

IN THE SUPREME COURT OF FLORIDA

THE STATE OF FLORIDA, and the  
several Property Owners,  
Taxpayers and Citizens of the  
City of Orlando, 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 issuance of the  
bonds herein more particularly  
described or to be affected in  
any way thereby,

Defendant/Appellant,

CASE NO. 75,804

vs.

Appeal from Case No. CI88-8819

City of Orlando, Florida, a  
municipal corporation of the  
State of Florida,

Plaintiff/Appellee.

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ON APPEAL FROM THE  
CIRCUIT COURT  
OF ORANGE COUNTY, FLORIDA

---

INITIAL BRIEF OF APPELLANT

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PREFACE

Appellant, State of Florida, will be referred to as "The State". Appellee, the City of Orlando, Florida, a municipal corporation of the State of Florida will be referred to as "The City". The intervenor, William E. Hall, Sr. will be referred to as "Mr. Hall". Appellant's Appendix will be stated as "App \_\_\_\_."

JURISDICTIONAL STATEMENT

This is an appeal pursuant to Rule 9.030(a)(1)(B)(i) of the Florida Rules of Appellate Procedure from a final Order issued pursuant to Chapter 75, Florida Statutes, validating bonds.

STATEMENT OF THE CASE

This is an appeal from a Final Judgment of the Circuit Court of the Ninth Judicial Circuit in and for Orange County validating not to exceed \$500,000,000 City of Orlando, Florida, Revenue Bonds.

The City of Orlando, "The City" filed an Amended Complaint pursuant to Chapter 75, Florida Statutes, seeking validation of not to exceed \$500,000,000 Revenue Bonds. The City served a Fourth Amended Order to Show Cause on the State of Florida requiring the State of Florida, through the State Attorney of the Ninth Judicial Circuit, to show cause why the prayer of said Complaint should not be granted and the bonds validated. Pursuant to Chapter 75, Lawson Lamar, State Attorney, answered and appeared at the trial through his Assistant State Attorneys, raising several issues as to why validation should not be granted. The Complaint was heard by Judge Joseph P. Baker, Circuit Court Judge of the Ninth Judicial Circuit in and for Orange County on June 12, 1989. On March 1, 1990, Judge Baker entered a Final Judgment validating the bonds. The State filed a timely Notice of Appeal on March 30, 1990.

STATEMENT OF THE FACTS

On October 31, 1988, and January 9, 1989, the City of Orlando "the City" adopted resolutions providing for the issuance of not exceeding \$500,000,000 Revenue Bonds (App.1). The City filed an Amended Complaint seeking validation of the bonds, the proceedings related thereto and the revenues pledged for the repayment thereof (App.2). In the Amended Complaint, the City states the bonds will provide funds to finance an insurance pool and qualifying projects of local agencies, by making loans from the proceeds through execution of a Local Agency Loan Agreement or through the purchase of Local Agency Securities (App.2 p.2). Neither the City Resolutions nor the Amended Complaint identified the projects to be financed, the local agencies involved, the revenue sources, or the public purpose behind such bond proposal.

Thus, the State of Florida, "The State" filed an answer raising these issues (App.3). A private citizen, William E. Hall, intervened raising identical issues (App.4). On March 15, 1989, the State took the City's Director of Finance, George Michael Miller's deposition in an attempt to find out exactly what projects the bond proceeds would finance, their eventual location and the revenues pledged to secure repayment (App.5). Although Mr. Miller states the City had an immediate need to borrow money for a number of projects, Mr. Miller would not identify any specific project to be funded, source of payment or potential local agency which would receive the benefit of the funds (App.5 pp.58-59,65,73). According to Mr. Miller, the City is not attempting to validate any underlying loan or underlying



security but is attempting to validate a financing vehicle (App.5 pp.58-59).

As first submitted, the bond proposal would allow the bonds to be issued and reinvested for profit without any requirement that they ever be used for a project and if so, that the project is located in the City of Orlando (App.8 pp.79,80). Because the bonds could be issued as taxable bonds, there were initially no restrictions on the time the City could use the funds for strictly investment purposes (App.8 pp.70-72).

The bond proposal also allowed the City to issue the bonds and loan all of the proceeds to governmental units by entering into Local Agency Loan Agreements (App.6). If the bonds are issued for this purpose, they would be secured by the funds pledged by the local agency (App.6) (App.8, pp.33-34). Since no local agency is identified, the source of funds for repayment can not be identified. According to the Trust Indenture (App.7) and proposed Local Agency Loan Agreement (App.6) the local agency can pledge funds derived from ad valorem taxes to repay the loan and thus the bonds. The applicable provision of the Trust Indenture reads as follows: "The Bonds and the Issuer's other obligations hereunder are solely and exclusively special and limited obligations of the Issuer and do not constitute or create an obligation, general or special, or debt, liability or moral obligation of the State or any political subdivision of the State (other than the Issuer to the extent provided herein and the Governmental units to the extent provided in their respective Loan Agreements)" (App.7, pp.48).

