32

IN THE SUPREME COURT OF FLORIDA

CASE NO. 69,827

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RICHARD LODWICK, Defendant/Intervenor, Appellant v. SCHOOL DISTRICT OF PALM BEACH COUNTY, FLORIDA, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, Plaintiff, Appellee.	)	Proceedings on Appeal from the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida

ANSWER BRIEF OF APPELLEE, SCHOOL DISTRICT OF PALM BEACH COUNTY, FLORIDA

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TABLE OF CONTENTS

	Page
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE	3
STATEMENT OF THE FACTS	5
SUMMARY OF ARGUMENT	11
ARGUMENT	
I. THE TRIAL COURT ACTED IN ACCORDANCE WITH LAW IN GRANTING SCHOOL DISTRICT'S MOTION TO STRIKE INTERVENOR'S AFFIRMATIVE DEFENSES	13
A. INTERVENOR'S AFFIRMATIVE DEFENSES GO TO LEGISLATIVE MATTERS WHICH ARE OUTSIDE THE SCOPE OF VALIDATION PROCEEDINGS	13
B. INTERVENOR'S AFFIRMATIVE DEFENSES FAILED TO STATE ANY LEGAL DEFENSE TO VALIDATION AND WERE THEREFORE INSUFFICIENT AS A MATTER OF LAW; HIS ALLEGATION OF FRAUD IS MERITLESS	18
II. THE SCHOOL DISTRICT COMPLIED WITH THE REQUIREMENTS OF CHAPTER 236, FLORIDA STATUTES, RESPECTING PUBLICATION OF THE RESOLUTION AUTHORIZING A BOND ELECTION AND THE NOTICE OF ELECTION	23
III. THE SCHOOL DISTRICT COMPLIED WITH THE REQUIREMENTS OF LAW RESPECTING THE CERTIFICATION OF ELECTION RESULTS	25
IV. THE ASSISTANT ATTORNEY FULFILLED HIS STATUTORY RESPONSIBILITIES IN REPRESENTING THE INTERESTS OF THE TAXPAYERS AND CITIZENS	26
V. CONCLUSION	27

TABLE OF CITATIONS

CASES | Page(s)

Berrett v. Quesnel, 90 So.2d 706 (Fla. 1956) 21

Board of Public Instruction of Lake County v. State, 119 So.2d 683 (Fla. 1960) 23, 24

DeSha v. City of Waldo, 444 So.2d 16 (Fla. 1984) 13, 17

Grapeland Heights Civic Assoc. v. City of Miami, 267 So.2d 321 (Fla. 1972) 19, 20

Headly v. Pelham, 366 So.2d 321 (Fla. 1972) 21

International Brotherhood of Electrical Workers v. Jacksonville Port Auth., 424 So.2d 753 (Fla. 1982) 27

Lance v. Wade, 457 So.2d 1008 (Fla. 1984) 21

Penn v. Pensacola-Escambia Governmental Center Auth., 311 So.2d 97 (Fla. 1975) 14

Rianhard v. Port of Palm Beach District, 186 So.2d 503 (Fla. 1966) 17

State v. City of Daytona Beach, 431 So.2d 981 (Fla. 1983) 14

State v. City of Miami, 103 So.2d 185 (Fla. 1958) 14

Taylor v. Lee County, 11 Fla. L.W. 623, No. 69,174 (Fla. Dec. 4, 1986) 13, 14

Town of Medley v. State, 162 So.2d 257 (Fla. 1964) 13

FLORIDA STATUTES

Fla. Stat. ch. 75 .... 14, 26

Fla. Stat. §75.05 26

Fla. Stat. §75.07 1

Fla. Stat. §75.08 4

Fla. Stat. §100.291 25

Fla. Stat. §100.351 .... 6, 25

Fla. Stat. §235.15 5

Fla. Stat. ch. 236 .... 11, 15, 23

Fla. Stat. §236.37 11

Fla. Stat. §236.37(1) 15

Fla. Stat. §236.37(3) 5, 15, 16

Fla. Stat. §236.38 .... 6, 11, 19, 23, 24

Fla. Stat. §236.39 24

FLORIDA CONSTITUTION

Fla. Const. art. V, §3(b)(2) 4

OTHER AUTHORITIES

Fla. R. Civ. P. 1.120(b) 21

Fla. R. App. P. 9.030(a)(1)(B)(i) 4

Fla. R. App. P. 9.220 1

PRELIMINARY STATEMENT

In this Answer Brief, the Appellee, School District of Palm Beach County, Florida, which was plaintiff below, is sometimes referred to as the "School District" or the "District." The School Board of Palm Beach County, which is the legislative body of the School District, is sometimes herein referred to as the "School Board." The Appellant, Richard Lodwick, who intervened below pursuant to section 75.07, Florida Statutes, and defended against validation, is herein referred to as the "Intervenor." The other intervenor, Sheldon Berger, withdrew from the case before the conclusion of the proceedings below and is not a party to this appeal.

