

SUPREME COURT OF FLORIDA

CASE NUMBER: 75,856

THE STATE OF FLORIDA, et al., )  
 )  
 Appellant )  
 )  
 V. )  
 )  
 PALM BEACH COUNTY, FLORIDA, )  
 a political subdivision of )  
 the State of Florida, et al., )  
 )  
 Appellee )  
 )

---

---

APPEAL FROM A BOND VALIDATION  
IN THE CIRCUIT COURT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

---

**FILED**  
SID J. WINT  
MAY 15 1990  
CLERK, SUPREME COURT  
By Deputy Clerk

INITIAL BRIEF OF APPELLANT,  
STATE OF FLORIDA

DAVID H. BLUDWORTH  
State Attorney  
15th Judicial Circuit  
HENRY PHILLIP YORSTON  
Assistant State Attorney  
224 Datura Street  
7th Floor, Harvey Building  
West Palm Beach, Florida 33401  
Telephone: (407) 355-3699  
Florida Bar Number: 0664413

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS	iii - iv
PREFACE	v
STATEMENT OF THE CASE	1 - 4
STATEMENT OF THE FACTS	5 - 6
SUMMARY OF THE ARGUMENT	7
ARGUMENT	
POINT ONE	8 - 11
THE CIRCUIT COURT ERRED IN VALIDATING THE BOND ISSUE SINCE PALM BEACH COUNTY LACKED THE AUTHORITY TO ISSUE THE SUBJECT BONDS DUE TO A SPECIFIC STATUTORY PROVISION PROHIBITING PERSONS ACTING IN ANY PUBLIC OFFICIAL CAPACITY FROM ENGAGING IN ANY MANNER IN FINANCING A PRIVATE SCHOOL CORPORATION.	
POINT TWO	12
THE CIRCUIT COURT ERRED IN VALIDATING THE INDUSTRIAL DEVELOPMENT BONDS WHERE THERE WAS NOT MUNICIPAL POWER TO LEND THE BOND PROCEEDS TO A PRIVATE SCHOOL	
POINT THREE	13
THE CIRCUIT COURT ERRED IN VALIDATING BONDS WHERE THE PROJECT WAS NOT OF SOME SUBSTANTIAL BENEFIT TO THE PUBLIC.	
POINT FOUR	14 - 16
THE CIRCUIT COURT ERRED IN VALIDATING THE BOND ISSUE WHERE AID IS BEING GIVEN TO A CORPORATION WHICH DOES NOT SERVE A PUBLIC PURPOSE CONTRARY TO THE FLORIDA CONSTITUTION, ARTICLE VII, SECTION 10.	

PAGE

CONCLUSION	...	...	17
CERTIFICATE OF SERVICE	...	...	18

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
<u>State v. City of Panama City Beach,</u> 529 So.2d 250 (Fla. 1988)	8, 12, 16
<u>Winter v. Playa del Sol, Inc.</u> 353 So.2d. 598 (Fla. 4th DCA 1977)	10
<u>Orange County Industrial Development Authority v. State, 427 So.2d 1974</u> (Fla. 1983)	10, 14, 15
<u>Wakulla County v. Davis, 395 So.2d 540</u> (Fla. 1981)	10
<u>Metropolitan Dade County v. Bridges,</u> 402 So.2d 411 (Fla. 1981)	10
<u>City of Miami Beach v. Fleetwood Hotel, Inc., 261 So.2d 801 (Fla. 1972)</u>	12
<u>State v. Miami Beach Redevelopment Agency,</u> 392 So.2d 875 (Fla. 1980)	13, 16
<u>Nohrr v. Brevard County Educational Facilities Authority, 247 So.2d 304</u> (Fla. 1971)	14
<u>Linscott v. Orange County Industrial Development Authority, 443 So.2d 97</u> (Fla. 1983)	16