The City of Orlando could also use the bond proceeds for its own purposes. To do this the City must enter into a contract, a local agency loan agreement, with itself (App.6) (App.8 p.76).

Moreover, the bond proposal initially allowed the City to issue the bonds for the purpose of purchasing local government securities (App.8 pp.46). The Trust Indenture, however, would allow the purchase of any investment securities authorized by law at the discretion of the issuer (App.7 pp. 9, 78) (App.8 pp.74-75, 80-81).

Lastly, the City stated the bond proceeds could be used to fund an insurance pool (App.2) (App.12).

At the trial of this cause, the City reiterated its request for validation of the bonds and introduced a project type list (App.10). Although the City presented little concrete evidence as to how the financing proposal would operate, who would participate or realistically how much profit the City intended to earn and for what purpose, the City's representative stated that the advantage of this financing proposal is that it reduces the costs of borrowing, allows governments to access otherwise unattainable markets and to reach economies of scale (App.8 pp.24,47,80).

At the conclusion of the hearing counsel for both sides submitted memoranda in support of its position (App.9) and the City submitted a proposed Final Judgment (App.11).

On March 1, 1990 Judge Joseph P. Baker signed a Final Judgment with numerous changes to the original proposal (App. 12). The Final Judgment as entered granted the relief

requested but placed some restrictions on the bond proposal (App.12). The Final Judgment as entered, restricts the City from issuing bonds unless the City of Orlando Council by resolution reasonably expects the bond proceeds to be used to either purchase Local Agency Securities, or to make loans pursuant to a Local Agency Loan Agreement to finance the costs of qualifying projects. A qualifying project must be of the type listed on the project list, which includes a broad range of capital projects as well as any others subsequently approved by state statute (App.10) (App. 12, pp.3,11).

According to the Final Judgment the bonds must be used within three years of the date of issuance to make loans, purchase local agency securities or redeem bonds (App.12, pp. 11). The Final Judgment as altered requires the City Council of the City of Orlando and the Local Agency to approve through its governing body the Local Agency Loan Agreement before the bond proceeds may be used to purchase Local Agency Securities or to make loans through the execution of Local Agency Loan Agreements (App.12,11). Further, the City may not loan money to a local agency or purchase a local agency security under the Final Judgment which pledge ad valorem taxes, unless the Local Agency first obtains approval of their voters pursuant to Article VII, Section 12 of the Florida Constitution (App.12,13).

The Final Judgment as entered by the Court on March 1, 1990 states it is not intended to collaterally estop any person from challenging in a collateral proceeding the specific projects, the validity of a Local Agency Loan Agreement or Security, or the

revenues pledged for the payment of such Local Agency Loan Agreement or Security (App.12, p.14).

The Final Judgment as entered, however, still does not identify any specific projects, a local agency or the particular revenues, which would secure the bonds if issued for City of Orlando purposes, or the particular revenues to secure repayment of the Local Agency Loan Agreement, if the funds are loaned out to other entities.

In spite of this, Paragraph 7 of the Final Judgment reads:

The Plaintiff determined pursuant to the Bond Resolution that the public interest will best be served by the issuance of revenue bonds in order to provide funds to the Plaintiff to be made available to the participating Local Agencies, including the Plaintiff, to finance, refinance or reimburse the cost of qualifying projects pursuant to Local Agency Securities issued by Local Agencies or Local Agency Loan Agreements between the respective Local Agencies and the Issuer. The issuance of the Bonds by the Plaintiff for such purposes serves a valid public purpose of the Plaintiff.

(App. 12, p.4)

On March 8, 1990, Judge Baker made public a Memorandum of Ruling in support of the court's decision in entering the Final Judgment of Validation (App.13). Citing the Florida Taxable Bond Act, Chapter 159, Part VII, Florida Statutes, the City's Municipal Home Rule Powers under Chapter 166, Florida Statutes and Article VIII, Section 2(b), Florida Constitution, Judge Baker declared the City is authorized to issue "taxable bonds to be

used solely to raise money to acquire investments" (App.13,11). Stating that the bonds in question could not be assessed in terms of public purpose, the Court analogized the bonds to "municipal credit cards" and questioned whether the "municipal purpose" of the bond issue might become something demonstrated by using mirrors and that the value, viability and validity of such should be determined by the securities markets and not by the courts (App.13, pp.11-12).

Judge Baker's Memorandum of Ruling goes on and states:

This bond issue cannot be assessed in terms of 'public purpose', as that concept has evolved . . .