The School District's planned capital expansion program, the financing for which the subject bonds are proposed to be issued, is sometimes referred to as the "Project." The General Obligation Bonds of the School District proposed to be issued in the aggregate principal amount of not exceeding $317,000,000 to finance the Project are sometimes herein referred to as "the Bonds."

Pursuant to Rule 9.220, Florida Rules of Appellate Procedure, the School District submits copies of certain documents admitted in evidence below. These documents are organized and presented in the form of separately bound appendix. Parenthetical references to the appendix are presented throughout this Answer Brief in the following form: "(A-__)." Included in the Appendix, among other items, are photocopies of the following

documents: (1) the transcript of the validation proceedings held below on November 19, 1986, references to which are indicated as "(A-17);" (2) the transcript of a deposition of the Intervenor taken on November 26, 1986, references to which are indicated as "(A-18);" and (3) the transcript of the validation proceedings held below on December 1, 1986, references to which are indicated as "(A-19)."

STATEMENT OF THE CASE

The School District does not disagree with the Intervenor's Statement of the Case, but presents its own statement in order to provide this court a more detailed account of the procedures that led to this appeal.

On October 16, 1986, the School District filed a Complaint (A-6) in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, for validation under chapter 75, Florida Statutes, of not exceeding $317,000,000 General Obligation School Bonds. The court issued an Order to Show Cause why the proposed bonds should not be validated. The Order to Show Cause was duly published as required by section 75.06, Florida Statutes. (A-8) The Answer of the State Attorney was timely served on November 10, 1986. (A-9) The Answer of intervenors Berger and Lodwick was served on November 17, 1986. (A-10) The Answer contained "affirmative defenses" to validation. The School District served a response to the intervenors' affirmative defenses on November 20, 1986, (A-11) and moved to strike those defenses. (A-12)

Proceedings were held in the circuit court on November 19, 1986. By order of the circuit court, the proceedings were continued until December 1, 1986. (A-11) At the conclusion of the proceedings held on December 1, 1986, the trial court granted the School District's motion to strike the Intervenor's affirmative defenses and validated the Bonds. (A-19, p.253) The Order granting the School District's motion to strike was rendered on

December 4, 1986, (A-14) and the final judgment validating the bonds was rendered on December 5, 1986. (A-15)

The Intervenor filed a notice of appeal in the circuit court on December 30, 1986. Jurisdiction vests in this court pursuant to article V, section 3(b)(2), Florida Constitution, Rule 9.030(a)(1)(B)(i), Florida Rules of Appellate Procedure, and section 75.08, Florida Statutes.

The Intervenor served his initial brief on January 18, 1987, and requested oral argument. Concurrently with its serving of this Answer Brief, the School District has filed a motion to deny oral argument and a motion for an award of its appellate attorney's fees.

STATEMENT OF THE FACTS

The School District presents the following statement of facts to reflect more fully (1) the determination of the School Board of the need (a) for the Project, and (b) for the financing of a portion thereof with the Bonds validated in the circuit court; (2) the independent verification of such findings of need by the Department of Education of the State of Florida; and (3) the lack of effort by the Intervenor to determine whether there was any state of facts which would support the affirmative defenses he raised in the proceedings below.

On June 4, 1986, the School Board adopted Amended Resolution No. 86-1 (A-1), in which it determined a need (a) for the Project sought to be financed with the proceeds of the proposed bond issue and (b) for the issuance of the Bonds to finance a portion of the cost of the Project. The Project was part of a $678,000,000 capital improvements plan found by the School Board to be necessary to alleviate present overcrowding, loss of educational services, and to prevent the future need for placing students on double sessions.

