine, surgery, pediatrics, obstetrics and emergency care. The Medical Center is Central Florida's primary teaching hospital with residencies in surgery, orthopedics, pediatrics and gynecology, internal medicine and pathology. The Medical Center offers numerous other specialized services which are either not available elsewhere in the Medical Center service area or are offered by only one other hospital in the service area. The Medical Center has been continuously accredited by the Joint Commission on Accreditation of Hospitals since its inception. It is licensed by the Florida State Department of Health and Rehabilitative Services and is certified for Medicare and Medicaid reimbursement. The Medical Center employs approximately 3000 full time

equivalent staff personnel. The medical staff is made up of over 500 physicians.

According to statistics provided by the Orlando Utilities Commission ("OUC") the Medical Center is the fifth largest consumer of electricity in the OUC system consuming 15,230,560 kilowatt hours of electricity in the calendar year 1984 at a cost to the Medical Center of \$802,449.30. The Medical Center is also the sixth largest water consumer in the OUC water system and for the same period of time consumed 106,550,000 gallons of water at a cost of \$46,417.03.

Since 1979, the Orange County Health Facilities Authority, created under the provisions of Chapter 154 Part III, Fla. Stat., has issued on behalf of the Medical Center a total of \$73,865,000 in Revenue Bonds and Revenue Refunding Bonds, described as follows: \$17,000,000 Hospital Revenue Bonds Series 1979-A were issued in part to satisfy approximately nine million dollars worth of outstanding indebtedness of the Medical Center which had been previously financed at financing costs greater than could be realized through these bonds issued by the Orange County Health Facilities Authority. The balance of the proceeds of that issue went to capital projects. Hospital Revenue Bond Series 1979-B in the amount of \$6,250,000 were issued in order to acquire, refinance and modify a

note of the Medical Center to the Federal Department of Health, Education and Welfare, in order to effect debt service savings.

In 1980 Hospital Revenue Bonds Series 1980-A were issued in the amount of \$3,300,000 to advance refund the Series 1979-B bonds resulting in a debt service saving to the Medical Center. In 1981, the Authority issued \$11,680,000 Hospital Revenue Bonds Series 1981 to finance and reimburse certain capital equipment expenditures made by the Medical Center. In 1983 the Authority issued \$35,635,000 Hospital Revenue Bonds Series 1983 to finance and reimburse the Medical Center for the costs of acquisition, construction and equipping a 150-bed medical-surgical satellite hospital facility located in Orange County. Thus, the Medical Center is well familiar with municipal bond market financing, refunding bonds and the debt service savings which can be realized with municipal bonds and refunding bonds, and as a health care provider interested in controlling health care costs, and as a significant electric and water service customer of OUC is vitally interested and concerned with this appeal.

ARGUMENT

The Medical Center concurs with the position taken by OUC at the bond validation hearing that the function of a Bond validation proceeding is to settle the basic validity of the securities and the power of the issuing agency to act and that the fiscal feasibility of the proposed issue is an administrative decision to be concluded by the business judgment of the issuing agency and that such problems as the advisability of or the purpose for the proposed issue is beyond the scope of judicial review and must be resolved at the executive or administrative level. State v. Manatee County Port Authority, 171 So.2d 169 (Fla. 1965); State v. Florida State Turnpike Authority, 134 So.2d 12 (Fla. 1961). The Medical Center also concurs with the position taken by OUC that the underlying bond resolution presented to the court for validation need not specify an exact interest rate, but that such interest rate may be determined after validation and at the time of actual issuance of the bonds. This court has so held. State v. Leon County, Florida, 410 So.2d 1345 (Fla. 1982).

The Medical Center in filing this Brief of Amicus Curiae in support of the appeal of Orlando Utilities Commission believes that the Final Judgment here on appeal is erroneous and that Appellant OUC has the requisite legal authority and power to issue bonds, but will not directly address whether OUC has that authority and power, as it assumes that OUC

will do so. Rather the Medical Center will argue as a significant electrical and water service customer of OUC, and as a health care provider interested in health care costs, that to the extent that the Lower Court was swayed by the financial feasibility and business judgment aspect of the evidence presented by OUC in rendering its Final Judgment, that it was in error and that the judgment should be reversed and the proposed refunding bond issue validated.