The chief financial officer of the city testified that the employment of this bond issue required such sophistication it could not be understood by counsel for the state and taxpayer defendant, which makes one wonder whether it might be beyond one or more individual city council persons . . . . The possibility of misuse of power cannot be a legal bar . . . .

(App.13, pp.11-12)

SUMMARY OF ARGUMENT

The City of Orlando is seeking to validate up to one half billion dollars of revenue bonds to be used as a "financing tool." In essence, the City wants to have access to \$500,000,000 dollars so it can do one or all of the following:

- (1) Invest the proceeds for profit
- (2) Loan the proceeds to other governmental units, by executing a Local Agency Loan Agreement.
- (3) purchase local agency securities
- (4) use the bond proceeds for undetermined City of Orlando purposes
- (5) finance an insurance pool

The City, however, has not identified with any particularity:

- (1) what percentage of the bonds it intends to use for any of these purposes
- (2) the amount, or realistic profit the City anticipates to earn from either investing or loaning out the bond proceeds
- (3) the local agencies
- (4) the local agency securities
- (5) the projects
- (6) the revenues to secure repayment of the bonds and/or the local agency loan agreements or securities

In addition to these uncertainties, the City has left open to collateral attack the validity of the local agency loan agreements, the local agency securities, the revenues pledged for payment of the Local Agency Agreements or Securities, and the specific projects.

Section 75.02, Florida Statutes gives the Courts jurisdiction to determine whether a city has authority to incur bonded debt and the legality of all proceedings taken in connection therewith. Once entered, however, a judgment of validation is forever conclusive as to all matters determined therein. This Court does not have jurisdiction to validate a bond proposal which on one hand does not identify any of the above elements and on the other leaves many of the issues open to subsequent challenge. The Court cannot determine whether a debt will even be incurred or whether all matters taken or in connection with the bond proposal are authorized by law. Since the City has failed to identify so many variables to the bond transaction, the case is not at issue or ripe for determination under Chapter 75, Florida Statutes leaving this Court without jurisdiction to confer validation.

Even if the Court finds jurisdiction, the bond proposal fails to serve a proper public purpose and is not authorized by law. Investing bond proceeds for profit in an unidentified manner for a period of years before using all or a portion of the bond proceeds to fund undetermined projects in undetermined local agencies or to purchase unidentified local agency securities does not serve a valid public purpose. The Florida Constitution,

statutes and case law do not authorize the particular transaction in question.

The City's proposal also violates Article 7, Section 12 of the Florida Constitution and Section 75.03, Florida Statutes. One of the stated purposes for the bonds is to finance loans to local agencies. These local agencies will enter into a Local Agency Loan Agreement with the City of Orlando and these loans will also secure repayment of the bonds. The local agency, however, may pledge revenues derived from ad valorem taxation for repayment of the loan and thus, the bonds. Therefore, the City's Revenue Bonds may violate Article 7, Section 12 of the Florida Constitution by pledging ad valorem taxation without an election as well as Section 75.03, Florida Statutes which requires the election to be held prior to the validation proceeding.

Furthermore, the Revenue Bonds in question violate simple contract principles. If the City intends to use the proceeds for its own purposes, the City must enter into a Local Agency Loan Agreement with itself. There is no mechanism in the documents which would allow the City to use the funds for its own purposes.

Lastly, the City of Orlando's Revenue Bonds violate the due process of future citizens and borrowers. Chapter 75 and Chapter 163, Part I, Florida Statutes clearly intended that those affected by a bond validation case would be notified of the proceedings. By not identifying a local agency or giving notice to the county or the State Attorney for that circuit which will eventually borrow the proceeds, citizens of that local agency and/or circuit are precluded from raising any objection to



validation of the bonds as a "financing tool" and are being denied due process of law.

POINT I

THE SUPREME COURT AND CIRCUIT COURT  
ARE WITHOUT JURISDICTION TO  
VALIDATE THE CITY OF ORLANDO,  
FLORIDA \$500,000,000 REVENUE BONDS.

The City of Orlando filed an Amended Complaint seeking validation of \$500,000,000 City of Orlando "Revenue Bonds" (App.2, pp.5). The City's proposal, however, did not and still does not identify any specific projects to be financed, the revenue sources or the local agency to receive the benefit of the bond proceeds. Nevertheless, the City in its Amended Complaint sought to validate the bonds, "the proceedings related thereto and the revenue pledged for the repayment thereof" (App.2, pp.5).

For these reasons, the State objected to the bonds in question in its answer (App.3), at trial (App.8), and in the memoranda filed in opposition to validation (App.9). A circuit court derives jurisdiction to hear a bond validation case from Section 75.02, Florida Statutes:

Any county, municipality, taxing district or other political district or subdivision of this state, . . . authorized by law to issue bonds, may determine its authority to incur bonded debt or issue certificates of debt and the legality of all proceedings in connection therewith, including assesment of taxes levied or to be levied, the lien thereof and proceedings or other remedies for their collection. For this purpose a complaint shall be filed in the circuit court in the county or in the county where the municipality or district, or any part thereof, is located . . .

