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IN THE SUPREME COURT OF FLORIDA

FILED  
SID J. WHITE

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CASE NO. 71,640

CLERK, SUPREME COURT  
By [Signature]  
Deputy Clerk

JAMES RISHER and CAROLYN RISHER, et al.,  
Intervenors/Appellants,

v.

TOWN OF INGLIS, a municipality of the  
State of Florida,

Plaintiff/Appellee.

Appeal from a Final Judgment of the  
Eighth Judicial Circuit, In and For  
Levy County, Florida.

Case No. 87-436 CA

ANSWER BRIEF OF PLAINTIFF/APPELLEE

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ABBREVIATIONS AND DESIGNATIONS

The following abbreviations and designations shall be used in this brief:

Florida Statutes shall be abbreviated Fla. Stat.

Section shall be abbreviated §.

Citations to the Appendices will be designated App. \_\_\_\_\_,  
p. \_\_\_\_\_.

STATEMENT OF THE CASE

This is an appeal from a Final Judgment entered in a bond validation proceeding by the Circuit Court of the Eighth Judicial Circuit, in and for Levy County, Florida, entered on November 12, 1987, by the Honorable Elzie S. Sanders, Circuit Judge, validating a revenue bond issue for a water system for the TOWN OF INGLIS, a municipality of the State of Florida. Said Final Judgment followed an Order to Show Cause entered by Judge Sanders on September 16, 1987, a hearing was set by the Order to Show Cause which was held on October 22, 1987, and the filings of memoranda by the Appellee and by Appellants.

At the hearing, testimony was presented as to the existence of the Town as a municipality, and as to the passage of the various resolutions and ordinances, certified copies of which were attached to the Complaint in the cause.

A Motion for Rehearing was filed by Intervenors on November 20, 1987, and the Circuit Court entered an Order Denying Motion for Rehearing on November 23, 1987. This appeal followed on December 15, 1987.

**STATEMENT OF FACTS**

On October 22, 1987, a show cause hearing was held on the Petition of the TOWN OF INGLIS, a municipality of the State of Florida, to validate revenue bonds for a water system for the Town. At the hearing, without formal appearance or pleading, certain persons alleged to be property owners and taxpayers affected by the proposed issuance of the revenue bonds, announced their intervention through their attorney, LEWIS E. DINKINS. Mr. Dinkins presented, briefly, his arguments, agreeing to the filing of memoranda on his position, stating that another case was pending challenging a 1975 amendment to the Charter of the Town of Inglis and challenging the north boundary line of the Town. He further mentioned the lack of a referendum on the bond issue and an alleged resulting violation of due process.

The existing case to which Mr. Dinkins referred is Case No. 87-265 CA, Cross et al. v. Town of Inglis, presently pending in the Circuit Court, Eighth Judicial Circuit, in and for Levy County, Florida. A review of the pending case indicates that there has been no action on the case since the filing of a Response to Motion to Dismiss which was filed by Mr. Dinkins on October 9, 1987. There has been no further action by Mr. Dinkins to attempt to resolve the issues which he indicates should have a bearing upon the bond validation

case (app. B). The two issues, as presented by his Memorandum of Law in this cause before the trial court are the authority of the Town of Inglis to conduct business under the presently alleged Town Charter of 1975, as well as the jurisdiction of the Town over certain real property which the Intervenor/Appellants have sought to put into issue.

The trial court entered its judgment finding that the Town of Inglis is a municipality of the State of Florida; that authority to issue revenue bonds is conferred by Fla. Stat. Ch. 166, Part II, and Fla. Stat. § 215.431; that the Town has authority to levy special assessments pursuant to Fla. Stat Ch. 170; that the Town did adopt the requisite resolutions and ordinances, including the issuance of water revenue bond anticipation notes; that the requisite meetings and publications were made; that the necessary publications and notifications for an equalization hearing were made and that the equalization hearing was held; that the Town has the authority to pledge water revenue for the payment of bonds; that there is no requirement for an election on the issuance of the bonds; and, generally, that all conditions of the constitution and laws of the State of Florida have been met.

There has been no challenge to these findings, other than authority of the Town to act on such bonds.

SUMMARY ARGUMENT

There has been no issue raised as to the propriety of the procedures through which the bond validation procedure has been carried out. There have been issues raised as to the 1975 Town Charter of the Town of Inglis as opposed to the original, 1955 Charter. There have also been issues raised as to the interpretation of the northern boundary of the Town of Inglis.

