

Supreme Court of Florida

CORRECTED OPINION

No. 72,041

BROWARD COUNTY, Appellant,

v.

STATE OF FLORIDA, Appellee.

[October 6, 1988]

PER CURIAM.

Broward County appeals a trial court order denying the validation of certain proposed bonds. We have jurisdiction, article V, section 3(b)(2), Florida Constitution, and reverse the court's order.

On April 19, 1984, Broward County adopted a resolution authorizing the issuance of \$590,000,000 in industrial development bonds to provide solid waste disposal facilities. In the meantime, Congress enacted the Deficit Reduction Act of 1984 which limited tax-exempt industrial development bonds and set volume caps and investment limitations on such bonds issued after December 31, 1984. Deficit Reduction Act of 1984, Pub. L. No. 98-369, §§ 621, 624, 98 Stat. 494, 915-18, 922-24 (1984). Because it would not be able to issue its industrial development bonds before December 31, 1984, the county devised a two-step plan whereby it would issue revenue bonds pursuant to chapter

166, Florida Statutes (1983), secure the payment of principal and interest by investing the proceeds in United States securities, and later convert the revenue bonds to industrial development bonds under chapter 159, Florida Statutes (1983).

This Court affirmed the circuit court's validation of the initial bond issue in State v. Broward County, 468 So.2d 965 (Fla. 1985) (Broward I). The court rejected the contention that bonds could not be issued under chapter 166 because the county intended that the plants to be constructed by the bond proceeds would be owned or operated by a private vendor. We noted, however, that at such time as the county sought to convert the bonds into industrial development bonds, it would be necessary to institute a new validation proceeding. The county then issued the chapter 166 bonds. In February 1987, the county filed a complaint for validation under chapter 159. The trial court dismissed the complaint for failure to join the purchasers of the original bonds as indispensable parties. We reversed, holding the bondholders not to be indispensable parties to that bond validation proceeding. Broward County v. State, 515 So.2d 1273 (Fla. 1987) (Broward II). Early in 1988, the circuit court again denied validation and conversion, finding the bonds not to have been issued as industrial development bonds before January 1, 1985, and, therefore, not "grandfathered" under the Deficit Reduction Act of 1984.¹

Section 159.802, Florida Statutes (1987), now provides that private activity bonds subject to section 146 of the Internal Revenue Code (the volume cap section of the Deficit Reduction Act) shall not be issued without a written confirmation from the state. The circuit court denied validation specifically because the county failed to comply with this section. If these

¹ The Act provided that the tax-exempt bonds could be issued without regard to the investment limitations and volume caps if the bonds were issued by December 31, 1984. See Deficit Reduction Act of 1984, Pub. L. No. 98-369, § 624, 98 Stat. 494, 924 (1984).

bonds were grandfathered under the Deficit Reduction Act, however, no written confirmation would be necessary. Therefore, the only real dispute² is whether the bonds were grandfathered.

Obviously, this Court cannot determine whether the interest on these bonds will be exempt from federal income taxation. However, for purposes of passing on the validity of the bonds under Florida law, we conclude that they were grandfathered under the Deficit Reduction Act of 1984. Therefore, the written confirmation contemplated by section 159.802, Florida Statutes (1987), was not required.

The definition of industrial development bonds in the Internal Revenue Code looks to how the proceeds received from the issuance of the bonds will be used. I.R.C. § 103(b)(2) (1984). The county's original resolution reflected the intent to issue the bonds to provide funding for tax-exempt solid waste disposal facilities to be operated by a private vendor. The county's intent has never changed.

According to Treasury Regulation section 1.103-13(b)(6) (1988):

The date of issue of an obligation is the date on which there is a physical delivery of the evidences of indebtedness in exchange for the amount of the issue price. For example, obligations are issued when the issuer physically exchanges the obligations for the underwriter's (or other purchaser's) check.

Because the bonds were purchased in 1984, this was the date of issuance. Contrary to the trial court's conclusion, the bonds are not now being reissued.³ Rather, the bonds are simply being

² The state also claims, inter alia, that the financing scheme impermissibly involves the taxing power of the county and lends the credit of the county to private vendors. We reject these arguments as meritless.

