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IN THE SUPREME COURT OF FLORIDA

THE STATE OF FLORIDA, and the Taxpayers, Property Owners and Citizens of Sarasota County, Florida, including nonresidents owning property or subject to taxation therein, and all others having or claiming any right, title or interest in property to be affected by the incurrence by Sarasota County of its obligations under the Lease herein described, or to be affected thereby,

Defendant/Appellant,

v.

CASE NO. 74,979

THE SCHOOL BOARD OF SARASOTA COUNTY, a duly constituted school board under the laws of the State of Florida,

Plaintiff/Appellee.

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ON APPEAL FROM THE
CIRCUIT COURT
OF SARASOTA COUNTY, FLORIDA

APPELLANT'S REPLY BRIEF

EARL MORELAND, STATE ATTORNEY
TWELFTH JUDICIAL CIRCUIT

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REPLY TO STATEMENT OF CASE AND FACTS

Appellee indicates the State omits record citations and did not give a complete statement of the case and facts. This was not an omission; it was deliberate. On appeal from a bond validation, the record is not transmitted unless ordered by the Supreme Court. Florida Rule of Appellate Procedure 9.110(i).

Second, Appellee's version of the Statement of Case and Facts would lead one to believe that Appellant does not want quality schools in Sarasota County. To the contrary, Appellant wholeheartedly agrees that quality education and schools in Sarasota County are excellent ideas. That is not the issue. The issue in this case is whether bonds, which are payable from ad valorem taxation, and maturing more than twelve months after issuance may be validated before obtaining referendum approval.

REPLY

I.

POINT ON APPEAL

THE TRIAL COURT ERRED BY VALIDATING BONDS PAYABLE IN PART FROM AD VALOREM TAXATION WITHOUT REFERENDUM APPROVAL

The School Board of Sarasota County attempts to place the burden upon the State of Florida to prove that both ad valorem tax revenues will be used to repay the bonds and prove that the bonds mature more than twelve months after issuance. It is important to note two facts are undisputed in this case: ad valorem funds are one source of redeeming these bonds and the School Board has failed to obtain referendum approval.

Accordingly, pursuant to Article VII, Section 12 of the Florida Constitution the burden is upon the School Board of Sarasota County to either obtain referenda approval or prove these bonds do not mature for more than twelve months after issuance. Appellee admits one source of redeeming these bonds is ad valorem tax revenues. Thus, we must look for guidance in the Florida Constitution. Article VII, Section 12 is clear:

> Local Bonds. - Counties, School Districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:
>
> (a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of free holds therein not wholely exempt from taxation;
>
> * * *

The above constitutional provision is not ambiguous. Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resort to the Rules of Statutory Interpretation. **Van Pelt v. Hilliard, 78 So.693 (1918).** Although the School Board has drafted a confusing, sophisticated, and complex plan to avoid referenda approval, the Constitution is clear, a referendum is required.

The heart of the School Board's arguments is that **State v. Miami Beach Redevelopment Agency, 392** So.2d **875** (Fla. **1980)** and **State v. Brevard County, 539** So.2d **461** (Fla. **1989)** stand for the proposition that unless bond holders can compel the use of ad valorem funds the bond issue is not violative of Article VII, Section **12** of the Florida Constitution. They also argue the Florida Constitution is not violated when ad valorem tax revenues are merely "pledged". To the contrary, the Florida Constitutional Referenda requirement comes into play whenever a governmental entity attempts to issue bonds "**payable**" from ad valorem taxation. Next, Appellee's reading of **Miami Beach** is misplaced. In **Miami Beach**, the bonds were payable from a trust fund. The trust fund received revenue from two sources. One source was money received from sales, leases and charges for the use of the redeveloped property. The second source was money contributed each year by the county and city from general operating revenues. Id. at **898.** The Court concluded that the statutory duty to make annual contributions did not mean the bonds were payable from ad valorem taxation in the Constitutional sense of the term. Id. at **898.** It is readily apparent that

Miami Beach does not control the instant action where it is undisputed that the bonds are payable from ad valorem taxation.

The School Board intimates that ad valorem tax revenues will only be used as a fourth source of income or as a last resort. However, notably absent is any language in the Resolutions or lease agreements supporting same. More importantly, whether ad valorem revenues are the first source of paying off the bonds or the last is irrelevant. What is critical is that ad valorem funds are still being used to pay off the bonds. Realistically, ad valorem funds will be a needed source of revenue to redeem the bonds, otherwise, the School Board would not have pledged these revenues to avoid the Constitutional referenda requirement.

