

IN THE SUPREME COURT OF THE STATE OF FLORIDA

STATE OF FLORIDA, Appellant,  
by and through CRAIG R. WILSON,  
a citizen of the STATE OF FLORIDA,  
as Intervenor,

Appellant,

v.

CASE NO. 69,565

PALM BEACH COUNTY HOUSING AUTHORITY,

Appellee.

**FILED**  
SID J. WILSON

JAN 7 1997

CLERK, SUPREME COURT

By   
Deputy Clerk

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BRIEF OF AMICUS CURIAE  
LEE COUNTY HOUSING AUTHORITY

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CITATION OF AUTHORITY

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## STATEMENT OF THE CASE

Amicus Curiae adopts the Statement of the Case as stated in Appellant's brief. Amicus Curiae further states that by stipulation of all parties to this proceeding, Amicus Curiae seeks to be allowed to submit this brief. Amicus Curiae seeks participation in this cause because of the impact of this Court's decision on future low cost housing projects statewide.

References to the Record shall be as follows: (R - P.\_\_)  
The transcript of the lower court hearing is attached to this brief and references to that transcript shall be as follows:  
(A.C. App. P.\_\_)

## STATEMENT OF THE FACTS

Amicus Curiae accepts the Statement of the Facts in Appellee's brief, but in order to properly frame the issues in this appeal, adds the following recitation of facts.

The proposed bonds are being issued in order to facilitate the construction of housing projects for persons of low income in Palm Beach County in the State of Florida. At the validation hearing, evidence demonstrated the great need for such projects in Palm Beach County. According to the testimony of Barry Seaman, Executive Director of the Palm Beach Housing Authority, Federal H.U.D. funding for housing projects has stopped. (AC App. P.8) The purpose of the validated bonds is to make available low income housing in Palm Beach County; such construction of rental units is necessary in order to alleviate the severe housing shortage in Palm Beach County. (AC App. P.12, 17.). The projects would be financially self-supporting, due to the structure of the program, and revenues from the projects would be used to pay the debt service on the Bonds. (AC App. P. 23, 25).

The security for the Bonds will consist of a letter of credit from a bank with a double or triple A rating. (AC App. P.28) That letter of credit would in turn be secured by additional letters of credit issued by local banks (i.e. "project credit enhancers"). (AC App. P.23, P.28). The local bank pursuant to the terms of the issuing documents, would be able to take back a mortgage on the project property to secure its letter of credit. This method of securing the bonds, or layered security, has been provided to

protect the bondholders in the event project revenues are insufficient, as explained by the financial expert before the trial court:

The project revenues will be there to pay debt service on the bonds. If it is not there, that money isn't sufficient, this financial institution, most likely a local bank or savings and loan, will actually guarantee the obligations of the Authority and make those payments on behalf of the Authority. And then a Letter of Credit bank, the double or triple A rated bank, is there as the top level of security in the event other funds aren't available. (AC App. P. 23)

In order for the local banks to be willing to issue a letter of credit, in effect guaranteeing a project, it is necessary that the Authority be empowered to mortgage project property (AC App. P.25).

According to other testimony by the same financial consultant:

If there are no revenues, then that New York bank or the double or triple A rated bank is going to look to the financial institution that has guaranteed the Authority's obligations, so that the financing has been structured so that irrespective of what happens with project revenues, the bond holders are going to be repaid. (AC App. P. 28).

The Bond Resolution itself provides as follows, with respect to the validated bonds:

Section 2 Findings. It is hereby ascertained, determined and declared that:

b) The Bonds and other obligations of the owner shall not be a debt of Palm Beach County, the State of Florida or any political

subdivision of the State of Florida. Neither Palm Beach County, the State of Florida, nor any political subdivision of the State of Florida shall be liable on such Bonds or other obligations, nor in any event shall such Bonds or other obligations be payable out of any funds or properties other than those specifically pledged therefor in the Indenture. The Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction (R-P.9).

The Final Judgment includes a similar finding by the trial court (R-P.315).

