IN THE SUPREME COURT OF FLORIDA

Case No. 69,046

JOHN J. PEPIN, et al,

Appellant,

v.

DIVISION OF BOND FINANCE, etc.,

Appellee.

IN RE $800,000,000 STATE OF FLORIDA, ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY REVENUE BONDS, SERIES OF 1986

$800,000,000 STATE OF FLORIDA, ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY JUNIOR LIEN REVENUE BONDS, SERIES OF 1986

On Appeal from the Circuit Court of the Second Judicial Circuit of Florida in and for Leon County, Florida

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ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

It may be helpful to the Court to realize that the parties to this Appeal as listed on the cover of Initial Brief of Appellant are reversed, and, technically, erroneous in the case of the identity of Appellant. John J. Pepin, one of the unnamed parties defendant who appeared at the bond validation hearing in Circuit Court, is the Appellant here, not the Division of Bond Finance, who is Appellee. Furthermore, neither William N. Meggs, State Attorney for the Second Judicial Circuit, nor John Robert Egan III, State Attorney for the Ninth Judicial Circuit, as counsel for the named defendant State of Florida in the lower court, have filed a notice of appeal in this action, and therefor neither said State of Florida nor any other defendant below, named or unnamed, except for John J. Pepin, individually and as trustee of the Hoyt-Pepin Trust, is an Appellant.

In the Preliminary Statement found at page one of Initial Brief of Appellant, Appellant deems it necessary to point out that while the proceeding below was held for the purpose of validating bonds to be utilized by the Orlando-Orange County Expressway Authority, the Authority was not made a formal party to the proceedings. Appellee Division of Bond Finance has no idea of what point Appellant is trying to make, but would like to point out to the Court that section 215.67, Florida Statutes, requires all state bonds to be issued by the Division. Additionally, section 215.82, Florida Statutes, provides that

"bonds issued pursuant to this act shall be validated in the manner provided by law through proceedings instituted by the attorneys for the division under chapter 75." The Division of Bond Finance has historically brought all of its bond validation suits in its own name.

Since it is necessary for Appellee Division of Bond Finance to attach an appendix of its own to this brief, references in this brief to such appendix will be designated by the symbol [DA-__] (for "Division's Appendix"), while references herein to Appellant's appendix will be designated by the symbol [A-__].

STATEMENT OF THE CASE AND FACTS

Appellee Division of Bond Finance hereby concurs with and adopts the Statement of the Case and Facts located at pages 2-3 of the Initial Brief of Appellant John J. Pepin in this case, with the following exceptions:

Appellant's third paragraph states that no evidence was offered to establish a need for the project. This is untrue. Plaintiff's Exhibit No. 12, a copy of which is included in the Appendix being filed with this brief, is a resolution of the Orlando-Orange County Expressway Authority dated June 4, 1986. On page one of such resolution, the Authority states ". . . it is necessary for the public health, safety and welfare of Orange County, Florida and its citizens that provision be made for the acquisition and construction of certain improvements to the System (the "1986 Project") and for the financing thereof. . ." [DA-1]. Orange County, Florida and the Governor and Cabinet of the State of Florida, sitting as the Governing Board of the Division of Bond Finance, have made similar findings of necessity for the project in question in resolutions which may also be found in the appendix attached hereto [DA-7, DA-9 and DA-12].

Appellant's fourth paragraph implies that his appeal is necessary because of case precedent which allegedly holds that a property owner's failure to raise questions of public purpose and necessity at a bond validation hearing would estop him from challenging the taking of his property at a subsequent eminent domain proceeding. Whether or not such precedent exists, Appel-

lant's rights in this regard were fully protected by the Circuit Court's judgment which specifically found that:

> "The finding herein that the Project serves a public purpose is not determinative of the question of the public purpose or necessity for any taking of any portion of [Appellant's] property in connection with the Project. [Appellant's] right to raise those issues, the entitlement of [Appellant] to costs and attorneys fees in this proceeding from the condemning Authority, if and when a condemnation action is filed to acquire any portion of [Appellant's] property, and any other right of a condemnee under Chapter 73 or Chapter 74, Florida Statutes, is not foreclosed hereby."

In essence, the Circuit Court has ruled in favor of Appellant on the question of estoppel.