(emphasis added).

Validation, however, is intended to conclusively resolve all issues as to the ability to incur bonded debt and the legality of all proceedings taken in connection therewith.

Section 75.09, Florida Statutes states in pertinent part:

If the judgment validates such bonds . . . and any taxes, assessments or revenues affected, and no appeal is taken . . ., or if taken and the judgment is affirmed, such judgment is forever conclusive as to all matters adjudicated against plaintiff and all parties affected thereby . . . and the validity of such bonds, certificates or other obligations or of any taxes, assessments or revenues pledged for the payment thereof, or of the proceedings authorizing the issuance thereof, including any remedies provided for their collection, shall never be called in question in any court by any person or party.

Even though validation is supposed to finalize any questions at issue, the Final Judgment states in paragraph 25:

The judgment shall not serve to collaterally estop any person from challenging in a collateral proceeding the

(i) the specific project or projects to be acquired, constructed or erected by the Local Agencies,

(ii) validity of any Local Agency Loan Agreement

(iii) validity of any Local Agency Securities

(iv) revenues pledged for the payment of such Local Agency Loan Agreements or Local Agency Securities, or

(v) proceedings of any Local Agency authorizing such Local Agency Loan Agreement or Local Agency Securities (including, but not limited to Local Agency Security of the City of Orlando or a Local Agency Loan Agreement executed by the City of Orlando.)

(App.12, p.14)

This Court as well as the Circuit Court is without jurisdiction to validate bonds which do not identify a project, a revenue source or the local agency recipient which at the same time leaves the validity of the projects, revenue sources and other items open to collateral attack. Section 75.02, Florida Statutes gives the Court jurisdiction to determine a municipality's authority to incur bonded debt and the legality of all proceedings taken in connection therewith. Thus, there is no question yet at issue in this case. Since the City has not yet identified any of the variables normally present in bond issues and has left most of the issues subject to later review, it cannot be determined whether the bonds are in fact "revenue" bonds or a "debt" contemplated under section 75.02, Florida Statutes. Further, if issues as to the individual project, the loan agreement or security and the revenues pledged thereunder are considered collateral, as the City suggests, there would be no statutory mechanism for a collateral action to be filed later challenging these items in Court. See, McCoy Restaurants, Inc. v. City of Orlando, 392 So.2d 252 (Fla. 1980) (The validity of an

aviation authority's lease agreement leasing airport facilities to airlines was a collateral issue in a bond validation proceeding for construction of new facilities at the Orlando International Airport.) All matters taken in "connection therewith" and pertinent to the bonds at issue should be able to be reviewed in the validation proceeding itself so that validation takes on the certainty it was intended to under Section 75.09, Florida Statutes.

Apparently, even Judge Baker questioned what validation of bonds with this structure actually meant when he filed a Memorandum, referred to in the Final Judgment, explaining his decision in entering in a Final Judgment of Validation. See, (App.13, pp.15) (App.12).

POINT II

THE CITY OF ORLANDO, FLORIDA  
REVENUE BONDS IN AN AMOUNT NOT TO  
EXCEED \$500,000,000 DO NOT SERVE A  
PROPER MUNICIPAL PURPOSE AND ARE  
NOT AUTHORIZED BY LAW.

If the Court determines this issue is ripe for determination and finds jurisdiction proper, validation should be denied since the bonds do not serve a public purpose. Whether the bond proposal serves a valid public purpose is proper for the Court to review once jurisdiction is invoked.

The Court must determine if a public body has the authority to issue the proposed bonds and whether the purpose of the obligation is legal before a judgment of validation can be entered. State v. Panama City Beach, 529 So.2d 250, 251 (Fla. 1988); Taylor v. Lee County, 498 So.2d 424 (Fla. 1986); Wohl v. State, 480 So.2d 639 (Fla. 1985). This inquiry includes whether the issuing agency may legally expend the proceeds for the contemplated purpose. State v. Panama City Beach, supra, at 251; State v. Miami Beach Redevelopment Agency, 392 So.2d 875, 886 (Fla. 1980); State v. Suwannee County Development Authority, 122 So.2d 190 (Fla. 1960).

Municipalities have historically issued bonds for specific projects such as airports, expressways and housing. See, McCoy Restaurants, Inc., v. City of Orlando, supra. (Revenue bonds issued to finance construction and expansion of airport facilities); Section 348.753, Florida Statutes (creates Orlando-Orange County Expressway Authority); Pepin v. Division of Bond Finance, 493 So.2d 1013 (Fla. 1986) (bonds approved for

expressway expansion project); Section 159, Part IV, Florida Statutes (creates housing finance authorities and empowers them to issue bonds for financing construction of housing).

