

IN THE SUPREME COURT OF THE STATE OF FLORIDA

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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.

_____ /

ANSWER BRIEF OF APPELLEE
PALM BEACH COUNTY HOUSING AUTHORITY

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STATEMENT OF THE CASE

The PALM BEACH COUNTY HOUSING AUTHORITY ("HOUSING AUTHORITY") generally agrees with the Intervenor's statement of the procedural history of this action, as outlined on Page 1 of the Initial Brief.

STATEMENT OF THE FACTS

It is the HOUSING AUTHORITY's belief, after reviewing the "Statement of the Case and Facts" (the "Statement") offered by the Intervenor, that the Statement contains no actual recitation of the facts underlying this case. Instead, the Statement is essentially limited to a discussion of the procedural matters which transpired before the lower court. Accordingly, the HOUSING AUTHORITY submits the following Statement of the Facts, pursuant to Florida Rule of Appellate Procedure 9.210(c) (1986), in order to ensure that the issues under review are properly analyzed within the framework of the relevant facts.

The Housing Authority was created pursuant to resolution of the Board of County Commissioners of Palm Beach County, Florida in compliance with Part I of Chapter 421 (known as the "Housing Authorities Law"; hereinafter the "Act"). It is a duly-created and legally organized public body corporate and politic under the provisions of the laws and constitution of the State of Florida and, more particularly, the Act. Section 421.27 of the Act authorizes the creation of county housing authorities and further provides that, once created, such housing authorities stand independent of, and unrelated to, any state, county, school district, municipality, special district, political subdivision or any agency thereof. The Act does not provide housing authorities, including the HOUSING AUTHORITY here, with the power to tax. Neither section 421.27, nor section 421.08 (which identifies the

powers of housing authorities) authorizes taxing powers; accordingly, housing authorities have no ability whatsoever to tax.

Chapter 75 creates the procedure by which bonds such as the Housing Authority's Municipal Housing Revenue Bonds, Series 1986A (the "Bonds") may be validated. Section 75.01, Florida Statutes (1985) vests this Court with jurisdiction to determine the validation of bonds and all matters connected therewith. The purpose of the action below was to determine the validation of the Bonds pursuant to Chapter 421 and Chapter 75, Florida Statutes (1985).

On July 10, 1986, the HOUSING AUTHORITY adopted a resolution which specifically provided for the issuance of the Bonds in order to finance the cost of acquiring, constructing, and equipping multi-family rental housing projects (the "Projects"). (R.1-272; Exhibit "1"). The Projects will house low-income families. The Bonds are payable solely from revenues generated by the Projects and investment earnings from Bond proceeds, and the Bonds may be secured by a pledge of such revenues and earnings, and by mortgages of the Projects.

On July 14, 1986, the HOUSING AUTHORITY filed its Complaint for Validation (R.1-272). In that Complaint the HOUSING AUTHORITY noted, among other things, that it was authorized to issue revenue bonds in order to provide funds for financing the cost of:

[A]cquiring, constructing, operating, and equipping housing projects for the providing of decent, safe and sanitary living accommodations

for persons of low income, (the "Housing Projects") located within the area of operation of the [HOUSING AUTHORITY] within Palm Beach County, Florida...such bonds to be secured by instruments evidencing pledges of the income and revenues of such Housing Projects, and other security as set forth below, to the end that [the HOUSING AUTHORITY] may be able to assist in and serve the public purpose of the development and maintenance of safe and sanitary dwelling accommodations for persons of low income in Palm Beach County and the State of Florida.

(R.2).

The HOUSING AUTHORITY further alleged in its Complaint that:

In connection with each Housing Project, the Housing Authority may enter into a mortgage agreement with the provider of the Project Credit Enhancement to secure the reimbursement to the provider of the Project Credit Enhancement of amounts advanced by such provider pursuant to the Project Credit Enhancement in the event that payments made by the Project Coordinator to such provider shall be insufficient to so reimburse such provider.

(R.5).

Thus, the issue was raised in the court below whether the HOUSING AUTHORITY could enter into mortgage agreements whereby it would grant a mortgage and security interest in the Projects. At the same time, however, the HOUSING AUTHORITY also specifically alleged that:

The BONDS shall not constitute general indebtedness of the State of Florida, Palm Beach County or any political subdivision of the State of Florida. The BONDS shall be payable solely from the sources and to the

extent provided in the indenture. The BONDS shall not be deemed to constitute a general debt, liability, or obligation of Palm Beach County, the State of Florida, or any political subdivision thereof, or a pledge of the faith and credit of the HOUSING AUTHORITY, Palm Beach County, or the State or any political subdivision thereof, but shall constitute special obligations payable solely from the pledge of those funds, accounts, and other sources as set forth in the indenture. The issuance of the BONDS pursuant to the Act shall not directly, indirectly, or contingently obligate the HOUSING AUTHORITY, Palm Beach County, the State of Florida, or any political subdivision thereof to levy or pledge any form of taxation whatsoever therefor.