## SUMMARY OF THE ARGUMENT

Amicus Curiae contends that the final judgment should be affirmed. The case of Nohrr v. Brevard County Educational Facilities Authority, 247 So.2d 304 (Fla. 1971) is factually distinguishable from the instant case, since the proposed security for the housing bonds differs from that in Nohrr.

Amicus Curiae submits that this Court should find Nohrr inapplicable to the instant case, and limit its scope in order to allow housing authorities to mortgage housing projects, in order to secure financing for those projects. Such financing is necessary, since alternative methods of securing such financing do not exist, due to the termination of federal funding. Article VII, Section 16 of the Florida Constitution, allows the pledge of legally available assets, in connection with the issuance of revenue bonds. Amicus Curiae considers that provision applicable to local housing authorities throughout the State, rendering that Section additional support for affirming the validation below.



ARGUMENT

I. WHETHER THE TRIAL COURT PROPERLY VALIDATED THE PROPOSED BOND ISSUE OF THE PALM BEACH COUNTY HOUSING AUTHORITY?

A. The Proposed Bond Issue Does Not Violate The Intent Of This Court's Decision In Nohrr v. Brevard County Educational Facilities, 247 So.2d 304 (Fla. 1971)

Amicus Curiae respectfully submits that this Court should hold that the case of Nohrr v. The Brevard County Educational Facilities Authority, 247 So.2d 304 (Fla. 1971) is not applicable to the facts in this case, or in the alternative, reconsider and limit the holding of Nohrr. The differences in the security structure in the instant case and the public purpose of meeting severe housing shortages justify a departure from Nohrr.

In the Nohrr case, the Educational Facilities Authority of Brevard County was acting as an issuer of bonds and was pledging as direct security for the bonds all revenues from the bond-financed project, as well as mortgaging the project itself. This Court confirmed validation of the bonds, but rejected the section of the Trial Court's opinion allowing the mortgage of the project itself on the theory that the actual mortgaging of the project by the Authority might lead to a decision by Brevard County to exercise its power to tax, in the event of foreclosure.

The Court in Nohrr feared the possibility that Brevard County would feel compelled to levy ad valorem taxes to avoid foreclosure, in the event of insufficient revenues to support the project. In the instant case, however, the Authority issuing the Bonds would procure a financial institution to issue a letter of

credit in an amount which would be sufficient to pay the principal and the premium, if any, and interest on all of the Bonds. The financial institution issuing the overall letter of credit would in turn receive letters of credit from local banks, or project credit enhancers, on each project. (AC App. 23, 25, 28). The actual security for the Bonds will be the overall letter of credit issued by the double or triple A rated financial institution. The second layer of security will be a letter of credit issued by a local bank for each respective project, which in turn will be supported by the pledge of all future revenues of that project and by a mortgage on the project property. (AC App. 25).

The Nohrr Court relied on the case of Boykin v. The Town of River Junction, 164 So. 558 (Fla. 1935), which involved a municipality with taxing power, as opposed to an educational authority without taxing power, as in Nohrr. In Boykin, the Town was issuing "revenue certificates" and attempting to have them secured by a pledge of the revenues derived from the utility and by a mortgage on the physical assets. This Court rejected the plan because of the possibility that the threat of foreclosure would lead to the exercise of the Town's taxing power.

Amicus Curiae understands the Boykin problem, the situation in which any municipality or governmental unit with taxing power is actually issuing bonds, and at the same time mortgaging the actual project. In the event of threatened foreclosure, that municipality or governmental agency might feel compelled to levy additional ad valorem taxes to save the Project. In such a situation, Article VII, Section 12 of Florida Constitution would certainly be violated.

Article VII, Section 12 of the Florida Constitution, provides as follows:

Section 12 - Local Bonds - Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness, or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:

- a. To finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation; or
- b. To refund outstanding bonds and interest and redemption premium thereon at a lower net average interest cost rate.