In addition, municipalities traditionally only issued bonds on a tax exempt status (tax free to the purchaser) with the intent of acquiring a low interest rate for repayment of the obligation. See, State v. Panama City Beach, supra at 251 (discussion of history of taxable and tax exempt bonds). When issuing municipalities started arbitraging the bonds, (by issuing tax exempt bonds at a low interest rate and investing the bond proceeds in government securities with a high rate of return for a profit), the I.R.S. placed strict controls on the use of arbitrage in tax exempt bond issues. See, Section 103(b)(2), and Section 148, U.S. Tax Code; State v. Panama City Beach, supra. Tax exempt bonds for example may not be invested in higher yielding investments for more than specific periods of time varying according to the type of project to be financed and the bond issue. See, Section 148, U.S. Tax Code.

This is relevant to the case at bar since the City of Orlando's proposal clearly allows taxable bonds. The I.R.S. regulations would not apply and thus, there is no federal limitation on the time the City could arbitrage or invest the bond proceeds before financing a specific capital project or loaned to another entity (App. 8, pp. 68-70) (App. 5, pp. 59-61). No matter what the project or financial motivation behind issuance, the Florida Supreme Court has consistently held bonds must serve a valid public purpose. State v. Panama City Beach,

supra, at 251 (Bonds must be for a proper municipal purpose); Pepin v. Division of Bond Finance, supra, at 1014. Linscott v. Orange County Industrial Development Authority, 443 So.2d 97 (Fla. 1983).

The question in this case is what is a proper municipal purpose. Article VIII, Section 2(b) of the Florida Constitution states:

Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

(emphasis added)

Section 166.111, Florida Statutes, under which the City claims it has authority to issue the bonds in question states: "The governing body of every municipality may borrow money, contract loans and issue bonds as defined in Section 166.101, from time to time to finance the undertaking of any capital or other project for the purposes permitted by the State Constitution . . ."

A project is defined as "a governmental undertaking approved by the governing body and includes all property rights, easements, and franchises relating thereto and deemed necessary or convenient for the construction, acquisition or operation thereof, and embraces any capital expenditure which the governing body of the municipality shall deem to be made for a public



purpose including the refunding of any bonded indebtedness which may be outstanding on any existing project which is to be imposed by means of a new project." Section 166.101(8), Florida Statutes (emphasis added).

The City cites State v. Panama City Beach, supra, in support of its argument that the bonds in question serve a valid public purpose and are authorized by law. In Panama City Beach, the City sought to validate \$300,000,000 in taxable investment revenue bonds with the intention of arbitraging the bonds and using the profit for park and recreational facilities, self-insurance reserves, or other municipal purposes, all to be designated by a subsequent resolution. At the hearing, the City of Panama City Beach presented testimony that the amount owed on the bonds was expected to be one-half of one percent less than the interest received from the investment contract and that this difference would produce a profit for the city of approximately \$1,500,000. This profit would then be used for the purposes stated above.

The Florida Supreme Court upheld the validation on grounds that the money would only be used for valid municipal purposes and the bonds would not pledge the full faith and credit of the issuer or pledge ad valorem taxes. Id. at 256. While the Court knew of no prohibition of the City's use of arbitrage financing to acquire the funds it expressed "misgivings" over a \$300,000,000 bond issue which is calculated to derive only \$1,500,000. Id.

The issue before this Court takes the Panama City Beach proposition several steps further. In Panama City Beach, the bonds were to be invested in an investment contract with an insurance company or other investment institution having an appropriate credit rating, with a guaranteed rate of return. The profit on this investment contract was expected to be approximately \$1,500,000.

In this case, unlike Panama City Beach, there is no concrete evidence as to how much money will be derived as profit if the bonds are to be used for investment purposes or how the proceeds would be invested. For instance the City stated the bonds would allow the City to borrow and lend and re-lend money to other jurisdictions and thereby create a profit from the transaction (App. 8, pp. 55-56). The City testified, over an objection to an improper predicate and speculation, that the profit would be dictated by the then profit market circumstances but probably were ". . . talking about more of an eighth to a half of twelve and a half base points to fifty base points of after spread that could be made by the City." (App. 8, pp. 55-57). "But on a \$10 million transaction , one percent is \$100,000 and a half would be \$50,000." "On the \$100 million transaction, then you just keep multiplying the zeros." (App. 8, p. 57) However, there was no indication as to how much money the City planned to invest in this manner, which local governmental units would borrow the proceeds or what project the funds would eventually finance. Also, since there is no federal limitation on taxable bonds and none in the bond documents themselves there was at the time of

trial no limitation whatsoever on the time these funds could be invested for profit, loaned out to other units or whether any profit would even be spent in the City of Orlando.