A copy of Amended Resolution No. 86-1 was forwarded to the Department of Education of the State of Florida (the "DOE") for review and approval pursuant to the provisions of section 236.37(3), Florida Statutes. (A-19, pp.145-47) Based upon an educational plant survey independently prepared by Department of Education personnel pursuant to section 235.15, Florida Statutes (A-19, p.140, line 17, through p.145) the DOE approved Amended

Resolution No. 86-1 on June 6, 1986. (A-1, p.6)

The School Board thereafter on June 18, 1986 adopted Resolution No. 86-3 (A-2) which, based upon the DOE's approval and Amended Resolution No. 86-1, again recited the school facilities proposed to be built and the proposed financing plan and called for a bond referendum to be held on September 30, 1986, at which all qualified electors residing in Palm Beach County would be entitled to cast their votes for or against the issuance of Bonds authorized for purposes of financing part of the cost of the proposed Project. The Board caused a full page reproduction of the resolution to be published in the Palm Beach Post (the "Post") on August 25, 1986, and additionally published the resolution in the Post on September 1, 8, 15, 22, and 29, 1986 (A-3), as required by section 236.38, Florida Statutes.

At the bond election held in Palm Beach County on September 30, 1986, the issuance of the proposed bonds was approved by a vote of 59,929 for the Bonds and 34,752 against the Bonds, a nearly 2:1 majority of the votes cast in the election. (A-4, p.2)

The results of the election were certified by the Supervisor of Elections of Palm Beach County to the Secretary of the State of Florida, pursuant to the provisions of section 100.351, Florida Statutes. (A-4; A-19, pp.229-31) Thereafter, on October 15, 1986, the results of the election were canvassed by resolution of the School Board (A-4), and based upon such results, the Board adopted a resolution (A-5) that authorized the issuance of

the not to exceed $317,000,000 General Obligation Bonds.

The School Board commenced proceedings to validate the Bonds by filing a Complaint in the circuit court on October 16, 1986 (A-6). The circuit judge entered an Order to Show Cause (A-7), setting a hearing date of November 19, 1986, in the matter. The Order to Show Cause was published in the Post on October 20, 27, and November 3, 1986 (A-8), pursuant to section 75.06, Florida Statutes. On November 17, 1986, Intervenor Lodwick, together with a co-intervenor, Sheldon Berger, filed an Answer in which they raised certain "affirmative defenses" to validation of the Bonds. (A-10) In these affirmative defenses, the co-intervenors alleged that the School Board had incorrectly determined the need for the Project and for the Bonds.

After hearing preliminary presentations of the parties in the proceedings on November 19, 1986, the trial judge ordered that the matter be continued for an evidentiary hearing on the Intervenor's allegations to be held on December 1, 1986. (A-11) The School Board's counsel then indicated the School Board's willingness to make records available to allow the Intervenor to marshal facts, if any, to support his arguments, (A-17, p.32, lines 3-10), and inspections of School Board records were scheduled by the Intervenor's attorney and others.

The School District scheduled the deposition of the Intervenor in order to determine more specifically the set of facts upon which his affirmative defenses to validation of the Bonds were based. This deposition was taken on November 26,

1986, the last business day before the evidentiary hearing scheduled for Monday, December 1, 1986. At his deposition, the Intervenor stated that he, personally, had no knowledge of any violation of the constitution or laws of the State of Florida with respect to the bond referendum. (A-18, p.17, lines 10-20) He further stated that he had no personal knowledge of any facts that would support the affirmative defenses raised in his Answer. (A-18, p.19, lines 12-20) He also stated that he had no knowledge of the testimony expected to be elicited from the twenty-nine (29) witnesses subpoenaed by his attorney to appear at the hearing and to bring records, (A-18, p.78, lines 1-6), which included, among other items, travel records of the Superintendent of Schools of Palm Beach County.

Intervenor Lodwick went on to state that he had made no effort to determine the existence of any such facts. (A-18, p.27, line 25, through p.28, line 23) In fact, at no time during the period from the initial publication on August 25 of the resolution calling the bond referendum through September 30, the date of the referendum, did the Intervenor, Richard Lodwick (who was an unsuccessful candidate for membership on the School Board in the election held on September 2, 1986), appear before the School Board to raise any objections or questions about the proposed bond issue; nor did he contact any members of the School Board's administrative staff to seek information or data with respect to the proposed bond issue. (A-18, p.71, lines 1-6) As of the October 15, 1986 meeting at which the results of the elec-

tion were canvassed and the Bonds authorized, there still had been no appearance by Intervenor Lodwick before the School Board or any request from him for information regarding the proposed bond issue.