(R.5).

On August 11, 1986, the hearing on the Complaint for Validation was held before the lower court. The following day, the trial court issued its Final Judgment validating the proposed Bonds and mortgage agreement. (R.313-316). In its judgment, the court ruled that the Bonds did not constitute a debt, liability or obligation of Palm Beach County, the State of Florida, or any political subdivision, or a pledge of the full faith and credit of Palm Beach County, the State or any political subdivision. In addition, the court expressly found that:

Neither the faith and credit nor the taxing power of Palm Beach County, Florida, or of the State of Florida, or of any political subdivision thereof has been pledged for the payment of the principal of or interest on the BONDS. The BONDS do not directly, indirectly or contingently obligate Palm Beach County, the State of Florida or any political subdivision thereof to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment. The BONDS will not be or constitute general obligations

or indebtedness of the [HOUSING AUTHORITY] within the meaning of Section 12, Article VII of the Constitution of the State of Florida.

(R.315).

Finally, the lower court approved the mortgage agreements as part of the transaction and stated that:

The [HOUSING AUTHORITY] is further authorized to enter into the Mortgage Agreements....

(R.315)

The sole basis of the State's opposition in the court below was the presence of the mortgage-agreement provision. The Intervenor concedes this in the Initial Brief. See, Initial Brief of Appellant at 1. Thus, the only issue to be resolved in this proceeding is whether the mortgage-agreement provision may properly be included as part of the bond transaction. It is on this basis that the Intervenor appeals.

SUMMARY OF THE ARGUMENT

The trial court properly validated the Bonds. The Bonds, as well as the proposed mortgage agreements, are fully authorized by the Act and the Florida Constitution. Accordingly, the judgment of the lower court should be affirmed.

The arguments advanced by the Intervenor in support of disturbing the Final Judgment are irrelevant. Article VII, Section 10 of the Florida Constitution is inapplicable; neither the HOUSING AUTHORITY, nor the state, nor any county, school district, municipality, special district, or agency of any thereof is lending its taxing power or credit to aid any corporation, association, partnership or person in connection with the issuance of the Bonds. Moreover, the case which represents the foundation for the Intervenor's arguments (Nohrr v. Brevard County Educational Facilities Authority, 247 So.2d 304 (Fla. 1971)) did not apply, or consider, Section 10 as a bar in the manner asserted by the Intervenor in the instant case. The Intervenor's reliance on Article VII, Section 10 is misplaced.

Article VII, Section 16 of the Florida Constitution also provides no support for the Intervenor's contentions. The HOUSING AUTHORITY agrees that Section 16 applies only to state housing authorities (and, as the Intervenor notes "not [to] local agencies." Initial Brief of Appellant at 6.). Thus, Section 16 has no impact upon this proceeding.

Finally, the Intervenor contends that, pursuant to Nohrr, the Bonds cannot properly be issued, as long as the mortgage agreement is included, except pursuant to referendum. It is the HOUSING AUTHORITY's position, however, that Nohrr represents an unwarranted extension of an earlier decision, Boykin v. Town of River Junction, 164 So. 558 (Fla. 1935). In Boykin, the Court held that because the issuer (a municipality) possessed taxing powers, the issuance of bonds secured by a mortgage on property owned by the issuer would have constituted an improper pledge of those powers. In this case, it is undisputed that the HOUSING AUTHORITY has no taxing powers of any kind. Thus, the Bonds and the mortgage agreement provision here are fully consistent with the Florida Constitution.

In summary, the nature of the Bonds, when viewed in conjunction with the issuer in this case (i.e., the HOUSING AUTHORITY) clearly warrants a finding by this Court that Nohrr and its progeny should not represent an obstacle to validation because of the presence of the mortgage-agreement provision. Hence, the Final Judgment should be affirmed.

ARGUMENT

A. The Trial Court Properly Found That The Bonds, And Accompanying Mortgage-Agreement Provision, Are Authorized Under Florida Law

The following analysis is divided into three parts. The first addresses the Intervenor's contention that, because of the mortgage agreement provision, Article VII, Section 10 of the Florida Constitution somehow operates as a bar to the validation of the Bonds. The second is devoted to the Intervenor's arguments that Article VII, Section 16 of the Florida Constitution applies only to state housing authorities, and has no application here. The last responds to the Intervenor's contentions, on the basis of Nohrr v. Brevard County Educational Facilities Authority, 247 So.2d 304 (Fla. 1971), that validation of the proposed issue in this case must be preceded by an election and approval by the voters.