³ See Revenue Ruling 79-262, 1979-2 C.B. 33, in which a corporation proposed to purchase and resell all of the industrial development bonds that had been previously issued by a municipality to finance a pollution control facility leased by another corporation and to substitute itself as the lessee and guarantor on the bonds. The Internal Revenue

converted in accordance with the original plan approved in
Broward I.

We vacate the trial court's order and direct the trial
court to validate these bonds.

It is so ordered.

EHRlich, C.J., and OVERTON, SHAW, BARKETT, GRIMES and KOGAN, JJ.,
Concur

MCDONALD, J., Concur in part and dissents in part with an opinion

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF
FILED, DETERMINED.

Service held that under these circumstances no reissuance
would be deemed to have occurred and the bonds would remain
tax exempt.

McDONALD, J., concurring in part, dissenting in part.

I agree that the trial court could have validated this bond issue. I disagree, however, with the majority's conclusion that these bonds are being converted instead of being reissued. The majority states that "for purposes of passing on the validity of the bonds under Florida law, we conclude that they were grandfathered under the Deficit Reduction Act of 1984." For purposes of passing on the validity of these bonds under Florida law, the Court need not, and may not, consider whether they were grandfathered in. This is a collateral issue which relates only to their tax-exempt status under the Internal Revenue Code. My personal view is that they were not.

Congress adopted the Deficit Reduction Act because of concern with the volume of tax-exempt private activity bonds. H.R. Rep. No. 432, 98th Cong., 2d Sess. 1025, reprinted in 1984 U.S. Code Cong. & Admin. News 711. The act eliminates the tax-exempt status of private activity bonds issued after December 31, 1984 which do not fall within certain volume limitations. Broward County wishes this Court to hold that the bonds were issued before December 31, 1984, so that the bonds maintain a tax-exempt status.

The majority correctly states that if these bonds were grandfathered in, no written confirmation would be necessary to satisfy chapter 159, part VI, Florida Statutes (1987). Part VI allocates the volume limitations imposed on private activity bonds by the Deficit Reduction Act; that is, which bonds remain tax-exempt. However, in State v. Division of Bond Finance, 495 So.2d 183 (Fla. 1986), we held that the division could issue taxable as well as tax-exempt bonds because the legislature had not specified one or the other. Later, the legislature enacted chapter 159, part VII, Florida Statutes (1987), which recognizes the limited availability of tax-exempt municipal bonds and provides guidelines for issuing bonds subject to federal taxation. Because these bonds fit easily in part VII, Broward County need not have complied with the procedural requirements in

part VI for us to pass on the validity of the bonds under state law.

The role of this Court in validation proceedings is limited. Specifically, we will consider 1) the authority of a public body to issue the bonds, 2) whether the purpose is legal, and 3) whether the authorization complies with the requirements of law. State v. City of Panama City Beach, 529 So.2d 250 (Fla. 1988). In State v. City of Miami, 103 So.2d 185 (Fla. 1958), this Court held that whether revenue bonds were exempt from taxation under the Florida Statutes was a collateral issue to a bond validation proceeding and outside the scope of judicial inquiry into bond validations. Likewise, whether the instant bonds are grandfathered in and maintain a tax-exempt status is a collateral issue outside our scope of inquiry and should be left to the appropriate federal authority. The majority errs in holding otherwise.

An Appeal from the Circuit Court in and for Broward County - Bond
Validations

Robert Lance Andrews, Judge - Case No. 87-05446 CH

Alan C. Sundberg and F. Townsend Hawkes of Carlton, Fields, Ward,
Emmanuel, Smith, Cutler & Kent, P.A., Tallahassee, Florida;
Susan F. Delegal, General Counsel, Broward County, Ft. Lauderdale,
Florida; and James K. Manning of Brown & Wood, New York, New York,

for Appellant

Michael J. Satz, State Attorney and Paul H. Zacks, Assistant
State Attorney, Ft. Lauderdale, Florida,

for Appellee

Frank A. Kreidler, Lake Worth, Florida,

Appellee/Intervenors for South Broward Citizens for a
Better Environment, Inc., and Bruce Head