These issues have been raised by the pending lawsuit in Levy County, and damages have been sought for taxes allegedly levied improperly due to the northern boundary issue. The pending lawsuit also questions the actions of the Town Commission of the Town of Inglis under the 1975 amended Town Charter. Nothing has been raised to suggest that the Town cannot function -- under the previous Town Charter should the 1975 amendment be found to have been improper.

There is no question but that the northern boundary issue is not relevant to the issuance of bonds, although it might be relevant to the service to a small portion of the Town if the matter is resolved against the Town. These adjustments can be made during the final planning and construction phase of the project, but cannot affect the validity of the project itself.

Nor can the 1955 versus 1975 Charter be relevant to the



bond issue. Under either Charter, the Town Commission  
is equally empowered to act.

## ARGUMENT

In order to facilitate the Court's consideration of the arguments in this case, the Appelle will respond to the arguments of the Appellants in the order and in the form presented.

THE TRIAL COURT ERRED IN ENTERING A FINAL  
JUDGMENT WHICH CONTAINED CONCLUSIONS  
REGARDING THE AUTHORITY OF THE TOWN OF  
INGLIS TO CONDUCT ITS MUNICIPAL BUSINESS WHERE  
THERE WAS NO EVIDENCE SUBMITTED TO OR CITED  
BY THE COURT WHICH WOULD SUSTAIN THOSE CONCLUSIONS.

As hereinabove noted, the Trial Court carefully outlined the authority of the Town of Inglis to act, citing Chapters 166, 215, and 170 of the Statutes of the State of Florida, as authority. This authority specifically deals with the right, power, and authority of the Town -- or of any Town or City -- to issue revenue bonds in the method utilized by the Town of Inglis. Further, as to the evidence required, this Court has stated quite plainly that the "introduction of the supporting resolution in evidence is all that was necessary to justify validation." Rianhard v. Port of Palm Beach District, 186 So.2d 503 (Fla. 1966), at 505.

The 1955 Charter of the Town provided, in Article XII, Section 1, "That the Town of Inglis is not authorized and shall not be empowered to issue bonds for any funded indebtedness." (App. 1. p.22). The 1975 Charter contains no similar language,

but it is the position of Appelle that it does not matter which Charter is operative due to the action of the Legislature in passing the so-called Home Rule Act.

This Court faces a comparable issue in State v. City of Miami, 379 So.2d 651 (Fla. 1980), in which the City of Miami sought validation of a bond issue without a referendum, despite a requirement of a referendum in the Miami City Charter, and in which the City was entering a lease of more than thirty years, again the violation of the Miami City Charter. This court rejected the charter provisions stating that

"[T]hese provisions constitute limitations on the borrowing and leasing power of the City of Miami which have been nullified by Section 166.021 (4), Florida Statutes (1977).

"The Municipal Home Rule Powers Act [Act] set forth in Chapter 166, Florida Statutes, was intended to secure the grant of the broad home rule powers to municipalities as provided by article VIII, section 2 of the Florida Constitution. Municipalities are granted the authority to conduct municipal government, perform municipal functions, and render municipal services so long as the powers are exercised for municipal purposes. The Act not only fails to incorporate restrictions set forth in municipal charters, but also specifically provides that '[a]ny other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed.' § 166.021(4), Fla. Stat. ...." Supra, at 653-54.

It is clear that no language in the Inglis Town Charter could, after the adoption of the Municipal Home Rule Powers Act, limit the power of the Town granted by the Legislature to issue revenue bonds.

THE TRIAL COURT ERRED IN FAILING TO GRANT INTERVENORS/APPELLANTS' REQUEST FOR A STAY ORDER IN THE BOND VALIDATION PROCEEDINGS PENDING RESOLUTION OF INTERVENORS/APPELLANTS' PRIOR-FILED CLASS ACTION LAWSUIT REQUESTING CERTAIN DECLARATORY AND INJUNCTIVE RELIEF RESPECTING THE TOWN OF INGLIS' AUTHORITY TO CONDUCT ITS MUNICIPAL BUSINESS WHERE THE PRINCIPAL ISSUE TO BE DECIDED IN BOTH PROCEEDINGS IS THE AUTHORITY OF THE TOWN OF INGLIS TO CONDUCT ITS MUNICIPAL BUSINESS.

The Appellants have queried whether or not the Town of Inglis has the authority to carry out its municipal functions either because the town boundaries are so uncertain or because the amended charter is voidable.