1. Article VII, Section 10 of the Florida Constitution Has No Application to This Case

The Intervenor first argues that Article VII, Section 10 of the Florida Constitution serves to prohibit the validation of the Bonds, while the mortgage-agreement provision is a part thereof, absent an election approving their issuance. See, Initial Brief of Intervenor at 4-5. This is clearly incorrect; Article VII, Section 10 is inapplicable, on its face, to the case at bar.

Section 10 provides in pertinent part that:

Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person....

The Intervenor has failed to demonstrate a violation of this provision. The HOUSING AUTHORITY has not given or offered its credit to any corporation, association, partnership or person, and no such use was or has been alleged by the Intervenor to have been involved with regard to the Bonds. Moreover, the HOUSING AUTHORITY has no taxing power of any kind.

In summary, Section 10 of Article VII does not impede the validation of the Bonds. The HOUSING AUTHORITY clearly has no taxing power whatsoever, and has never given, offered or used its credit to aid any corporation, association, partnership or person. The Final Judgment may not be disturbed on this basis.

2. Article VII, Section 16 of the Florida Constitution Has No Application to The Palm Beach County Housing Authority

The second principal contention advanced by the Intervenor is that Section 16 of Article VII does not support the validation of the Bonds. See, Initial Brief of Intervenor at 5-7. As the Intervenor noted in the Initial Brief, the language of Section 16 reflects "... that the entire section relates only to state housing authorities, not local agencies." Initial Brief

of Intervenor at 6. The HOUSING AUTHORITY agrees. Accordingly, both parties in this appeal agree that Section 16, whether favorable or unfavorable, does not pertain to the case at bar. This does not affect the propriety of the lower court's ruling.

3. This Court's Decision in Nohrr v. Brevard County Educational Facilities Authority Does Not Warrant Modification or Reversal of the Lower Court's Ruling.

The last of the Intervenor's arguments before this Court is that the decision in Nohrr v. Brevard County Educational Facilities Authority, 247 So.2d 304 (Fla. 1971) precludes the issuance of the Bonds because the Bonds are to be secured by a mortgage on the physical property to be financed with the proceeds of the Bonds. This is inaccurate; the precise nature of this aspect of the Bonds is set forth on page 4 of this Brief.

In Nohrr, this Court considered the validation of an issue of revenue bonds by an Educational Facilities Authority where the revenues received from the bond-financed project, together with the project itself, were to be assigned, pledged and mortgaged as security for the payment of the principal and interest on the bonds. Nohrr, 247 So.2d at 306. In approving the validation of the bonds, but rejecting the provision creating the mortgage of the project and the accompanying right of foreclosure, the Court stated that:

Commencing with the case of Boykin v. Town of River Junction, 121 Fla. 902, 164 So. 558 (1935), the Court without exception has held that revenue bonds secured by a mortgage on the

physical properties to be financed could not be issued by public bodies unless approved at an election.

Nohrr, 247 So.2d at 310, 311.

The Nohrr Court thus relied upon Boykin as the foundation for its conclusion that such mortgages were prohibited. It is the HOUSING AUTHORITY's position, however, that Nohrr represents an unwarranted extension of Boykin. In Boykin, a municipality with taxing powers sought to issue revenue certificates, the proceeds of which would be used to acquire a utility, and which would be secured by a pledge of the revenues derived from the utility to be so acquired and by a mortgage upon the utility. In holding that the issue as structured, with its resulting pledge of the issuer's taxing power, was violative of Article 9, Section 6 of the Florida Constitution, the Court in Boykin stated that:

[A] contractual financial arrangement whereby a municipality issues revenue certificates ... is the creation of a conditional indebtedness on the municipality's part...[which] constitutes an interest-bearing assumption of liability for the repayment of the money so borrowed that must be ultimately discharged by taxation... and is therefore within the necessarily implied prohibitions of amended section 6 of article 9 of the Constitution....

Boykin, 164 So. at 560, 561.

The ruling in Boykin was a narrow one - that Article IX, Section 6 of the 1885 Florida Constitution prohibited the issuance of bonds secured by an indirect and contingent pledge of the taxing powers of a public body. Article IX, Section 6, in relevant part, provided that:

Counties, Districts, or Municipalities of the State of Florida shall have power to issue bonds only after the same shall have been approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such Counties, Districts, or Municipalities shall participate, to be held in the manner to be prescribed by law...

