

IN THE SUPREME COURT OF FLORIDA

\_\_\_\_\_  
Case No. 72,232  
\_\_\_\_\_

FILED  
CLERK OF THE SUPREME COURT

APR 27 1938

CLERK OF THE SUPREME COURT  
By: *M*  
Deputy Clerk

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

\_\_\_\_\_  
INITIAL BRIEF OF APPELLANT  
\_\_\_\_\_

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STATEMENT OF THE CASE AND FACTS

This is an appeal by the State of Florida from a final judgment of the Circuit Court of the Second Judicial Circuit of Florida, in and for Leon County, Florida. The action, which was commenced on February 1, 1988, was a proceeding to validate \$300,000,000 Florida Housing Finance Agency, Housing Revenue Bonds (Multiple Series).

At the close of the hearing, on March 7, 1988, Judge William L. Gary found for the Division of Bond Finance of the State of Florida Department of General Services and issued a final judgment validating the proposed Bonds.

On April 6, 1988, the State of Florida filed a Notice of Appeal from the Final Judgment directly to the Supreme Court of Florida.

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On June 26, 1987, the Florida Housing Finance Agency (hereinafter, the "Agency") adopted a resolution requesting and authorizing the Division of Bond Finance of the State of Florida Department of General Services (hereinafter, the "Division") to issue not to exceed \$300,000,000 of the Agency's Housing Revenue Bonds (hereinafter, the "Bonds") for the purpose of making loans to or for qualified sponsors for construction and/or permanent financing of qualified housing projects as provided in the Florida Housing Finance Agency Act, being Sections 420.501 - 420.516, Florida Statutes, as amended (hereinafter, the "Act"),

including projects containing facilities or units designed for and available to elderly tenants.

On January 26, 1988, the Governor and Cabinet of the State of Florida, as the Governing Board of the Division, on behalf of the Agency, adopted a resolution authorizing the issuance of the Bonds.

Attorneys of the Division filed a validation complaint for the Bonds in the Circuit Court of the Second Judicial Circuit on February 1, 1988. A hearing was held on March 7, 1988, and the Circuit Judge rendered his Final Judgment validating the Bonds on March 8, 1988.

## 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.

In his validation hearing testimony [A-12, A-16, A-22], the Director of the Agency made it clear that it is the intent of the Agency to use proceeds of the Bonds for the financing of projects in which as much as 80% of the tenants will not be required to meet any income restrictions, based on the fact that the 1987 Florida Legislature deleted the requirement that all tenants in projects financed pursuant to Section 420.508(3), Florida Statutes, be "eligible persons". Eligible person, as defined by rule of the Agency and now by statute, includes persons whose income does not exceed 150% of the state or county median family income.

However, the 1987 Legislature did not delete the requirement that, before a financing pursuant to Section 420.508(3), the Agency must make the determination "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." Section 420.508(3)(b)1, Fla. Stat. (1987).

Appellant submits that the Legislature must have intended that projects financed by the Agency pursuant to Section

420.508(3) have as their primary purpose the alleviation of such hardships, and contends that the occupancy of a mere 20-40% of units in such Agency-financed projects by such persons does not satisfy such Legislative intent. Appellant further contends that the Circuit Judge therefore erred when he found, in paragraph TENTH of his Final Judgment, that the Florida Legislature intended that the units remaining in a project financed by the Agency after satisfying the income restrictions imposed by Federal or State law may be "rented without regard to personal or family income to the general public".

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.

The Director of the Agency also made it clear in his validation testimony [A-13/17, A-24] that it is the intent of the Agency to be able to use proceeds of the Bonds for the financing of projects which will be restricted, in whole or in part, to occupancy by tenants belonging to certain defined groups, including groups defined by income, age, family size or other non-prohibited criteria. He also testified that if such restricted units cannot be rented to tenants of the designated group, such units could be made available to the general public [A-15].

There is nothing in Section 420.508(3) which either requires or permits such limitations. Even the recent addition of persons 65 years or older, regardless of income, to the definition of "eligible persons", which in any case has no relationship to the specific statutory provision under consideration here, while possibly recognizing certain housing needs of elderly citizens, does not provide for projects financed by the Agency to be specifically set aside for such persons.

Appellant contends that the Agency's plans violate Article I, Section 2 of the Florida Constitution, which states, in part, that "All natural persons are equal before the law..." In



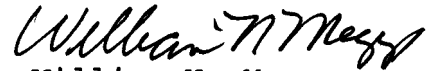
interpreting this provision, the Florida Supreme Court stated "Legislation is not invalid simply because it benefits a limited group, but any disbursement of public funds which benefits a limited group of individuals must to some degree also serve the welfare of the general public." State v. Champe, 373 So.2d 874, 879 (Fla. 1978).

While arguably not disbursing public funds, since the Bonds are not an obligation of the State or any of its agencies, the Agency is instrumental in conferring a benefit (housing) on a limited group (that portion of the tenants required to comply with the income restrictions). Appellant contends that if the Agency is allowed to further restrict the beneficiaries of its actions, it will violate the spirit of Champe. The Circuit Judge therefore erred in paragraph TENTH and ELEVENTH of his Final Judgment when he found that the Agency may target and set aside certain projects or portions of projects financed by it for specific groups of citizens as determined by age or family size, and that the public purpose of the Agency is served by such actions.

CONCLUSION

Projects financed by the Florida Housing Finance Agency which have income restrictions on only 20-40% of the tenants do not sufficiently satisfy the requirements of Section 420.508(3), Florida Statutes, that the Agency act to alleviate the housing needs of low, moderate and middle income citizens of the State of Florida. The Agency's plan to target and set aside some of its projects or portions of projects for certain groups based on income, age, family size or other criteria is not authorized by law and violates the equal protection rights guaranteed to the citizens of this State by Article I, Section 2 of the State Constitution. The findings in paragraphs TENTH and ELEVENTH of the validation Final Judgment should therefore be invalidated and the Judgment reversed.

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 Glenn R. Hosken, Senior Attorney, Division of Bond Finance of the State of Florida Department of General Services, 453 Larson Building, 200 E. Gaines Street, Tallahassee, Florida, 32399-0971, this 27<sup>th</sup> day of April, 1988.

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