As to the first issue, it appears a bit late to challenge the legal description of the town boundaries in 1987, when the description has remained unchanged and the Town has operated with the blessing of the Legislature for more than thirty years prior to filing of the lawsuit. The real issue in the pending lawsuit is clearly a matter of interpretation as to the northern boundary of the Town. This interpretation -- regardless of outcome -- would affect only a small percentage of the Town and of the area to be serviced by the water system. Amendments to the water system would be possible, so that there is no basis for claiming that irreputable harm would come to the Appellants if the water bond issue is validated.

Further, this Court has clearly stated that "[w]hether any territory is illegally embraced within the city limits cannot be determined in this proceeding." State v. City of

Coral Gables, 154 So. 234, at 243 (Fla. 1934.) While recognizing that a boundary dispute is not relevant to a bond validation proceeding, Appellants argue that a boundary dispute should be ample justification for putting a bond validation proceeding on hold indefinitely, without providing any authority for this position.

As to State v. city of Miami, Supra, Appellants urge that it is distinguishable from the instant cause because the City of Miami case did not deal directly with the authority of the city to act. However, the language of this Court in its opinion, as well as the clear language of the Legislature in the Municipal Home rule Powers Act, clearly shows the transparent ridiculousness of this position. The issue, as discussed above, is "any" limitation of power. What Appellants attempt to create from smoke is just such a limitation -- a limitation upon the power of the Town of Inglis to borrow money.

Of further import as to the argument of Appellants that the bond validation procedure should be halted for an unstated period of time for the collateral matters raised by appellants is the further opinion of this Court in the Rainhard case that "[i]t is the intent of the law that validations be expedited at the earliest time reasonably possible." Rianhard v. Port of Palm Beach District, 286 So. 2d 503 at 505 (Fla. 1966). Appellants seeks to violate

this basic principle of law by delaying validation to wait upon a collateral case which has lain dormant for three months at this time, and for which no hearings have been scheduled.

It is important to note that this Court has opined, as to the role of the validating Court, that,

"Proceedings to validate bond are purely statutory ....."

"It was never intended that proceedings instituted under the authority of this chapter to validate governmental securities would be used for the purpose of deciding collateral issues not going directly to the power to issue the securities and the validity of the proceedings with relation thereto." State v. City of Miami, 103 So.2d. 185, at 188 (Fla. 1958)."

It is clear from all of the authority of the Courts and Legislature of this State that bond validation proceedings represent a test of procedure and authority. In the instant case, the authority is clearly present, being statutory as pointed out in the Final Judgment of the trial court, and the procedures have been found to be appropriate and were, in fact, never challenged by any party as being faulty.

Accordingly, it is clear that the Appellants are seeking delay for the sake of delay through a collateral attack upon the entire validation proceeding. This is not the law or intent of the Legislature of the State of Florida.

## CONCLUSION

It is clear from the case at hand that the Town of Inglis has legislative authority to issue revenue bonds, and that no challenge has been made to the procedures through which the statutory mandate was carried out.

It is further clear that there is no impediment to the issue of revenue bonds by the Town of Inglis through its charter -- regardless of which charter is considered. The Municipal Home Rule Powers Act has removed any impediment which might have arisen.

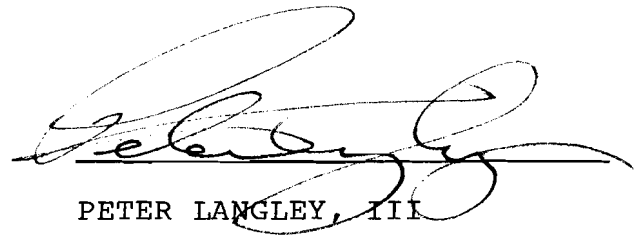
It is also clear that the north boundary dispute does not bear directly upon the issues properly considered by the trial court, and cannot be the basis for a stay of the validation proceedings, since any problems arising from the alleged dispute can be resolved prior to construction of the water system if need be. This is not an issue which speaks to the validity of the bond issue.

Finally, it is clear that the Appellants in this case are simply attempting to do indirectly that which they recognize they cannot do directly -- delay the water system and its bond issue on the basis of purely collateral matters.

Wherefore, the Appellee respectfully requests that this Honorable Court will expedite this cause as intended by this Court, and deny all relief sought by Appellants and affirm the actions of the trial court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy  
of the foregoing has been furnished by United States  
Mail this 12 day of January,  
1988, to: LEWIS E. DINKINS, 201 Northeast Eighth  
Avenue, Suite 100, Ocala, Florida 32670.



PETER LANGLEY, III