ARGUMENT

THE TRIAL COURT DID NOT ERR WHEN IT ENTERED A FINAL JUDGMENT, VALIDATING THE REVENUE BONDS, WITHOUT FIRST REQUIRING A SHOWING OF SOME EVIDENCE OF THE NECESSITY FOR THE CONSTRUCTION OF THE PROJECT

Appellant's brief is based entirely on the confusion of a few key terms. He claims that the legal point in question is whether, in a bond validation hearing concerning expressway bonds of a state agency, there is a requirement to show some evidence of "necessity" for the project. In his Summary of Argument, however, he states that the Circuit Court should require a showing of "public purpose" (quotation marks in the original) for the proposed project. Throughout the body of his Argument, the terms "necessity" and "public purpose" are used interchangeably. This would be acceptable, albeit somewhat confusing, except for the fact that the only bond validation case cited by Appellant (State v. Miami Beach Redevelopment Agency, 392 So.2d 875 (Fla. 1980), in the quotation on page 6 of his brief, uses the term "public purpose" as a phrase in opposition to "private purpose." The words as quoted have nothing to do with necessity.

However, Appellant's intention seems clear enough, because, to quote directly from page 6 of his brief,

> "The dispute in this bond validation proceeding does not arise in the usual fashion where the parties opposing the project allege that a predominant private purpose will be served by the project. Rather, the appellant maintains simply that the Division must present, as in a condemnation proceeding, 'some evidence' of necessity for the project before the bonds can be validated as serving a public purpose. Cf. City of Jacksonville v. Griffin, 346 So.2d 988, 990 (Fla. 1977)."

As previously mentioned, the Miami Beach case primarily involves a question of public versus private purpose. To quote from the Court's opinion,

> "The fourth issue in this case . . . is whether chapter 163, Florida Statutes (1977), violates the requirements of article VII, section 10 and article X, section 6, Florida Constitution, that public bonded financing and the power of eminent domain must serve a public purpose. . . . The state attorney argues that the use of bond proceeds to acquire the land for the project by eminent domain is prohibited by article X, section 6, Florida Constitution, because the project does not serve a public purpose. [She] might well have expanded her argument, because if the statute violates article X, section 6 by authorizing eminent domain without the justification of a public purpose, such lack of public purpose also renders the sale of any bonds and the expenditure of any public funds on the project a violation of article VII, section 10, Florida Constitution . . . The purpose of article VII, section 10 is to protect public funds from being exploited in assisting or promoting private ventures when the public would at most be only incidentally benefitted. . . . The standard for determining the question of 'public purpose' is the same under article VII, section 10 and article X, section 6. If a project serves a public purpose sufficient to allow the expenditure of public funds and the sale of bonds under article VII, section 10, then the use of eminent domain in furtherance of the project is also proper . . . We note that this challenge to the legality of the project to be financed by the proposed bonds is proper in these proceedings because validation proceedings involve a determination not only of the authority of an agency to issue bonds . . . , but also whether the agency may lawfully expend the proceeds for the contemplated purpose."

Miami Beach at 884-86 (emphasis added).

In other words, the question in the section of Miami Beach cited by Appellant was whether the project to be financed by the proposed bond issue would primarily benefit private interests, which would violate both article VII, section 10 and article X, section 6 of the Florida Constitution. Yet even Appellant in the

instant case admits in his brief that such is not the question here!

Why, then, does Appellant cite Miami Beach at all? Because the quotation from that case, stating that the standard for determining the public purpose of bonds is the same for eminent domain purposes, which does not in any way concern the notion of "necessity", but rather the "public" versus "private" question, taken out of context, allows Appellant to attempt to piggy-back onto the requirements of bond validation proceedings found in chapter 75, Florida Statutes, all of the requirements of eminent domain proceedings found in chapter 73 and all attendant case law. This becomes apparent when it is realized that of the seven cases cited by Appellant in his brief, six are exclusively concerned with eminent domain! As such they have no connection with and should not be regarded as precedent for matters concerning the validation of bonds, despite the attempt by Appellant to show otherwise.

The foregoing should be enough to completely refute Appellant's arguments. However, it is not necessary for the Appellee to rely on the negation of Appellant's case; as subsequently discussed, there are many instances of statutory and case law regarding proper matters to be raised in bond validation cases. The thrust of all these authorities, especially in the context of a state agency expressway authority attempting to validate expressway revenue bonds, is that the question of the necessity of the proposed project is beyond the scope of the court.