Amicus Curiae is concerned with the devastating results to low cost housing if there is a reversal of the Trial Court's validation in this case, and respectfully submits to this Court that this case differs from Nohrr. The fact that two lending institutions (the letter of credit issuers) will be examining each project before financing is made available makes the likelihood of a project encountering financial difficulty resulting in a foreclosure unlikely. Thus, the possibility of ad valorem taxation in response to a foreclosure suit becomes even more remote than was the case in Nohrr. As a practical matter, a literal interpretation such as the one in Nohrr, of the Boykin case would mean that no agency, whether or not it had taxing powers, could include a mortgage in its security for the issuance of Bonds.

The public purpose of the instant Bonds would be totally frustrated at the Nohrr expansion of Boykin concept were to be followed by this Court.

Even if this Court believes that Nohrr is applicable to the instant facts, even though the mortgage is more remote in this case than it was in Nohrr, Amicus Curiae respectfully requests the Court to limit the Nohrr holding and to allow the mortgages in connection with the validated housing bonds.

As discussed by Mr. Seaman, the Executive Director for the Authority in the Trial Court hearing, there is a severe lack of low-cost housing in Palm Beach County, due in part to the cessation of Federal H.U.D. funding. (AC App. P.8). These projects would be self-supporting and would create housing where the need is great. (AC App. 12). The public purpose for the validated bonds, to create housing for low income persons would be an appropriate place to end the application of Nohrr.

B. Article VII, Section 16, Of The Florida Constitution Allows The Issuance Of Bonds By Local Housing Authorities, As Well As The Pledge Of Assets By Such Authorities

The adoption in 1980 of Article VII, Section 16 to the Florida Constitution effectively creates an exception to the Nohrr line of cases, and allows the mortgage of assets in the context of housing bonds. That Constitutional provision states in pertinent part as follows:

Section 16 - Bonds for Housing and Related Facilities

- a. When authorized by law, revenue bonds may be issued without an election to

finance or refinance housing and related facilities in Florida, herein referred to as "Facilities".

- b. The bonds shall be secured by a pledge of and shall be payable primarily from all or any part of revenues to be derived from the financing, operation, or sale of such facilities, mortgage or loan payments, and any other revenues or assets that may be legally available for such purposes derived from sources other than ad valorem taxation, including revenues from other facilities, or any combination thereof, herein collectively referred to as "Pledged Revenues", provided that in no event shall the full faith and credit of the state be pledged to secure such revenue bonds.
  
- c. No bonds shall be issued unless a State fiscal agency, created by law, has made a determination that in no state fiscal year will the debt service requirements of the bonds proposed to be issued and all other bonds secured by the same pledged revenues exceed the pledged revenues available for payment of such debt service requirements, as defined by law. (Emphasis added).

The creation of this new Section was part of a series of major revisions to the Florida Constitution, no such provision existed at the time the Nohrr case was decided. While revenue bonds could previously be issued without an election, such was not the case when assets were being pledged.

Appellant suggests that Article VII, Section 16 was created in order to allow a statewide Housing Authority and has application only to statewide Housing authorities. Amicus Curiae submits that scrutiny of the plain meaning of that provision does not limit itself to statewide authorities.

Article VII, Section 16 especially authorizes the issuance of Housing Bonds and does not limit itself to the issuance of State Bonds. The requirement concerning a State Fiscal Agency in no way precludes the possibility of the local issuance of bonds. Any restrictions which may have been created by Nohrr, or which may have existed in the Florida Constitution prior to Nohrr, no longer exist. Section 16 provides in part that "any other revenues or assets legally available..." may be pledged, with the exception of ad valorem taxes.

The validated bonds are actually secured by a letter of credit, as discussed above. While it is true that such letter of credit is in turn secured by local letters of credit which may require in the mortgaging of project properties, such a mortgage of the project assets would be consistent with the provisions of Article VII, Section 16 allowing the pledge of legally available assets.

These assets are available to the Authority by virtue of Chapter 421, Florida Statutes, which provides for the creation of such authorities. In particular, Section 421.08, Florida Statutes, authorizes the pledge of assets:

To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and, subject to the limitations contained in this chapter, to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent

domain any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operations of the authority or agree to the procurement of insurance or guarantees from the Federal Government of the payment of any such debts or parts thereof, whether or not incurred by said authority, including the power to pay premiums on any such insurance.