The School Board next argues that pledging ad valorem revenues is permissible without referenda approval as long as a bond holder cannot "compel" the levy of ad valorem tax revenues. Appellee points out that the Lease-Purchase Agreement and the Trust Agreement contains language in capital letters that "THE TRUSTEE AND THE OWNERS OF THE BONDS MAY NOT COMPEL THE LEVY OF AD VALOREM TAXES." As noted earlier, the constitutional issue is not whether the bondholders can compel the levy of ad valorem taxes. The issue is whether the bonds are payable from ad valorem taxes.

A dispositive principle of Florida law is the Courts look at the substance and not the form of the proposed bonds. **State v. City of Key West**, **14** So.2d **707** (1943). The School Board is attempting to put form over substance and issue bonds payable from ad valorem tax revenues and maturing more than twelve months

after issuance without referenda approval.

The School Board next contends that, "at worst, the Board will rent some of its land to third parties for a period of years." However, the School Board fails to point out that the bondholders will take possession of the buildings and have exclusive use of the buildings and the land upon which they are located until the bonds are paid off. Appellee estimates it will take 15-20 years to redeem these bonds. What is the School Board supposed to use for educational facilities for twenty years? The School Board is issuing these bonds in anticipation of rapid population growth and a corresponding need for additional educational facilities in Sarasota County. Conspicuously absent in Appellee's answer is what Appellee intends to do if it loses its school buildings and use of land to the bondholders for twenty years.

The Supreme Court held in **County of Volusia v. State**, 417 So.2d 968 (Fla. 1982) that Volusia County's pledge of all available non-ad valorem revenue together with its promise to do all things necessary to continue to receive the various revenues will inevitably lead to higher ad valorem taxes during the life of the bond. In this case, the analysis is even easier since the School Board is using ad valorem tax revenues as a source of redeeming the bonds. Hence, in **Volusia**, the Supreme Court struck down the bonds. Finally, the language of the Court in **Volusia** is well worth quoting:

> "That which may not be done directly may not be done indirectly."

The Court in the instant case, like the Court in **Volusia**, should deny the proposed bond validation because the School Board failed to obtain referenda approval.

Although the School Board attempted to tailor its complaint closely to the recent decision in **State v. Brevard County**, **539** So.2d **461** (Fla. 1989), their complaint fails for three reasons. In **Brevard**, all payments under the lease were secured solely by non-ad valorem tax revenues. In **Brevard**, the lease involved a purchase agreement for equipment, that could be replaced upon a default, not school buildings and real property underneath. Finally, in **Brevard**, there was no moral compulsion to renew the lease on a yearly basis as a termination of the lease did not result in the loss of public lands.

REPLY

II.

POINT ON APPEAL

THE BOND VALIDATION CREATES AN IMPERMISSIBLE MORTGAGE ON PUBLIC PROPERTY

The School Board argues the recent decision in **Wilson v. Palm Beach County Housing Authority, 503** So.2d **893** (Fla. **1987)** has relegated **Nohrr v. Brevard County Educational Facilities Authority, 247** So.2d **407** (Fla. **1971)** and **Boykin v. Town of River Junction, 164 So. 588 (1935)** to a second class status. However, a close reading of **Wilson** shows this is patently not the case. **Wilson** did not overrule **Nohrr** and it certainly did not overrule **Boykin**. In the case at bar, if the School Board fails to appropriate funds each year to service the debt on the bonds, the School Board loses the school buildings and the use of the real property underneath until the bonds are paid off. This could take thirty years. It could take more if a third party had to be found to pay off the bonds. This is exactly the situation that is constitutionally forbidden in the **Nohrr** and **Boykin** decisions. The rationale is that the governmental unit (School Board) when issuing these bonds would feel compelled to levy ad valorem tax revenues sufficient to prevent the loss of the school buildings and real property underneath. Since the School Board has exhausted all educational facilities in Sarasota County at the present time, it seems clear the School Board will do whatever it takes not to lose the school buildings and real property underneath for an indeterminate period of time. Again, the School Board attempts to place form over substance. In

reality, the proposed bond issue in the instant case creates a mortgage against public property with the possibility of losing the use of the facilities and should not be permitted without referenda approval.