At the bond validation hearing held in this cause considerable testimony was given by the two witnesses for OUC who were the only witnesses to testify in the proceeding, as to the anticipated interest rate of the bonds at time of issuance and anticipated savings to OUC and its customers resulting from the proposed refunding by a reduction in its bond indebtedness annual debt service. Witness Harry C. Luff, Executive Vice President, General Manager and Secretary of OUC testified repeatedly as to these anticipated savings and offered his opinion that it was necessary to refund the existing OUC bonds specified in the Complaint for Validation in order to achieve those savings (App - 39, 40, 52, 53). Mr. Luff also testified that the refunding bond issue accomplished in 1978 by OUC actually reduced the outstanding debt of OUC (App-43).

As indicated in the Statement of Facts, it has also been the experience of the Medical Center that refunding bonds when actually issued do accomplish a reduction in debt service and in fact this is the primary reason for such an issue.

OUC's other witness, John Miller, Managing Partner of the Municipal Utilities Department of Merrill, Lynch, Pierce, Fenner & Smith, Inc., in New York, also testified as to anticipated savings and reduction in debt service, and expressed the opinion that under certain reasonably anticipated market conditions OUC could save several million dollars (App - 65, 72, 73).

The Medical Center recognizes that refunding existing bond indebtedness through the issuance of new bonds does not necessarily equate to a reduction in rates paid by the customers supporting the revenue generating system and the Medical Center cannot state to this Court that its various refunding bond issues referred to herein have resulted in reduced rates to its patients. However, it can state that a reduction in debt service has a positive effect on the financial condition of an institution or agency and contributes to an ability to keep rates from rising faster than they otherwise might. Of course, the extent to which this is true depends upon market conditions at the time of sale of the revenue refunding bonds and many other factors affecting rates.

In this proceeding Mr. Luff testified that a reduction in debt service, especially in the interest component of debt service, results in a reduction of revenue requirements of OUC and has a direct impact on rates. (App - 50). He also testified that the anticipated savings would be a benefit to customers of the OUC system and would far exceed any other savings that

could be realized in the operation of the system on an annual basis. (App - 51). These anticipated savings are significant to a large customer of the OUC System such as the Medical Center and in the opinion of the Medical Center would contribute to the ability of OUC to continue its reputation as an electrical and water utility providing service at rates which are among the lowest in the State of Florida.

Because of this considerable testimony in the record, which although not refuted by additional testimony was attacked on cross examination by the other parties, the Lower Court may have felt that Appellant OUC did not have the authority and power to issue the refunding bonds as proposed, because it could not be conclusively proven to what extent debt service would be reduced and savings affected. However, the Medical Center does not believe that any greater power or authority is required for refunding bonds than for original bond issues and suggests that the Lower Court lost focus of this when it rendered its Final Judgment.

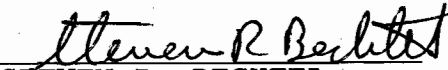
The Medical Center suggests as a matter of public policy that the powers of governmental agencies to issue original bond issues necessarily carries with it the power to refund those bonds. For the reasons contained in the record in this proceeding to deny Appellant OUC such power and deny it the ability to reduce its indebtedness and control its operating costs would be to deny its customers, such as the Medical

Center, a major health care provider in the OUC utility service area, one of the means of helping it to control its own costs of providing health care, a major public policy goal which has been firmly established by the State of Florida.

CONCLUSION

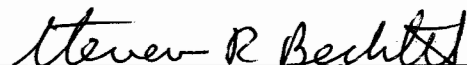
The Medical Center believes that OUC should be allowed to issue Revenue Refunding Bonds and that it has the authority and power to do so as will be argued in its Initial Brief and that there are significant advantages to its utility customers resulting from such an issue. This Court should accordingly reverse the Final Judgment here on appeal and validate the proposed bond issue.

RESPECTFULLY SUBMITTED


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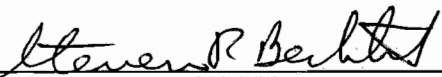
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amicus Curiae Brief of Orlando Regional Medical Center, Inc. has been forwarded by United States Mail to Ms. Carolyn J. Thomas, 201 E. Pine Street, Suite 1200, Orlando, Florida 32801, Mr. Keith Johnstone, Assistant State Attorney, 250 N. Orange Avenue Orlando, Florida 32801 and Mr. Irby G. Pugh, 218 Annie Street, Orlando, Florida 32806, on this 20 day of May, 1985.


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