At the hearing on December 1, the trial court granted the motion of co-intervenor Berger to be dismissed from the case. (A-19, p.4) The trial judge advised counsel for the Intervenor to select three witnesses for purposes of proferring testimony on the record tending to indicate support for the Intervenor's affirmative defenses raised in opposition to validation of the Bonds. (A-19, p.28, lines 9-20) Counsel for the Intervenor identified the Superintendent of Schools, the Associate Superintendent of Administration, and the Assistant Superintendent for Facilities and Operations (A-19, p.29, lines 17-24) as the witnesses through whose testimony he would demonstrate to the trial court the substance of his affirmative defenses. Questioning of the three witnesses by the Intervenor's attorney was concerned wholly with the issues whether the School Board had properly determined (a) the need for the proposed school facilities and (b) the need for the proposed bond issue as a method of financing the facilities. See e.g., A-19, p.121, lines 23, through p.122, line 18. At the conclusion of the Intervenor's proffer, the Assistant State Attorney advised the court that he had no objection to the entry of an order granting the School Board's Motion to Strike the [Intervenor's] Affirmative Defenses and a final judgment validating the Bonds.

The Assistant State Attorney said that the issues raised by the Intervenor went solely to matters to be determined by the School Board as the legislative body of the District. He further stated that no evidence had been introduced to indicate any impropriety in the manner of the School Board's reaching its decisions as to the need for the Project and the Bonds. The trial judge concluded that no showing had been made of facts that would tend to support the allegations contained in the Intervenor's Answer and announced its judgment for the School Board both on its Motion to Strike and on the merits of its Complaint for validation. (A-19, p.253)

It is from this judgment, rendered on December 5, 1986, (A-15) that the Intervenor filed a notice of appeal on December 30, 1986.

SUMMARY OF ARGUMENT

The Intervenor has failed to point to any reversible error of the circuit court in striking the Intervenor's affirmative defenses and validating the Bonds. The affirmative defenses relate solely to questions about the need for the Project and the manner of its financing. The authority to determine such matters is by statute vested in the School Board as the legislative body of the District. Such matters are not adjudicable in a validation proceeding.

The Intervenor argues, for first time on appeal, that the School Board perpetrated a fraud upon the voters by not advertising the District's year-end fund balances in connection with the bond referendum. The Intervenor failed to state a prima facie case or proffer evidence of any fraud in the proceedings below. The ciruit court therefore acted properly in striking the Intervenor's affirmative defenses.

The School Board complied with all statutory publication requirements with respect to the bond referendum. Sufficient information was available to the voters in order for them to make an intelligent exercise of their voting franchise.

The School Board satisfied the requirements of chapter 236, Florida Statutes, in publishing the resolution described in section 236.38 (Resolution 86-3, the resolution authorizing a bond election) rather than the resolution described in section 236.37 (Amended Resolution 86-1, the resolution required to be forwarded to the Department of Education).

The School District introduced unrebutted testimonial and documentary evidence that the results of the bond referendum were duly certified by the Supervisor of Elections of Palm Beach County to the Department of State in accordance with section 100.351, Florida Statutes.

The Assistant State Attorney completely and faithfully discharged his statutory duties in representing the interests of the citizens and taxpayers of Palm Beach County in the validation proceedings below. Once the assistant state attorney determined that the School District had proven its case for validation and that the Intervenor's affirmative defenses went only to collateral matters, he correctly declined to further defend against validation.

The circuit court's order striking the Intervenor's affirmative defenses and its final judgment validating the Bonds should be affirmed.

ARGUMENT

I. THE TRIAL COURT ACTED IN ACCORDANCE WITH LAW IN GRANTING SCHOOL DISTRICT'S MOTION TO STRIKE INTERVENOR'S AFFIRMATIVE DEFENSES

A. INTERVENOR'S AFFIRMATIVE DEFENSES GO TO LEGISLATIVE MATTERS WHICH ARE OUTSIDE THE SCOPE OF VALIDATION PROCEEDINGS

The scope of a validation proceeding is very narrowly limited to matters affecting the authority of the governmental unit to issue the bonds and the regularity of the proceedings had in connection with the authorization of the bonds. Most recently, in Taylor v. Lee County, 11 Fla. L.W. 623, 624, No. 69,174 (Fla. Dec. 4, 1986), this court stated:

> The scope of judicial inquiry in bond validation proceedings is limited. Specifically, the courts should: 1) determine if a public body has the authority to issue the subject bonds; 2) determine if the purpose of the obligation is legal; and 3) ensure that the authorization of the obligations complies with the requirements of law.