The Court's concern was that the securing of the revenue certificates by a mortgage (with a right of foreclosure) might lead to liability which "must be ultimately discharged by taxation..." Boykin, 164 So. at 561 (emphasis added); for that reason, the mortgage represented a possible moral obligation to exercise the power to tax.

In Nohrr, relied upon by the Intervenor, the Court relied upon Article VII, Section 12 of the current Florida Constitution, which has been recognized as being substantively identical to that relied upon in Boykin:

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 to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholders therein not wholly exempt from taxation....

In Nohrr, however, the Court cited Boykin for an entirely different proposition - that in all cases, regardless of whether the issuer has taxing power, revenue bonds secured by a mortgage on the physical properties to be financed could not be issued by public bodies, unless approved at an election. Nohrr,

247 So.2d at 310, 311. Thus, the actual rule in Boykin is entirely different from the purported "Boykin rule" as characterized in Nohrr.

In the case at bar, taxation is not a possibility; the HOUSING AUTHORITY has no such power. Neither the State nor the Intervenor has ever contended to the contrary. Accordingly, the constitutionally impermissible situation which Boykin identified - the securing of bonds creating a direct, indirect, moral or contingent pledge of the issuer's taxing power - is conspicuously absent here.

In addition, the mortgages to be created in this case will not be a debt of any state, county, city, or political subdivision, and none of these entities are or will be liable or obligated as a result of the mortgages. There was no contrary proof introduced below, and the Intervenor has made no contrary allegations on appeal. In fact, the record in this case is devoid of any proof whatsoever that the Bonds, with the mortgage agreement specified in paragraph 16 of the Complaint, will either pledge taxing powers or impact (either directly or indirectly, expressly or implicitly) on any governmental entity or agency. The posture of this case thus differs dramatically from the authorities relied upon by the Intervenor in the Initial Brief.

In summary, neither Boykin nor Nohrr should act as an obstacle to this Court's affirmance of the lower court's judgment. As correctly noted in Boykin, the relevant constitutional provision affects issuers with taxing power.

Moreover, that provision - which is the same substantive section relied upon in Nohrr - continues today as an express limitation only on public bodies "with taxing power." See, State v. Miami Beach Redevelopment Agency, 392 So.2d 875 (Fla. 1981). Article VII, Section 12, Florida Constitution. The lower court's ruling here correctly reflects that distinction. Accordingly, the HOUSING AUTHORITY respectfully requests that the this Court confirm both the validity of the Bonds, and the mortgage-agreement provision as a part thereof.

CONCLUSION

The judgment of the lower court must be affirmed. The trial court correctly ruled that the Bonds, as well as the mortgage-agreement provisions, are fully consistent with Florida law and should be validated. In addition, the authorities cited by the Intervenor do not support reversal. In large measure, they are irrelevant in the context of the case at bar. Moreover, while some of those decisions appear to require a different result, closer scrutiny reflects that the applicable constitutional provision presents no hindrance to validation of the Bonds and the accompanying mortgage-agreement provision.

Accordingly, the HOUSING AUTHORITY respectfully requests that this Court affirm the judgment of the lower tribunal, and expressly confirm the propriety of 1) the validation of the Bonds, and 2) the mortgage agreement as a part thereof.

Respectfully submitted,

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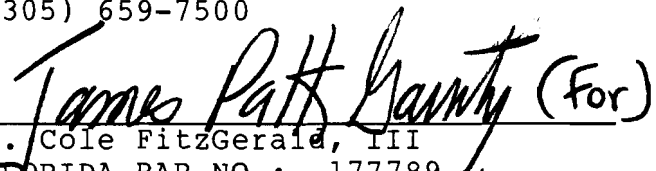
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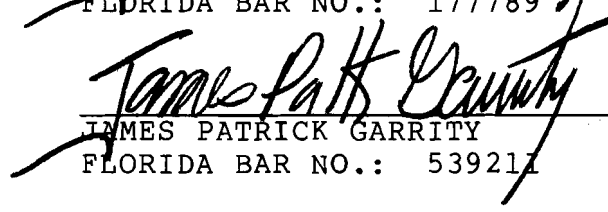
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by ~~mail~~ ^{hand} this 8th day of December, 1986, to: CRAIG R. WILSON, ESQUIRE, Flagler Court Building, 215 Fifth Street, Suite 302, West Palm Beach, Florida 33401 and CHARLES W. MUSGROVE, ESQUIRE, Congress Park, Suite 1-D, 2328 South Congress Avenue, West Palm Beach, Florida 33406.

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