Appellee argues the weight of authority from other jurisdictions favors validation in this case. Appellee claims numerous states, including New Mexico, have approved Lease-purchase financing without elector approval. This is incorrect. New Mexico has rejected a similar scheme to disenfrancise the voters and required voter approval before allowing this type of financing. None of the cases cited by Appellee have a State Constitution that specifically prohibits the issuance of bonds maturing more than twelve months after issuance and payable from ad valorem taxes without the approval of the voters.

Recently, the Supreme Court of the State of New Mexico decided a case similar to this case in **Salomon Montano v. Paul Gabaldon**, Case No. **17,937.** The constitutional issue facing the Court in **Montano** was whether a county Lease-Purchase Agreement (lease) with a private corporation to build **a** new jail, violated the Constitution of New Mexico. Article IX, Section 10 of the New Mexico Constitution requires the approval of county voters prior to the creation of county indebtedness for the purpose of erecting public buildings. The lease required the County to make semi-annual payments, denominated as rent, for the use of the new jail facility. $3,100,000.00would be raised by issuing Certificates of Participation. The lease also contained a "non-appropriation" provision which allowed the County to terminate

the lease at the end of any fiscal year if the Board of County Commissioners did not appropriate sufficient funds to pay the rent. The Court, speaking through Justice Scarborough, held the arrangement, was in essence, an installment purchase agreement for the acquisition of a public building with outside financing with payments spread over twenty years, and as such requires voter approval. The Court also pointed out that an agreement that commits the county to make payments out of general revenues on future fiscal years, without voter approval, violates the New Mexico Constitution even if that obligation is merely an "equitable or moral" duty.

In Montano, the County argued there was no legal obligation to continue the lease from year to year. The Court rejected this argument and concluded that once the county accepted the lease it would be obligated to continue making rental payments in order to protect a growing equitable interest in the facility, as well as protect the County's interest in the land. The court concluded the lease created an unconstitutional debt and reversed.

This Court should follow Montano's lead and reverse the Judgment below and require referenda approval as guaranteed by our Constitution.

SUMMARY

The School Board through the use of confusing semantics has tried to obfuscate the real issue in this case. Ad valorem revenues are a source of redeeming these bonds. There is no doubt that bonds redeemable from ad valorem tax revenues and maturing more than twelve months after issuance must get referendum approval. In its answer to Point I on Appeal, Appellee argues that ad valorem tax revenues are not "pledged" and therefore a referendum is not required to validate the subject bonds. The Florida Constitution is not violated only when ad valorem tax revenues are "pledged". The Florida constitutional referenda requirement comes into play whenever a governmental entity attempts to issue bonds "payable" from ad valorem taxation. Appellee would like this Court to interpret the clause "payable from ad valorem taxation" to mean: "pledged from ad valorem taxation". This does not comport with the clear, unambiguous language in our Constitution.

It is also clear this elaborate bonding scheme matures more than twelve months after issuance. These bonds cannot exceed thirty years and Appellee estimates 15-20 years to redeem these bonds, depending on interest rates. There exists a moral duty for the Board to continue to renew the lease as the Board cannot default on one school without defaulting on all schools built with these bond proceeds. Also, a default will result in the loss of use of public lands to the bond holders. If the Board loses these lands, where would they build alternative schools? Only by indulging in contorted legal gymnastics can one conclude

this Lease-purchase scheme is a mere one year commitment. The Constitution clearly states that bonds maturing more than twelve months after issuance require a referendum.

Assuming Appellee's yearly option to renew is not considered form over substance, the moral compulsion spelled out in **Nohrr** is obvious. The moral compulsion here is as strong as **Nohrr** because the School Board will lose educational facilities, which they desperately need.

Since these bonds are payable from ad valorem taxes and mature more than twelve months after issuance, the Constitutional referenda requirement must be met. The bond validation should be reversed and the bonds should not be validated until such time as the School Board of Sarasota County obtains referenda approval or issues bonds where ad valorem tax revenues are not a source of redeeming the bonds.

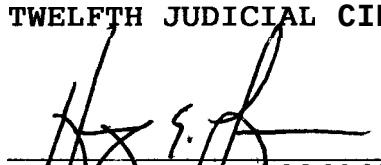
Respectfully submitted,

Henry E. Lee
Chief Assistant State Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to A. Lamar Matthews, Williams, Parker, Harrison, Dietz & Getzen, 1550 Ringling Boulevard, Sarasota, Florida 34236 this 10 day of January, 1990.

EARL MORELAND, STATE ATTORNEY
TWELFTH JUDICIAL CIRCUIT



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reply/brief/bond