No 72,232

IN THE SUPREME COURT OF FLORIDA

Case No. 72,232

STATE OF FLORIDA, etc.,

Appellant,

v.

DIVISION OF BOND FINANCE OF THE STATE OF FLORIDA DEPARTMENT OF GENERAL SERVICES, etc.,

Appellee.

IN RE $300,000,000 FLORIDA HOUSING FINANCE AGENCY, HOUSING REVENUE BONDS (MULTIPLE SERIES)

On Appeal from the Circuit Court of the Second Judicial Circuit of Florida in and for Leon County, Florida

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ANSWER BRIEF OF APPELLEE

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TABLE OF CITATIONS AND AUTHORITIES

STATEMENT OF THE CASE AND FACTS

Appellee Division of Bond Finance hereby concurs with and adopts the Statement of the Case and Facts located at pages ii-iii of the Initial Brief of Appellant State of Florida in this case.

ARGUMENT

I. WHETHER THE FLORIDA HOUSING FINANCE AGENCY MAY FINANCE OR PARTICIPATE IN THE FINANCING OF PROJECTS TO WHICH INCOME LIMITATIONS ON AS FEW AS 20% OF THE TENANTS APPLY, WITH ABSOLUTELY NO INCOME LIMITS ON THE REMAINING TENANTS.

Appellant contends that if projects financed with proceeds of the subject bonds, pursuant to Section 420.508(3), Florida Statutes, have income limits on as few as 20% of the tenants, the Legislative intent in providing for such financing will be violated, given the language found in Section 420.508(3)(b)1 requiring the Florida Housing Finance Agency (the "Agency") to make a determination, prior to such financing, "That a significant number of low-income, moderate-income or middle-income persons in the local government in which the project is to be located, or in an area reasonably accessible thereto, are subject to hardship in finding adequate, safe and sanitary housing."

Appellee submits that the Legislature has clearly indicated that 20% <u>is</u> a significant number, by adding (in Chapter 87-106, Section 5, Laws of Florida) a new subsection (14) to Section 420.509, Florida Statutes, setting forth income limitation requirements on 20% of the tenants of a project financed by the Agency through the issuance of bonds the interest on which is <u>not</u> exempt from federal taxation, in effect mirroring federal requirements (as they existed prior to amendments in the federal Tax Reform Act of 1986) which would otherwise be inapplicable in

the case of taxable bonds (as the Director of the Agency has testified [A-10], federal tax law imposes a harsher low-income limitation on projects financed with tax-exempt bonds). In any event, it is evident that the Legislature was well aware of income limits, and determined that the 20% restriction it added to Section 420.509 satisfied the requirements for projects financed pursuant to Section 420.508(3). There is no other interpretation which will accommodate such restriction, the deletion of the requirement (as noted in Appellant's brief) that all tenants be "eligible persons", and the findings required to be made pursuant to Section 420.508(3)(b)1. As this Court has said many times, "where possible we must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another", Villery v. Florida Parole & Probation Commission, 396 So.2d 1107, 1111 (Fla. 1981); State v. Robarge, 450 So.2d 855, 857 (Fla. 1984); State v. Rodriquez, 365 So.2d 157, 159 (Fla. 1978).

Appellant also states in his brief that the "primary" purpose of projects to be financed by the Agency pursuant to Section 420.508(3), Florida Statutes, must be the alleviation of the hardship of low, moderate and middle-income people in finding adequate, safe and sanitary housing. Appellant ignores other findings of public purpose for Agency-financed projects made by the Legislature in Section 420.502, Florida Statutes: to deal with the problems of unemployment, business losses and bankruptcies in the construction and building trade industry, and to ensure that housing construction is carried out pursuant to

appropriate planning, land use and construction policies. Who can say which of these problems is of "primary" importance; indeed, does it make any difference? Appellee submits that the Legislature has found them all to be important, and that, subject to specific statutory requirements, all may be considered by the Agency when determining whether to proceed with the financing of a specific project. It is well settled that legislative declarations of public purpose are presumed valid and should be considered correct unless patently erroneous. State v. Pinellas County Housing Finance Authority, 506 So.2d 397, 399 (Fla. 1987); State v. Division of Bond Finance, 495 So.2d 183, 184 (Fla. 1986); Pepin v. Division of Bond Finance, 493 So.2d 1013, 1014 (Fla. 1986); Linscott v. Orange County Industrial Development Authority, 443 So.2d 97, 101 (Fla. 1983); Zedeck v. Indian Trace Community Development District, 428 So.2d 647, 648 (Fla. 1983); State v. Housing Finance Authority of Polk County, 376 So.2d 1158, 1160 (Fla. 1979). Appellant has failed to overcome such presumption.

