IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CASE NO. 86-9730 (CL) N

APPEAL NO. 69,827

FL. BAR NO. 003765

RICHARD LODWICK,

Appellant,

-vs-

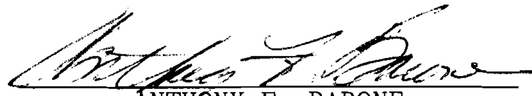
SCHOOL DISTRICT OF PALM
BEACH COUNTY, FLORIDA, A
POLITICAL SUBDIVISION OF
THE STATE OF FLORIDA,

Appellee.

FILED
SID J. WHITE
JAN 20 1987
CLERK, SUPREME COURT
By Deputy Clerk

APPEAL FROM THE CIRCUIT COURT
OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLANT'S INITIAL BRIEF



ANTHONY F. BARONE
700 Tower C-Forum III
1655 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33401
(305) 471-9000

Attorney for Appellant

TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS....ii

TABLE OF ABBREVIATIONS....iii

STATEMENT OF THE CASE AND OF THE FACTS....iv-vi

SUMMARY OF ARGUMENT....vii

ISSUE I....1

THE TRIAL COURT ERRED IN STRIKING APPELLANT/INTERVENOR'S AFFIRMATIVE DEFENSES

ISSUE II....2-3

THE APPELLEE/PLAINTIFF SCHOOL DISTRICT FAILED TO SUBSTANTIALLY COMPLY WITH THE STATUTORY PROCEDURES REQUIRED IN SEEKING ISSUANCE OF GENERAL OBLIGATION SCHOOL BONDS

ISSUE III....3-4

THERE WAS NO EVIDENCE PRODUCED REGARDING THE REQUIRED CERTIFICATION OF THE RESULTS OF THE BOND ELECTION

ISSUE IV....4-5

THE STATE ATTORNEY FAILED TO ACTIVELY CONTEST THE VALIDATION PROCEEDINGS

CONCLUSION....6

CERTIFICATE OF SERVICE....7

TABLE OF CITATIONS

CASES | PAGE

City of Miami v. Romfh, 63 So. 440 (Fla. 1913)....................................3

Hillsborough County v. Henderson, 33 So. 997 (Fla. 1903).......................3

McSwain v. Special Road and Bridge District No. 2, Desoto County, 88 So. 479 (Fla. 1921)..3

Special Tax School District No. 1 of Duval County v. State, 123 So. 2d 316 (Fla. 1960)..3

State v. City of Daytona Beach, 158 So. 300 (Fla. 1934)........................2

Town of Medley v. State, 162 So. 2d 257 (Fla. 1964)...........................1

STATUTES

Section 75.05 (1), Fla. Stat. (1985).

Section 100.351, Fla. Stat. (1985).

Section 236.37 (3), Fla. Stat. (1985).

Section 236.38, Fla. Stat. (1985).

TABLE OF ABBREVIATIONS

A = APPENDIX

L = LINE

STATEMENT OF THE CASE

This action was initiated by the Appellee for judicial validation of its $317,000,000.00 Bond Issue.

Appellant filed an Answer and Affirmative Pleadings alleging misrepresentation.

The Trial Court approved the validation of the Bond Issue and struck the Affirmative Defenses of the Appellant.

STATEMENT OF THE FACTS

On October 16, 1986, the Appellee filed a Complaint seeking to validate a bond issue in the amount of $317,000,000.00 (A 1), and an Order to Show Cause was issued requiring all intervenors appear on the 19th day of November, 1986, and show cause why the Bond Issue should not be validated (A 2).

The Appellant filed an Answer denying that the Bond Issue was approved at a Bond Referendum in accordance to the requirements of the Constitution and Laws of the State of Florida; denied authority was conferred to issue the bonds for the purpose of financing the cost of the Project; denied that all resolutions and proceedings required to authorize the bonds were legally adopted (A 3).

Affirmative Defenses were also included in the Appellant's Answer (A 3). The Affirmative Defenses alleged that the Appellee failed to make disclosures that would have reduced the need for the $317,000,000.00 Bond Issue; and that the voters would not have voted in favor of the Bond Issue if disclosures that substantial portions of Appelee's construction needs as published were already funded and completed (A 3). Also, that the Appellee knew such disclosures would defeat the Bond Referendum (A 3).

On November 19, 1986, the lower court was advised at the hearing that misrepresentations were contained in Exhibits attached to the Appellee's Complaint and therefore ordered an Evidentiary Hearing on December 1, 1986, (A 4, L 21, A 5 & 6).

At the Evidentiary Hearing, the Appellant was restricted to just 3 witnesses selected from a total of 28 (A 7).

The Appellee's Superintendant admitted that more than $200,000,000.00 was on hand in an investment fund at the time it published its needs for $317,000,000.00 (A 8, L 19-25 and A 9, L 7 & 8). Appellee's resolution disclosed a total need of $678,000,000.00 and assets of $361,000,000.00

leaving a balance of $317,000,000.00 for a bond issue (A 10). However, no part of the $200,000,000.00 plus investment fund was included in the assets of $361,000,000.00 (A 10).

