

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

v.

PALM BEACH COUNTY HOUSING AUTHORITY,

Appellee.

Appellant,

APPELLANT'S REPLY BRIEF

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and

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Attorneys for Appellant

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# STATEMENT OF THE CASE AND FACTS

The statement of the case and facts are adequately set out in prior briefs.

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# POINT INVOLVED

THE COURT ERRED IN VALIDATING A BOND ISSUE SECURED BY MORTGAGES WITH THE ACCOMPANYING RIGHT OF FORECLOSURE.

### ARGUMENT

Appellee argues that this Court was wrong in <u>Nohrr v. Brevard County Educational Facilities Authority</u> (Fla 1971) 247 So.2d 304, to forbid mortgages for an agency with no taxing authority. Its argument that Article VII, Section 10 of the current Constitution has no bearing on this case reflects the same historical misconception.

Decisions such as <u>Boykin v. Town of River Junction</u> 121 Fla 902, 164 So. 558 (1935) are not based on the power to tax, but rather condemn the pledge of future revenues. Such a pledge is implicit in every mortgage because the pressure to redeem the mortgaged property exists whether the revenue source is taxation or something else. Thus, in <u>State v. Florida State</u> <u>Improvement Commission</u> 47 So.2d 627 at 631 (Fla 1950) this Court noted it was the pledge of future revenues which requires an election.

The point of Article VII, Section 10(c) is that bonds are authorized only when fully payable from the revenues derived therefrom. As <u>Nohrr</u> recognizes, the instant bonds do not violate the section, but the mortgage provision does.

Appellee claims on page 11 of its brief that the Intervenor has misdescribed the mortgage aspect of these bonds, even though the description matches that from its own memorandum (R 282). In any event, the purpose of the bond issue is to construct low cost housing and the resulting housing is to be the subject of mortgages to assure the credit enhancement provider that it will be paid back if revenues are inadequate. Will not the Appellee feel the pressure to keep the low cost housing available for those who need it by resorting to other revenues rather than allowing foreclosure. Appellee would hope the answer is yes, but it highlights the fact that Nohrr is correct and applies here.

At least Appellee has conceded that Article VII, Section 16 of our Constitution has no application. However, Appellee devoted half of its memorandum argument below to trying to

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convince Judge Poulton that this section does apply, authorizes this bond issue (R 282-283) and repeals the basis of <u>Nohrr</u> (R 284-285). Since the trial Judge gave no explanation for his rejection of <u>Nohrr</u>, it may well have been based on the misconception of law regarding that new constitutional provision and its effect. In other circumstances, it might be appropriate to reverse and remand for reconsideration without the erroneous view of the law. However, in this case it is unnecessary. This Court can and should determine that <u>Nohrr</u> lives and requires disapproval of this bond issue or deletion of the mortgage provision.

### CONCLUSION

Based on the foregoing, and the reasons and authorities set out in Appellant's initial brief, Appellant submits that the Final Judgment herein must be reversed or modified to strike the mortgage provision.

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### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to E. Cole FitzGerald, III, Esquire, Moyle, Flanigan, Katz, FitzGerald & Sheehan, P.O. Box 3888, West Palm Beach, FL 33402, and Frank R. Stockton, Esquire, Assistant State Attorney, 315 Third Street, West Palm Beach, Fl 33401, this \_\_19\_\_ day of December, 1986.

Charles W. Musque

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