This court has consistently held that legislative matters, such as the need for a particular capital project and the manner of its financing, are not to be adjudicated in a validation proceeding. Such matters lie within the province of the legislative body of the governmental unit. See DeSha v. City of Waldo, 444 So.2d 16, 18 (Fla. 1984) (question of need for project is matter to be determined by governing body); Town of Medley v. State, 152 So.2d 257, 259 (Fla. 1964) ("questions of business

policy and judgment incident to issuance of [bonds] are beyond the scope of judicial interference and are the responsibility and prerogative of the governing body of the governmental unit in the absence of fraud or violation of legal duty"); Taylor v. Lee County, 11 Fla. L.W. 623, 624, No. 69,174 (Fla. Dec. 4, 1986) ("collateral issues will not be resolved in bond validation proceedings"); State v. City of Daytona Beach, 431 So.2d 981, 983 (Fla. 1983) (validation proceeding is improper forum for inquiry into economic feasibility of project); Penn v. Pensacola-Escambia Governmental Center Auth., 311 So.2d 97, 102 (Fla. 1975) (in bond validation proceeding, court is not concerned with "political and policy considerations within the legislative spheres of authority," or with the "political or economic wisdom of the project proposed to be financed with the proceeds of the bonds"); State v. City of Miami, 103 So.2d 185, 189 (Fla. 1958) (chapter 75, Florida Statutes, does "not contemplate that collateral matters shall be adjudicated in validating bonds").

Underlying the Intervenor's affirmative defenses is a single contention--that the School Board (and the DOE) improperly determined that the Bonds are necessary to assure adequate funding for the District's planned capital expansion program (the "Project"). In Paragraphs 1, 2, 4, 5, 9 and 10 of his affirmative defenses, the Intervenor contends that the bond issue is unnecessary because the School District had sufficient funds on hand at the close of its 1986 fiscal year to pay a substantial

part of the cost of the Project. In Paragraphs 3, 6, 7, and 8, the Intervenor alleges that the bond issue is unnecessary because portions of the Project had already been constructed or "funded." These arguments relate solely to matters to be determined legislatively by the School Board as the governing body of the School District.

Chapter 236, Florida Statutes, vests the authority to determine the need for capital projects and the manner of their financing in the School Board, as the governing body of a District, with provision for oversight and review by the State Department of Education. Section 236.37(1) provides in part that the "school board ... shall determine whether in its opinion the projects for which bonds are proposed to be issued are essential for the school program of the district." (Emphasis added.) Section 236.37(3) provides in part that the school board, after taking into account the current funds, projected proceeds of any special district millage, and the availability of any loans against current funds, "shall then determine the amount of bonds necessary to be issued to complete the projects as proposed for the district ...."

Chapter 236 further provides a check on the School District's discretion to determine the need to issue bonds by mandating that "[i]f the [State Department of Education] shall determine that the issuance of bonds as proposed is unnecessary or is unnecessary in the amount and according to the plan proposed ..., the school board shall then amend its resolution to

conform to the recommendation of the department ...." Fla. Stat. §236.37(3). The School Board's determination of the amount of bonded indebtedness needed to be incurred to finance the Project, as expressed in Amended Resolution 86-1 (A-1), was approved by the Department of Education (A-1, p.6) based on the Department's independent study. The trial court was therefore eminently correct in declining to second-guess the determinations made by the School Board and the Department of Education in performing the functions assigned to them by the Florida Legislature.