To begin with, the Orlando-Orange County Expressway Authority is a state agency. §348.753(1), Fla. Stat. (1985). The law which establishes the Authority (chapter 348, part IV, Florida Statutes) is part of the Florida Transportation Code. §334.01, Fla. Stat. (1985). The purpose of the Florida Transportation Code is:

> " . . . to establish the responsibilities of the state . . . in the planning and development of the transportation systems serving the people of the state and to assure the development of an integrated, balanced statewide transportation system. This code is necessary for the protection of the public safety and general welfare and for the preservation of all transportation facilities in the state."

§334.035, Fla. Stat. (1985) (emphasis added).

As declared in the law establishing the Orlando-Orange County Expressway Authority,

> "The authority created and established by the provisions of this part is hereby granted and shall have the right to acquire, hold, construct, improve, maintain, operate, own and lease in the capacity of lessor, the Orlando-Orange County Expressway System hereinafter referred to as "system." It is the express intention of this part that said authority, in the construction of said [system], shall be authorized to construct any extensions, additions or improvements to said system or appurtenant facilities, including all necessary approached, roads, bridges and avenues of access, with such changes, modifications or revisions of said project as shall be deemed desirable and proper. . . . The authority is hereby granted, and shall have and may exercise all powers necessary, appurtenant, convenient or incidental to the carrying out of the aforementioned purposes, including, but without being limited to, the following rights and powers: . . . (g) To borrow money, make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, either in temporary or definitive form, hereinafter in this chapter sometimes called "bonds" of the authority, for the purpose of financing all or part of the improvement or extension of the [system], and appurtenant facilities . . ."

§348.754, Fla. Stat. (1985) (emphasis added).

The words "as shall be deemed desirable and proper" can only be construed as a legislative delegation of plenary power to the authority in all matters concerning the expressway system. This is confirmed by a subsequent statutory section, which states, in part,

> "THIS PART COMPLETE AND ADDITIONAL AUTHORITY . . . The extension and improvement of said Orlando-Orange County Expressway System, and the issuance of bonds hereunder to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this part without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special or local law, and no approval of any bonds issued under this part by the qualified electors or qualified electors who are freeholders in the state or in said County of Orange, or in said City of Orlando, or in any other political subdivision of the state, shall be required for the issuance of such bonds pursuant to this part."

§348.765, Fla. Stat. (1985).

It is interesting to note that the statute in question in the Miami Beach case quoted by Appellant in his brief, which concerned the establishment and powers of community redevelopment agencies, did in fact require a specific finding of necessity by a county or municipality before it could proceed with a redevelopment project. Miami Beach at 879. By contrast, chapter 348, part IV, Florida Statutes, the Orlando-Orange County Expressway Authority Law, contains no such requirement. Appellant's failure to mention such a requirement in Miami Beach is even more interesting when it is realized that the only statutory requirement mentioned in that case regarding such a

finding contemplated a resolution by the county or municipality, nothing more.

The Orlando-Orange County Expressway Authority made just such a finding of necessity on page one of a resolution dated June 4, 1986, [DA-1] as did the Orange County Board of County Commissioners on page one of a resolution dated March 31, 1986, [DA-7] and as did the Governor and Cabinet of the State of Florida sitting as the Governing Board of the Division of Bond Finance on page four of a resolution adopted on April 22, 1986, [DA-10] and on page 11 of a resolution adopted on April 22, 1986, [DA-13] which resolutions are attached in the appendix hereto since Appellant failed to include such resolutions in his appendix, even though they were introduced into evidence at the validation hearing and copies of them had been previously provided to his attorney [A-7]. In any event, such findings, together with the recitation of necessity in section 334.01, Florida Statutes, is ample evidence that the Authority, the County, the Division and, by inference, the Legislature, deemed the proposed additions to the local expressway system to be necessary and proper.

Turning now to case law, it is well settled that a legislative determination of public purpose should be presumed valid unless it clearly appears to be beyond the power of the legislature. State v. Sunrise Lakes Phase II Special Recreation District, 383 So.2d 631, 633 (Fla. 1980). As noted above, the Florida Legislature determined that the Transportation Code is necessary for the protection of the public safety and general

welfare. The statutory scheme establishing the Orlando-Orange County Expressway Authority requires no other evidence of necessity for a proposed project.