To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to purchase its debentures at a price not more than the principal amount thereof and accrued interest. all debentures so purchased to be canceled. (Emphasis Added)

Similarly, Section 421.14, Florida Statutes, provides as follows:

421.14 Debentures:

1. An authority may issue debentures from time to time at its discretion, for any of its corporate purposes. An authority may also issue refunding debentures for the purpose of paying or retiring debentures previously issued by it. An authority may issue such types of debentures as it may determine, including debentures on which the principal and interest are payable:
  - a. Exclusively from the income and the revenues of the housing project financed with the proceeds of such debentures, or with such proceeds together with a grant from the federal government in aid of such project;
  - b. Exclusively from the income and revenues of certain designated housing projects whether or not they were financed in whole or in part from the proceeds of such debentures; or

- c. From its revenues generally.  
Any of such debentures may be additionally secured by a pledge of any revenues of any housing project, projects or other property of the Authority. [Emphasis added].

Both of these statutory provisions support the power of housing authorities to pledge their assets as security for debentures, rendering the assets of the authorities "legally available" within the meaning of Article VII, Section 16, of the Florida Constitution.

Amicus Curiae contends that the clear meaning and intent of Article VII, Section 16 is to allow the issuance of housing bonds at any governmental level. The following language by this Court in the case of Florida Society of Ophthalmology v. Florida Optometric Association, 489 So.2d 1118 (Fla. 1986), is illustrative of the principles of the constitutional construction which are operative in our analysis:

Constitutions are "living documents," not easily amended, which demand greater flexibility and interpretation than that required by legislatively enacted statutes. Consequently, courts are far less circumscribed in construing language in the area of constitutional interpretation than in the realm of statutory construction (emphasis omitted). When adjudicating constitutional issues, the principles, rather than the direct operation or literal meaning of the words used, measure the purpose and scope of provision. (Emphasis omitted).

Article VII, Section 16, of the Florida Constitution clearly marked the advent of new procedures in the area of housing bonds,



allowing the pledge of legally available assets as security for revenue bonds.

As indicated by the testimony before the trial court, there is a severe shortage of low income housing in Palm Beach County. That need, coupled with the plain meaning of Article VII, section 16 of the Florida Constitution and the language of Chapter 421, Florida Statutes, supports the position of Amicus Curiae that local authorities may avail themselves of their assets and pledge such assets to secure strong and viable financing.

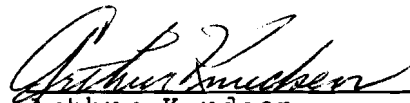
CONCLUSION

Amicus Curiae respectfully requests that this Court affirm the validation of the Palm Beach County Housing Authority housing bonds. The only pertinent objection raised by Appellant is the Nohrr case, which is factually distinguishable from this case. The manner of financing the bonds in the instant case and their paramount public purpose of creating low-income housing in Palm Beach County support affirmance of the trial court. The creation of Article VII, Section 16, to the Florida Constitution, allows the pledge of assets by housing authorities to secure the issuance of housing revenue bonds.

For the foregoing reasons, Amicus Curiae respectfully requests that this Court affirm the judgment of the lower court, including the provisions allowing mortgaging agreements.

Respectfully submitted,

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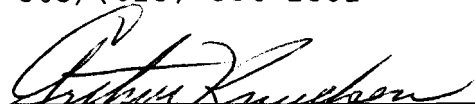


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail this 6<sup>th</sup> day of January, 1987, to: Craig R. Wilson, Esquire, Flagler Court Building, 215 Fifth Street, Suite 302, West Palm Beach, Florida 33401; Charles W. Musgrove, Esquire, Congress Park, Suite 2-D, 2328 South Congress Avenue, West Palm Beach, Florida 33406; and E. Cole FitzGerald, III, and James Patrick Garrity, 625 North Flagler Drive, 9th Floor, Barnett Centre, West Palm Beach, Florida 33401.

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