Finally, as the Director of the Agency testified [A-10 through A-14], the elimination of the "eligible person" requirement was necessitated by a change in federal tax law which had the effect of rendering Agency financing of these projects economically unfeasible; the Legislature, recognizing this fact, acted to enable non-income restricted tenants to assist in carrying the economic burden of these projects in order for the Agency to be able to carry out its purposes. Current federal tax law, together with federal budget cuts in the housing area, have

placed the full burden of providing low-income housing on state and local governments. The Florida Legislature has determined that the amendments it made in 1987 to the Florida Housing Finance Agency Act (Chapter 420, Florida Statutes), provide the best available method to address this problem.

II. WHETHER THE FLORIDA HOUSING FINANCE AGENCY MAY FINANCE OR PARTICIPATE IN THE FINANCING OF PROJECTS THE TENANCY IN WHICH MAY BE RESTRICTED TO CERTAIN GROUPS BASED ON INCOME, AGE, FAMILY SIZE OR OTHER NON-PROHIBITED CRITERIA.

Appellant contends that placing restrictions on certain types of tenants permitted to occupy Agency-financed projects is not permitted by law, and is violative of the equal protection provision of the Florida Constitution (Article I, Section 2).

As Appellant has pointed out, the bonds sold by the Division of Bond Finance on behalf of the Agency to finance these projects are not obligations of the State of Florida or any of its agencies; they are payable solely from the revenues of the projects. Thus, no public funds are being spent in aid of these projects. It is well settled that "An indirect public benefit may be adequate to support the public participation in a project which imposes no obligation on the public, and the qualification of the direct beneficiary complies with the principles of due process and equal protection.", Polk County, 376 So.2d at 1160; Linscott, 443 So.2d at 101; Zedeck, 428 So.2d at 648.

All of the cited cases dealt with the propriety of government involvement in the financing of projects which arguably benefited primarily private parties in the areas of housing, economic development and community development, respectively.

Appellant takes the approach not that the Agency should not be involved in financing rental residential housing projects, but

that it may not discriminate in the types of tenants allowed to occupy these projects on the theory that any discrimination will not serve the "general public". Given Polk County, Linscott and Zedeck, which allow such governmental involvement to partially benefit private parties, it is hard to see how benefiting certain portions, although admittedly less than all, of the public is impermissible.

As for the argument that such selectivity is not specifically authorized by statute, this Court has recently found, in State v. Division of Bond Finance, 495 So.2d at 184, that because the Legislature did not specify that bonds it authorized the Division to issue need be tax-exempt, the Division may issue both taxable and tax-exempt bonds. Similarly, in not specifying (aside from to 20-40% required income restriction) who may occupy Agency-financed projects, it should be found that benefits to the general public or any substantial segment thereof is permitted by Section 420.508(3), Florida Statutes.

Finally, it should be noted that the Legislature has enumerated categories of persons who may not be discriminated against in connection with the occupancy of an Agency-financed project. Section 420.516 Florida Statutes (1987). While most of the categories listed are universally recognized as being "suspect" classes, against which virtually no discrimination is allowed, the Legislature has included the discretionary class "marital status". It could have just as easily added family size or age, the categories at which the Agency Director has stated that certain projects may be targeted [A-14/15]. The fact that

it did not do so affirmatively demonstrates that such targeting is therefore not intended to be prohibited.

CONCLUSION

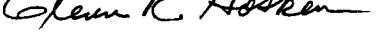
The Florida Housing Finance Agency, in order to carry out its public purposes of alleviating housing shortages, promoting building construction and encouraging the use of proper land use planning, must allow higher-income tenants to occupy projects which the Agency helps finance in order to subsidize the lower-income tenants required by federal or state law; such rental program is not violative of any statutory or constitutional provision, and is in fact impliedly approved and encouraged by Chapter 420, Florida Statutes.

Targeting occupancy of Agency-financed projects to segments of the general public based on age or family size is entirely permissible, given that such targeting can hardly be said to benefit "private" individuals, that no public funds are being expended, and that the Legislature has not specifically prohibited such discrimination in the anti-discrimination section of the housing law.

Appellee Division of Bond Finance has taken all steps necessary and has full authority to proceed with the issuance of the proposed bonds on behalf of the Florida Housing Finance Agency, which bonds are to be lawfully utilized in the manner indicated by the documentary and testamentary evidence, wherefore Appellee prays that the final judgment of the Circuit Court of

the Second Judicial Circuit, in and for Leon County, Florida, be affirmed.

Respectfully submitted,



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CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief has been hand-delivered to William N. Meggs, State Attorney, Second Judicial Circuit, in and for Leon County, Florida, Suite 500, First Florida Bank Building, Tallahassee, Florida, 32301, this 11th day of May, 1988.

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