In addition to the ommission of the investment fund the Appellee did not credit any portion of a surplus fund of $45,000,000.00 (A 11, L 16 & 17 and A 12, L 1-18).

Further, Appellee understated part of its assets in arriving at its need for a $317,000,000.00 Bond Issue by 100% (A 13, L 6-25, A 14 and A 15).

Resolution 86-1 which was not published, differs from Resolution 86-3 that was alleged in paragraph 3 of Appellee's Complaint as being published (A 1, A 10 & A 17).

The lower court granted Appellee's Motion to Strike the Affirmative Defenses of Appellant and validated the Bond Issue (A 16, L 16-21).

ISSUE I

THE TRIAL COURT ERRED IN STRIKING APPELLANT/INTERVENOR'S AFFIRMATIVE DEFENSES

In its Order, (A 19), the Trial Court relied upon a plethora of caselaw regarding the raising of collateral matters as defense to a complaint for Bond Validation. However, what the court failed to recognize was that Appellant/ Intervenor, LODWICK, raised the Affirmative Defense of fraud and misrepresentation by the School District of Palm Beach County.

It was stated in Town of Medley v. State, 162 So. 2d 257 (Fla. 1964), that

> "(the courts) have consistently ruled that questions of business policy and judgment incident to the issuance of revenue issues are beyond the scope of judicial interference and are the responsibility and perogative of the governing body of the governmental unit in the absence of fraud or violation of legal duty". (emphasis added).

Id., at 258, 259.

In the instant case, as the Affirmative Defenses (A 3) indicate, the School Board had ready access to funds which they failed to disclose to the voters. According to the testimony of DR. HENRY BOEKHOFF, Associate Superintendent of Administration for the School Board of Palm Beach County, there were numerous figures deleted from consideration in arriving at the final overall financial need. Among those were the earnings on capital funds for 1986, (A 90, L 9-14), and ten million eight hundred thousand ($10,800,000.00) dollars of unencumbered cash surplus, (A 94, L 1-9). There was an indication that other amounts were deleted, but the records indicating whether amounts encumbered for completed construction work were included in the final bond request were not produced by the Plaintiff at trial. (A 103-104, L 21-6). As such, the failure by the School Board to present this information prior to the general election evidences the fraudulent manner in which the end result was achieved.

All of the allegations contained in the Affirmative Defenses (A 3), raised significant issue which were not "collateral matters" as found by the Trial Court. Appellant/Intervenor was not seeking an adjudication on issues dealing with the School Board's findings in relation to the financial feasability of the construction of schools and improvements for the school district, only that certain material facts and figures were deleted from the presentation to the voters. As noted in State v. City of Daytona Beach, 158 So. 300 (Fla. 1934) , "[q]uestions of business policy are therefore beyond the scope of judicial interference unless some charge of negligence, fraud, or violation of legal duty is made a predicate for the attack". (emphasis added). Id., at 305.

As indicated, the Appellant/Intervenor's allegations centered upon the concealment of vital statistics and facts. The court is the proper authority to deal with these matters, otherwise administrative hearings, such as before the School Board, would create the final word in this matter. There would be no recourse for a wrongfully discharged verdict by the School Board, and as an obviously prejudiced party, Appellant/Intervenor would be denied due process.

The Trial Court's Finding as to collateral matters is clearly erroneous and must be reversed on appeal. There was sufficient allegations presented to support Appellant/Intervenor's position, and as such must be given proper adjudicatory proceedings to resolve the issues.

ISSUE II

THE APPELLEE/PLAINTIFF SCHOOL DISTRICT FAILED TO SUBSTANTIALLY COMPLY WITH THE ISSUANCE OF GENERAL OBLIGATION SCHOOL BONDS

According to Section 236.37 (3), Fla. Stat. (1985), it is required that the School Board "...adopt and transmit to the Department of Education a resolution setting forth the proposals with reference to the projects and proposed plan for financing the projects...". This mandatory procedure was accomplished by the Appellee School Board when it filed Amended Resolution 86-1

(A10).

The next step in the pre-validation procedure is approval by the Department of Education and a resolution by the school district authorizing that an election be held. (See Section 236.37 (3), Fla. Stat. (1985).). Amended Resolution 86-1 was approved by the Commissioner of Education on June 6, 1986. However, the publication required by Section 236-38, Fla. Stat. (1985), was not satisfied. The School Board published Resolution 86-3 (A17), which was not approved by the Department of Education.

> "Where bonds of a governmental subdivision are to be issued by administrative officers under statutory authority, the requirements of the statute conferring the authority must be substantially complied with in all material particulars or the bonds will not be valid...".

McSwain v. Special Road and Bridge District No. 2 Desoto County, 88 So. 479 (Fla. 1921). (See also: City of Miami v. Romfh, 63 So. 440 (Fla. 1913); Hillsborough County v. Henderson, 33 So. 997 (Fla. 1903); Special Tax School District No. 1 of Duval County v. State, 123 So. 2d 316 (Fla. 1960).).