Meetings of the School Board, rather than proceedings before judicial tribunals, provided the proper opportunity for this Intervenor to question and influence the business and policy judgments to be made about how to finance the needed capital improvements of the School District. Yet the Intervenor made no attempt either to appear before the School Board or to confer with its administrative staff prior to the bond referendum. (A-18, p.71, lines 1-6) Instead, the Intervenor sat silently throughout the legislative process and voiced his objection to the financing plan only in these validation proceedings. The implication of the Intervenor's foregoing the several opportunities afforded by law to influence the legislative decision-making process in favor of interposing collateral issues in the validation proceeding is that the Intervenor's motive is only to delay the issuance of the Bonds, at great cost to the taxpayers of the School District. The Intervenor should not be afforded any opportunity to further delay the issuance of the Bonds. This

court in DeSha v. City of Waldo, 444 So.2d 16 (1984) rejected the appellant's argument that the trial court erred in excluding their "proffered evidence concerning the necessity for and reasonableness of the project" and in "denying them a continuance for the purpose of developing further evidence on these issues." Id. at 18. The court reasoned that the question of the need for the project was "a matter to be determined by the governing body of that community." In Rianhard v. Port of Palm Beach District, 186 So2d 503, 504-505 (Fla. 1966), this court upheld the exercise of the discretion of a circuit court in deciding not to hold further hearings after affording the intervenors opportunity at the initial hearing to proffer evidence in support of their allegations. The Intervenor in these proceedings was given ample opportunity to marshal evidence in support of his affirmative defenses. The evidence he proffered simply did not substantiate his allegations, and the trial court correctly responded by striking his affirmative defenses.

B. INTERVENOR'S AFFIRMATIVE DEFENSES FAILED TO STATE ANY LEGAL DEFENSE TO VALIDATION AND WERE THEREFORE INSUFFICIENT AS A MATTER OF LAW; HIS ALLEGATION OF FRAUD IS MERITLESS

No legal defense to the Complaint for validation was stated in any of the Intervenor's Affirmative Defenses (A-10). The School District, therefore, timely moved to strike those defenses (A-12). In hearings on November 19 and December 1, 1986, the trial court afforded the Intervenor ample opportunity to present argument and proffer evidence in support of his defenses. The court then entered an order granting the motion to strike the affirmative defenses (A-15) and rendered its final judgment validating the bonds (A-16).

On appeal, the Intervenor argues for the first time that the School District perpetrated a "fraud" upon the voters by not including in the resolutions advertising the bond referendum any information regarding the monies held in restricted accounts of the Board. The Intervenor repeatedly refers to this aggregate year-end balance of $200,000,000 as money available for Project costs when the record testimony of the Associate Superintendent of Administration was that these monies were restricted to specified uses and unavailable as an alternative source to the proceeds of the bonds as a means of financing the Project. (A-19, p.115, lines 15-21)

The Intervenor urges that, as a result of such "fraud," the information available to the voters of the District when the subject bond issue was approved by a nearly 2-1 margin on

September 30, 1986 was somehow insufficient. By predicating this appeal upon newly raised and unsupported allegations of fraud, the Intervenor has improperly attempted to elevate his political objections to the School District's proposed capital financing plan to the level of a question that might be adjudicated in a validation proceeding. Presumably, the Intervenor asks this court to set aside the results of the bond election.

The Intervenor failed, however, either (1) to state a prima facie case in fraud or, more importantly, (2) to proffer any evidence tending to show that such a case could be established. The Intervenor also failed to demonstrate that the information made available to the electors of Palm Beach County through the publication of Resolution No. 86-3 and otherwise did not satisfy the requirements for publication of notice as set forth in sectin 236.38, Florida Statutes.

Sufficient Information Was Available to the Voters. This court in Grapeland Heights Civic Assoc. v. City of Miami, 267 So.2d 321 (Fla. 1972) confronted a contention similar to that of this Intervenor--that the voters were not provided adequate information about the project before the bond referendum was held. The language used by this court in considering and dismissing that argument in Grapeland Heights is equally dispositive in this case:

> It is also contended that the electors were not given adequate information on the projects. This argument is equally without merit. The 14-page proposal before the Commission was a public record, spelling out

> in detail each project (park) by listing its location and estimated cost (thus the precise total of $39,890,000). The public media, utilizing various means of communication and fulfilling its public trust to inform and to report events and community concerns, fully advised the voters on all different aspects of the bond issue ....
>
> The presentations in the proposal for the bonds were approved "in the sunshine" by the City Commission, and having been widely publicized by an informed and civic-minded media, as mentioned above, we can only conclude that there was ample public knowledge of the projects involved, sufficient for an intelligent exercise by the public of its very important franchise.

_Id_. at 324 (footnote omitted).