Moreover, it has been held time and again that:

> "the purpose of bond validation proceedings and the scope of judicial inquiry held pursuant to Chapter 75, Florida Statutes . . . is to determine if a public body has the authority to issue such bonds under the Florida Constitution and statutes, to decide whether the purpose of the obligation is legal and to ensure that the authorization of the obligations complies with the requirements of law."

Wohl v. State, 480 So.2d 639, 640-41 (Fla. 1985); City of Sunrise v. Town of Davie, 472 So.2d 458, 459 (Fla. 1985) ("[potential intervenor's] claim that a portion of the funds to be received from the sale of revenue bonds may possibly be used in violation of [the law], is not a pertinent issue to be raised in the validation hearing."); McCoy Restaurants, Inc. v. City of Orlando, 392 So.2d 252, 253 (Fla. 1980); Sunrise Lakes at 633-34; State v. City of Miami, 379 So.2d 651, 654 (Fla. 1980); State v. Sarasota County, 372 So.2d 1115, 1118 (Fla. 1979) (expenditure for, location and method of financing of capital projects are policy decisions of the issuing authority); State v. City of Sunrise, 354 So.2d 1206, 1209-10 (Fla. 1978). And, in the only bond validation case cited by Appellant, the Court said "the wisdom of authorizing the cataclysmic demolition and redesign of neighborhoods or even whole districts is not for the Court to determine." Miami Beach at 891.

Similarly, in a case involving an application for temporary injunction against the building of a certain state road, the Court stated:

> "The Legislature determines the public policy of the state as to what roads shall constitute a part of the state highway system. The authority to determine when and how these roads shall be built is vested in the executive or administrative department of the government by the Legislature and the Courts should not substitute their judgment with reference to these matters for that of the legislature or executive departments."

Webb v. Hill, 75 So.2d 596, 605 (Fla. 1954) (emphasis added).

In a classic bond validation case, Mr. Justice Thomas said:

> "This court is not remotely concerned with the policy inherent in the legislative act that will be discussed, the wisdom of provisions for turnpikes being a matter solely within the province of the legislature. This Court is now required only to review the order of the circuit court which validated the bonds. . . The proceeding under the [validation] statute was to validate bonds, not roads . . ."

State v. Florida State Turnpike Authority, 80 So.2d 337, 339 and 341 (Fla. 1955) (emphasis added).

Finally, in a case directly on point legally with the current set of circumstances, a group of intervenors appealed the validation of bonds proposed to be issued by the City of Waldo for the purpose of financing the improvement and expansion of the city's water supply and waste water collection and treatment systems, claiming that, among other things, the trial court improperly excluded their proffered evidence concerning the necessity for and reasonableness of the project. In his opinion affirming the validation of the bonds, Mr. Justice Boyd stated that:

> "We reject the appellant's arguments because the question of the need for expansion and improvement of Waldo's water and sewer system is a matter to be determined by the governing body of that community."

DeSha v. City of Waldo, 444 So.2d 16, 18 (Fla. 1984) (emphasis added).

CONCLUSION

The Orlando-Orange County Expressway Authority has been given total discretion by the Florida Legislature to determine the necessity for constructing extensions to the Orlando-Orange County Expressway System. The Authority, Orange County and the Governing Board of the Division of Bond Finance have, by resolution, determined a need for the projects to be financed by the proposed bonds. No statute or applicable case law requires the introduction of other evidence of necessity for a state road project to be financed by bonds at a bond validation hearing. Moreover, the question of necessity for a project to be financed by proposed bonds is beyond the scope of inquiry at a bond validation hearing under Chapter 75, Florida Statutes.

Appellee Division of Bond Finance has taken all steps necessary and has full authority to proceed with the issuance of the proposed bonds on behalf of the Orlando-Orange County Expressway Authority, wherefore Appellee prays that the final judgment of the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, be affirmed.

Respectfully submitted,

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CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief has been hand-delivered to Alan E. Deserio, Esq., Counsel for Appellant John J. Pepin, et al, 1363 E. Lafayette Street, Suite C, Tallahassee, Florida 32301, on this 18th day of August, 1986.

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