Although the City stated in its Reply Memorandum that the State's position evidences a monumental misunderstanding of the nature of the bonds sought to be validated, the City, as a concession to the State's argument, placed in its final judgment a requirement that the bond proceeds must be used within three years of issuance to make Local Agency Loans, purchase Local Agency Securities or redeem bonds (App. 12, 11). (App. 9, Reply Memo, p. 1) This paragraph does not cure the problem. Bonds could still be loaned out for three years and then redeemed and loaned out again without any indication as to who would benefit from the proceeds, how much would be borrowed or how much the City realistically anticipated to profit.

Moreover, the anticipated profits from the bonds in Panama City Beach were going to be used for park and recreational facilities, self insurance reserves or other municipal purposes, to be decided by subsequent resolution which would apparently directly benefit the City of Panama Beach. In this case, the bond proposal does not guarantee the profits will be used in the City of Orlando or even that the bonds are to be used to obtain a profit, only that the City's council must approve the project (App. 12, p. 8).

The City's bond proposal also allows the City to borrow its own revenue bonds for its own use by entering into a Loan Agreement with itself (App.8, pp.49, 76). In addition to being

against elemental principles of contract law, the City has again failed to identify any specific projects, the amount needed or whether it intends to use the bonds for this reason at all.

Further, the Court in Panama City Beach upheld validation holding that the bonds were revenue bonds because they were not payable from ad valorem taxes and do not pledge the property, credit or general tax revenue of the municipality. Supra, at 256. In the instant case, the City has not and cannot show that neither the City's nor a local agency's credit or ad valorem taxes will be pledged. For example, one of the potential uses for the bonds is to loan the proceeds to local governments through execution of a Local Agency Loan Agreement (App. 6). The Local Agency Loan Agreement allows funds to be pledged as security for the Loan Agreement funds derived from ad valorem tax revenues. See, (App. 8, p. 52). (" . . . to the extent they want to use property tax revenues -- ad valorem revenues, there would have to have previously been a referendum . . .") (App. 12, pp. 12-13) (App.7, pp.48). Likewise, if the City were to issue the bonds for funding of a capital project by entering into a loan agreement with itself, the City could potentially pledge ad valorem tax revenues for repayment of the loan and thus, the bonds (App. 8, pp. 76-77).

Since the City has not presented any concrete evidence as to how much they intend to invest, or the method of investment or the basis for anticipating a certain amount of profit, the purpose of such a transaction cannot be determined. The instant case differs from the Panama City Beach case in that the City's

proposal allows numerous types of transactions without even guaranteeing the profits will be used within the City and if so, what projects they would finance. The bonds proposal also may potentially pledge ad valorem tax revenues further distinguishing itself from Panama City Beach and indicating that a public purpose cannot be identified.

The City also cites the Florida Interlocal Corporation Act of 1969, Section 163, Part I, Florida Statutes, in support of its argument. Although the purpose of this Act is to permit local governments to make the most efficient use of their powers by enabling them to cooperate with other localities, this Act does not authorize the City of Orlando to enter into this particular type of bond transaction. The Act does allow local governments to jointly exercise their powers for their common good by entering into a contract for this purpose called an interlocal agreement. See, Section 163.01(5), Fla. Stat.

Although every local agency that wants to participate in a common project need not be identified at the beginning in every instance, when read in its entirety, the Act implicitly requires at least two local governments to be identified for an interlocal agreement to be created when the bonds involve projects other than insurance pools and liability coverage contracts. See, Section 163, Part I, Fla. Stat.; Section 163.01(7)(c), Fla. Stat. (any separate legal entity, created by an interlocal agreement may for the purposes of financing the costs of an electric project issue bonds); Section 163.01(7)(d) (any separate legal entity, the membership which consists of municipalities or

counties created pursuant to the provisions of this section, may for the purposes of financing capital projects, issue bonds); Section 163.01(7)(e), Fla. Stat. (Any separate legal entity created pursuant to this section controlled by counties or municipalities, may for the purpose of financing acquisition of liability coverage contracts, issue bonds).

Furthermore, Section 163.01(5), Florida Statutes is very specific as to what should be contained in the interlocal agreement which should include but is not limited to (1) the purpose of the interlocal agreement (2) the duration (3) the precise legal entity created, if any, (4) the manner in which the parties to the agreement will provide for their treasuries the financial support for the purposes set forth and (5) the method for financing the payments to reserve funds and operating costs and payments of principal and interest on obligations.

These provisions by implication suggest that at least two local agencies must be identified and have entered into a contract with these identifiable purposes and methods for financing, before the local agencies have created a valid interlocal agreement under the Florida Interlocal Corporation Act.