The matters considered by the School Board were matters of public record and as such were available for public inspection. Resolution 86-3 (A-2) was approved by the School Board in an open meeting and was published in the local newspaper prior to the bond referendum in the form of a full-page advertisement on August 25 and in the form of a legal notice on September 1, 8, 15, 22, and 29. (A-3)

Resolution 86-3 clearly shows both the proposed Project to be built with the proceeds of the Bonds and the details of the proposed financing plan. (A-2, pp.2-3) This construction program and its manner of financing was developed by the District and confirmed by the State Department of Education (A-1, p.6), based on the DOE's independent study, and was approved by the voters at the bond referendum. (A-4, p.2) Because all the information about the financial resources of the School District are matters

of public record, all relevant facts were available to the voters at the time the Bonds were approved.

The Intervenor Failed to Plead Fraud Or to Show Fraud Could Be Proven. The courts have consistently treated allegations of fraud--going as they do to basic notions of truth, honesty, and fair play--with utmost strictness. Fraud is never presumed. Barrett v. Quesnel, 90 So.2d 706, 706 (Fla. 1956). Indeed, there is a presumption against the existence of fraud. Headley v. Pelham, 366 So.2d 60, 63 (Fla. 1st DCA 1978). Thus Rule 1.120(b), Florida Rules of Civil Procedure, provides that "[i]n all averments of fraud ..., the circumstances constituting fraud ... shall be stated with such particularity as the circumstances may permit." The elements of actionable fraud were most recently articulated by this court in Lance v. Wade, 457 So.2d 1008, 1011 (Fla. 1984).

The Intervenor did not raise the issue of fraud in any of the affirmative defenses stated in his Answer. The word "fraud" does not even appear anywhere in Intervenor's Answer. Indeed, in a colloquy with the trial judge in open court, Intervenor's attorney admitted that fraud was not an issue below. When asked by the trial court whether it was the Intervenor's contention that a "fraud" had been "placed upon the public," counsel replied in the negative, "I think fraud is rather strong ...." (A-17, p.27, lines 14-15) When the Intervenor was asked in his deposition whether he was alleging that the School Board had deceived the DOE, the Intervenor responded, "You know, I'm not

accusing anybody of intentionally doing something here ...."
(A-18, p.46, lines 3-4) Nevertheless, Intervenor insists for the first time on appeal that fraud be made an issue.

The Intervenor failed to produce any evidence of one false statement by the School Board in connection with its findings of necessity both for the Project and for the issuance of the Bonds as a means of financing part of the cost of the Project. Indeed, the Intervenor failed to convince the trial court that the Intervenor had knowledge of any fact or circumstance which would even suggest the existence of fraud. The Intervenor's confessed lack of knowledge of any facts supporting his affirmative defenses, as disclosed in his deposition (A-18, p.19, line 17, through p.20, line 1), should be the beginning and end of the inquiry into the issue of "fraud," raised for the first time in this appeal.

II. THE SCHOOL DISTRICT COMPLIED WITH THE REQUIREMENTS OF CHAPTER 236, FLORIDA STATUTES, RESPECTING PUBLICATION OF THE RESOLUTION AUTHORIZING A BOND ELECTION AND THE NOTICE OF ELECTION

Section 236.38, Florida Statutes, requires publication of the resolution calling the bond referendum as part of the process of notifying the electors of the issue to be presented to them. The School Board complied with the requirements of section 235.38 by causing Resolution 86-3 (A-2), authorizing a bond election and providing a notice of election, to be published in the manner prescribed by that section. (A-3) The Intervenor argues that in publishing Resolution 86-3 rather than Amended Resolution 86-1, the School District failed to follow the procedural requirements of chapter 236, Florida Statutes. The Intervenor's argument is premised upon a misreading of the publication requirements of chapter 236.

Section 236.38 provides in part that "when the <u>resolution authorizing an election</u> has been adopted as set forth above, [it shall be the duty of the school board] to cause <u>such resolution</u> to be published once each week for 4 successive weeks in some newspaper published in the district." (Emphasis added.) This court construed identical language in an earlier version of this portion of chapter 236 in <u>Board of Public Instruction of Lake County v. State</u>, 119 So.2d 683 (Fla. 1960), and declared that chapter 236 only requires "publication of the bond election resolution rather than the original resolution .... The statute does not require the original resolution proposing the bond issue to

be published." Id. at 688.

At trial, the School District introduced unrebutted evidence that Resolution 86-3 (A-2), which included a Notice of Election as prescribed in section 236.39 and permitted by section 236.38, was published in the manner prescribed by section 236.38. (A-19, p.58) In publishing Resolution 86-3, the School District completely satisfied its statutory obligations respecting publication of the resolution authorizing a bond election and the notice of election.