The terminology in Resolution 86-3 (A17), makes specific reference to Amended Resolution 86-1 (A10), but in review of both, there are substantial differences between them. The voters never had the opportunity to review Amended Resolution 86-1 as same was never published. Section 236.38, Fla. Stat. (1985), specifically states that the approved resolution be published for four (4) successive weeks prior to the election. The mandatory term "shall" found in Section 236.38, Fla. Stat. (1985), leaves absolutely no discretion to the School Board. As such, there has been an unauthorized publication of an unapproved resolution in direct contravension of the statutes. This clearly provides sufficient support for the reversal of the Trial Court's ruling, and must be recognized as such by this Court.

ISSUE III

THERE WAS NO EVIDENCE PRODUCED REGARDING THE REQUIRED CERTIFICATION OF THE RESULTS OF THE BOND ELECTION

According to Section 100.351, Fla. Stat. (1985), it is mandatory that the election supervisor certify the results of the referendum election and enter those results with the Department of State. The only documentary evidence that purports to satisfy this requirement was a Resolution by the School Board which matter-of-factly indicated that a majority of voters voted in favor of the bond issuance.

The foregoing document was used to support paragraph 5 of the Complaint (A 1), and as such was put in issue by Defendant State and Defendant/Intervenor's Answers. (A 3). A demand for strict proof of the certification and canvassing of the results of the election was never complied with by the School Board, and merely glanced over by the Trial Court.

When, as here, there is a mere tracking of the necessary statutory language and procedure without any proof to support those contentions, there appears to be a miscarriage of justice. The School Board had the burden of producing evidence to support the validity of its resolution, as well as compliance with the statutory mandates. Their failure to do so has left the Appellant/Intervenor in a posistion to disprove conclusions which were never supported by evidence or testimony. Statutes and caselaw set forth mandatory compliance, not selective compliance, and as such the burden is upon the School Board to come forward with a full arsenal to show that everything was done pursuant to law. This was not done, accordingly this cause must be reversed.

ISSUE IV

THE STATE ATTORNEY FAILED TO ACTIVELY CONTEST THE VALIDATION PROCEEDINGS

In the bond validation proceedings, it is encumbent upon the State through the State Attorney to "...show why the Complaint should not be granted and the proceedings and bonds or certificates validated". Section 75.05 (1), Fla. Stat. (1985). This appears to mandate the State Attorney to actively contest the issues raised and to ascertain full compliance with statutory requirements by the entity seeking the validation.

In the instant case, the State Attorney for the Fifteenth Judicial Circuit filed an Answer (A 18) indicating that strict proof of the statements in the Complaint (A 1), was necessary. However, at trial there was no active involvement by the State. There was complacency on the part of the State, and a willingness to stipulate to many facts that had been previously under attack.

In their cross-examination of Dr. Boekhoff, and with the knowledge of the Appellant/Intervenor's defenses, nothing was adduced from the witness that would indicate the State's defense against the validation. (See A 59-61, L 1-11). The only information ascertained from Dr. Boekhoff was that the monies sought through the bond issue would expedite construction of schools that were planned over a five-year period. Nothing went to the issues of the validity of the adoption of the resolution, or anything which was previously contested in the Answer to the Complaint.

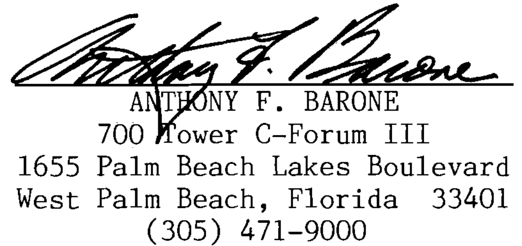
The State Attorney represented the citizens of Palm Beach County, and as such was cloaked with the authority to act in their best interest. It was his duty to actively contest and concern himself with the pressing issues of the case. To fail in this duty, he did a disservice to those citizens. As such, by his complacency, the School Board was able to manipulate the Trial Court and achieve their desired goal without having to rebut defenses previously set forth by the State. This was clearly an error on the part of the State Attorney and shows additional prejudice to the Appellant/Intervenor at the trial level.

CONCLUSION

Based upon the foregoing arguments, it is imperative that this Honorable Court reverse the Trial Court's rulings and allow further proceedings to be had in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 18th day of January, 1987, to: RICHARD L. OFTEDAL, ESQUIRE, School Board of Palm Beach County, 3323 Belvedere Road, Building 503, Room 232, West Palm Beach, Florida 33402 and to ROBERT FREEMAN, ESQUIRE, 1200 Barnett Bank Building, Jacksonville, Florida 32202 and also to FRANK STOCKTON, ASSISTANT STATE ATTORNEY, 307 North Dixie Highway, West Palm Beach, Florida 33401.



ANTHONY F. BARONE
700 Tower C-Forum III
1655 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33401
(305) 471-9000

Attorney for Appellant