Since the City of Orlando has not identified any local agencies interested in borrowing the bond proceeds in question or the purposes or financing mechanisms required in Section 163.01(5), Florida Statutes, the State objects to the conclusion in the Final Judgment that the Loan Agreements would serve as Interlocal Agreements. See, (App.12, pp.6) ("The Loan Agreements

referred to in Paragraph 11 hereof constitute an Interlocal Agreement in accordance with the terms and provisions of Chapter 163, Part I, Florida Statutes.)

As indicated, the City has not identified a potential local agency, the project to be financed or the revenues to be used to secure the obligations and thus, cannot rely on Chapter 163, Part I, Florida Statutes as authority for issuance of the bonds.

POINT III

THE CITY OF ORLANDO, FLORIDA  
REVENUE BONDS VIOLATE ARTICLE VII,  
SECTION 12 OF THE FLORIDA  
CONSTITUTION AND SECTION 75,  
FLORIDA STATUTES.

The City of Orlando initially sought to validate the revenues pledged for repayment of the bonds as indicated in the Amended Complaint's prayer for relief. See, (App.2, p.5). The Final Judgment validated the bonds including the revenues pledged for the payment of the bonds (App.12, p.14). The Final Judgment excluded from determination the validity of any Local Agency Loan Agreement or Local Agency Security (App.12, pp.14-15). This particular structure, however, violates both Article VII, Section 12 of the Florida Constitution and Section 75, Florida Statutes.

According to the Trust Indenture, Section 4.01, the bonds will be payable from the trust estate. The trust estate consists of (1) money that would be payable to the City under the loan agreement by other borrowers, (2) all monies held by trustee under the trust indenture, (3) any revenues the City of Orlando pledges for payment of the bonds (App.7, pp.48-56). The borrowing municipality is exempt from the prohibition against pledging revenues from ad valorem taxes. The Trust Indenture states in Section 4.01:

The Bonds and the Issuer's other obligations hereunder are solely and exclusively special and limited obligations of the Issuer and do not constitute or create an obligation, general or special, or debt, liability or moral obligation of the State or any political



subdivision of the State (other than the Issuer to the extent provided herein and the Governmental Units to the extent provided in their respective Loan Agreements).

(App.7, p.48)

Since it is not known which governmental unit will borrow the proceeds or which local agency's securities the City of Orlando intends to purchase, or the funds that governmental unit will use to secure repayment, the City of Orlando cannot conclusively state that the bonds will not pledge funds payable from ad valorem taxes. Thus, this bond proposal could potentially involve a pledge of a borrowing governmental unit's credit.

Article VII, Section 12, of the Florida Constitution states:

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 freeholds therein not wholly exempt from taxation

(b) to refund outstanding bonds and interest and redemption premium thereon at a lower net average interest cost rate.

Since the City of Orlando has not precluded the use of ad valorem revenues and has not indicated whether an election has been held, the City has also violated Article VII, Section 12 of the Florida Constitution and has failed to comply with Section 75, Florida Statutes. Section 75.03, Florida Statutes states in pertinent part: "As a condition precedent to filing of a complaint for the validation of bonds . . . or district desiring to issue them shall cause an election to be held to authorize the issuance of such bonds . . . and show prima facie that the election was in favor of the issuance thereof . . ."

Therefore, the City of Orlando's bond proposal should not be validated until the City can or has complied with the Florida Constitution and Section 75, Florida Statutes.

POINT IV

THE CITY OF ORLANDO, FLORIDA  
REVENUE BONDS IN AN AMOUNT NOT TO  
EXCEED \$500,000,000 VIOLATE SIMPLE  
CONTRACT PRINCIPLES.

The bond proposal before this Court has many variables. One of the variables, contemplates the City of Orlando issuing up to one half billion dollars in bonds with the intent of loaning the bond proceeds to local agencies or purchasing local agency securities. Under the terms of the Trust Indenture, the City of Orlando must deposit all of the proceeds of the sale of the bonds into one of three accounts:

(a) the Debt Service Account (which pays the bondholders principal and interest

(b) the Cost of Issuance Fund (which pays attorneys, underwriters, etc. . . .)

(c) the Loan Fund.

See, App.7, Section 4.03, pp.48) The monies in the Loan Fund are to be used to loan to governmental units who wish to participate in the program. Id. at Section 404(b), pp.49. This requires the local government to enter into a contract with the City of Orlando by executing a Local Agency Loan Agreement (App.6). There is no mechanism in the Trust Indenture and Local Agency Loan Agreement as written for the City of Orlando to keep proceeds for its own use. The City of Orlando remains the owner of the monies placed with the trustee. The placement is simply a mechanism for the protection of the bondholders. For the City of

Orlando to use the proceeds for its own projects the City would have to enter into a Local Agency Loan Agreement with itself, contrary to all known principles of contract law. (See, App.8, p.76). See also, Kislak v. Kreedian, 95 So.2d 510 (Fla. 1957) (A contract contemplates an agreement between two or more parties.)