Furthermore, the information provided to the voters in Resolution 86-3 was at least as comprehensive as the information that would have been provided by publication of Amended Resolution 86-1. The financial figures and the descriptions of the various parts of the Project contained in Resolution 86-3 are identical to those presented in Amended Resolution 86-1.

III. THE SCHOOL DISTRICT COMPLIED WITH THE REQUIREMENTS OF LAW RESPECTING THE CERTIFICATION OF ELECTION RESULTS

The Intervenor urges that the School District failed to state a prima facie case for validation by failing to plead and prove that the Supervisor of Elections of Palm Beach County complied with section 100.351, Florida Statutes, requiring certification of the election results to the Department of State. The School District contended below, as it does in this appeal, that, pursuant to section 100.291, Florida Statutes, the admission in evidence of the resolution canvassing the election results (A-4) served as prima facie evidence that the Bonds were duly approved by the electors. The Intervenor waived objection to the authenticity of the copy of that resolution received in evidence. (A-18, p.5, lines 2-17)

Assuming for the sake of argument the correctness of the Intervenor's contention, the Assistant Supervisor of Elections for Palm Beach County testified that the subject certificate had been filed. (A-19, pp.229-31) Plaintiff's Composite Exhibit "H" (A-14) demonstrates that the certificate of the county canvassing board was duly transmitted to the Department of State.

IV. THE ASSISTANT STATE ATTORNEY FULFILLED HIS STATUTORY RESPONSIBILITIES IN REPRESENTING THE INTERESTS OF THE TAXPAYERS AND CITIZENS

The assistant state attorney in this case competently and completely discharged his duties as prescribed in section 75.05, Florida Statutes. He timely filed an Answer to the School District's Complaint for validation, denied personal knowledge of the facts stated therein, and demanded strict proof thereof. (A-9) He was present throughout the trial, representing the interests of the citizens and taxpayers, as mandated by chapter 75, Florida Statutes.

At the hearing of November 19, 1986, the School District moved to introduce in evidence certain documents comprising its prima facie case for validation (A-17, p.24, line 24, through p.25, line 19). The assistant state attorney joined the Intervenor in opposing such introduction without an opportunity for the Intervenor to proffer evidence tending to disprove the truth of the matters asserted in the documents. (A-17, p.26, line 19, though p.27, line 8) After considering the proffers of evidence by the Intervenor in the subsequent proceedings held on December 1, 1986, the assistant state attorney announced his decision not to defend further against validation by joining in the School District in its motion to strike. (A-19, p.220, line 21; pp.238-39. The assistant state attorney stated that the evidence proffered by the Intervenor failed to support any allegation of fraud. (A-19, p.238, line 11, through 239, line 15)

V. CONCLUSION

In this appeal, the Intervenor has failed to point to any reversible error of the trial court. "The judgment of validation ... comes to [the supreme court] with a presumption of correctness, and the burden is on the appellant to point out from the record the failure of the evidence to support the conclusions of the issuing authority and of the trial court." International Brotherhood of Electrical Workers v. Jacksonville Port Auth., 424 So.2d 753, 755 (Fla. 1982).

The legal arguments presented by the Intervenor in this appeal are as meritless as the defenses to validation raised in the proceedings below. The judgment of the trial court should be affirmed.

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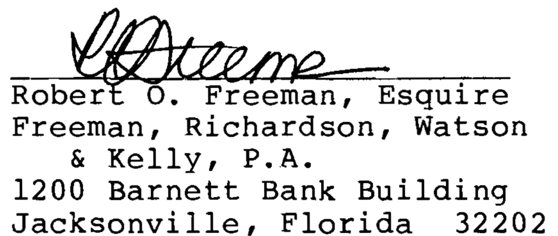
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ANSWER BRIEF OF APPELLEE, SCHOOL DISTRICT OF PALM BEACH COUNTY, FLORIDA and of the APPENDIX TO ANSWER BRIEF OF APPELLEE, SCHOOL DISTRICT OF PALM BEACH COUNTY have been furnished to Anthony F. Barone, Esquire, 1655 Palm Beach Lakes Boulevard, 700 Tower C - Forum III, West Palm Beach, Florida 33401 by hand this 11th day of February, 1987.



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