Although the City's bond proposal contemplates the possibility of using some of the bond proceeds for its own projects, the Trust Indenture does not provide for this use and calls for the City to enter into an illegal contract with itself.

POINT V

THE CITY OF ORLANDO, FLORIDA  
REVENUE BONDS IN AN AMOUNT NOT TO  
EXCEED \$500,000,000 VIOLATE DUE  
PROCESS OF FUTURE CITIZENS AND  
BORROWERS.

This bond proposal contemplates validation without giving the citizens of affected counties and municipalities proper notice of this proceeding and an opportunity to be heard. Although Chapter 75, Florida Statutes contemplates notice be given to all those affected by a bond validation proceeding it does not speak directly to the issue in the instant case. Section 75.02, Florida Statutes requires a complaint for validation to be filed in the Circuit Court in the county or in the county where the municipality or district, or any part thereof is located against the State and the taxpayers, property owners and citizens of the county located therein. In the case where a state agency, commission or department brings an action to validate bonds, the complaint must be filed in the circuit court of the county where the proceeds of the bonds are to be expended or where the seat of state government is situated and shall be brought against the state and taxpayers, property owners and citizens thereof. See, Section 75.02, Florida Statutes.

Clearly it was the intent of the drafters to give notice of the validation proceeding to the state attorney and/or citizens of counties where the proceeds would actually be expended. Surely it could not have even been contemplated at the time Chapter 75 was enacted that cities would issue bonds where the proceeds would be used statewide.

Even though the Final Judgment leaves open to collateral attack the specific project, loan agreement and revenues pledged thereunder, it does not afford the opportunity to citizens and future borrowers to object to this type of bond transaction itself. As stated earlier, if the issues are not raised during validation, they may not be raised later since validation conclusively resolves all issues as to legality. Section 75.09, Fla. Stat. Furthermore, there is no known statutory authority for an individual or entity to collaterally challenge collateral a matter validated in a bond proceeding even if the judgment of validation leaves open this possibility.

The City is relying in part on Section 163, Part I, the Florida Interlocal Corporation Act, Florida Statutes as authority to validate the bonds in question. This Act, however, requires validation proceedings not involving liability coverage contracts or insurance pools to be filed in the Circuit Court for Leon County and served on the state attorney in each circuit where the public agencies are initially a party to the agreement are located. See, Section 163.01(7)(d), Fla. Stat.

By not identifying the project as well as the municipality, this proposal violates the statutory and constitutional due process guarantees of residents of future borrowers as intended by Chapters 75 and 163, Part I, Florida Statutes. See, Pelle v. Diners Club, 287 So.2d 737 (Fla. 1974). ("It is fundamental that the constitution guarantee of due process, which extends unto every proceeding, requires that the opportunity to be heard be full and fair, not merely colorable or illusive.")

Since citizens of future borrowers and/or the state attorney of those circuits have not been served with notice of this proceeding, the due process rights of those citizens are being circumvented and validation should be denied.

CONCLUSION

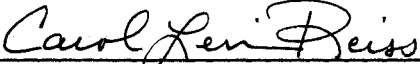
The City of Orlando's Revenue Bond proposal leaves too many unanswered questions. Since there has been no concrete evidence as to how the proceeds will be spent, what projects the proceeds will finance, the revenues to secure repayment and/or whether the bonds will be used for anything other than investment purposes, this issue is not yet ripe for determination and the Court is without jurisdiction to confirm validation. The bonds are not authorized by law, and do not serve a public purpose.

Citizens and taxpayers of future borrowers will be affected without notice and the ability to be heard. The proposal's own documents do not allow the City of Orlando to use the bonds for its own projects and do not adequately prohibit a pledge of credit of the borrowing municipality in violation of the Florida Constitution

Wherefore, the State of Florida prays this Court deny validation or return the case to the Circuit Court for further proceedings or until such time as the City of Orlando can address the variables discussed herein.

Respectfully submitted,

LAWSON LAMAR, STATE ATTORNEY  
NINTH JUDICIAL CIRCUIT

  
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COUNSEL FOR DEFENDANT/APPELLANT



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Robert L. Hamilton, Esquire, City Attorney, 400 S. Orange Avenue, Orlando, Florida 32801; W. Robert Olive, Esquire & Randall W. Hanna, Esquire, Bryant, Miller and Olive, P.A., 201 S. Monroe Street, Suite 500, Tallahassee, Florida 32301 and Irby Pugh, Esquire, 218 Annie Street, Orlando, Florida 32801, on this 18<sup>th</sup> day of May, 1990.



CAROL LEVIN REISS  
ASSISTANT STATE ATTORNEY