CONSTITUTIONAL AND STATUTORY AUTHORITY

Art. VII, §10, Fla. Const.	2, 14
Art. IX, Fla. Const.	12, 15
Ch. 75, Fla. Stat. (1989)	9, 10
Ch. 159, Part II (1989)	14, 15
Ch. 243, Fla. Stat. (1989)	15
Ch. 617, Fla. Stat. (1989)	3, 8, 9, 10, 11, 12
Ch. 623, Fla. Stat. (1989)	9, 11
Ch. 718, Fla. Stat. (1989)	10
Ch. 616, Fla. Stat. (1989)	10
Ch. 619, Fla. Stat. (1989)	10

PREFACE

This is an appeal from the Final Judgment validating Three Million Two Hundred and Fourteen Thousand Dollars (\$3,214,000.00) of Industrial Revenue Bonds (the "Bonds") to be issued by Palm Beach County. It is before this Court as a direct appeal of a Final Judgment issued by the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County pursuant to the Florida Constitution Article V, Section 3(b)(2), Section 75.08 Florida Statutes (1989) and Florida Rule of Appellate Procedure 9.030 (1)(b)(i).

Within the context of this Brief, this Appellant shall refer to the parties by proper name. The Appellant, State of Florida, shall be known as "State". The Appellee, Palm Beach County, shall be referred to as "County". The intended beneficiary of the bond proceeds Pine Crest Preparatory School, Inc., shall be referred to as the "School".

Consistent with Florida Rule of Appellate Procedure 9.110(o) an appendix is provided containing those pleadings, documents and transcripts excerpts pertinent to the State's case.

References to this Appendix shall be designated by a document number as shown on individual tabs and a page number contained in the lower right hand corner. These references shall utilize the following symbols:

Ap = Appendix

t = Index tab number

p = Page number

STATEMENT OF THE CASE

This cause originated with the County filing a Complaint of Validation in the Circuit Court of Palm Beach County (Ap: t 2 , p 9-15). At issue was three million two hundred fourteen dollars (\$3,214,000.00) in Industrial Revenue Bonds for financing or refinancing the acquisition, construction and equipping of a private school, including improvements thereto, and providing working capital for the operation of the School. The contemplated improvements include, but are not limited to, a swimming pool and a gymnasium. To further this objective the Board of County Commissioners adopted Resolution R-88-2202 (the "Bond Resolution") authorizing the issuance of the Industrial Revenue Bonds and enumerating the projects to be funded (Ap: t 2 , p 16-22). The stated objectives of this bond issue were defined, in pertinent part, in the Memorandum of Agreement made a part of the Bond Resolution as follows:

"(a) ... to finance or refinance all or a portion of the cost of the acquisition of Boca Raton Academy-A Pine Crest School, formerly known as the Boca Raton Academy, located at 2700 St. Andrews Boulevard in Palm Beach County, Florida (the "School") and the construction and equipping of additions and improvements thereto, the provision of working capital for operations of such school and to refinance existing indebtedness incurred for the aforementioned purposes (collectively, the "Project"); and

(b) ... to encourage the Borrower to acquire, construct and equip the Project and to operate the Project in Palm Beach County, Florida (the "County"), to promote and enhance the educational opportunities available to the residents of the County and the economy of the County and the State of Florida (the "State), increase opportunities for gainful employment and otherwise contribute to the prosperity and welfare of the County and the State and the inhabitants thereof; ..."

(Ap: t-2 , p 23-30).

The major construction projects to be financed or refinanced are a swimming pool and gymnasium as defined in the Bond Resolution. (Ap: t 2 , p 17 ).

In conformance with Chapter 75, Florida Statutes (1989) the Complaint was served upon the State Attorney and an Order to Show Cause was issued (Ap: t 2 , p 14 ). The State Attorney, pursuant to his obligation imposed by law, reviewed the validation complaint and submitted his Answer and an Amended Answer raising certain issues, deficiencies, and improprieties inherent in this bond proposal (Ap: t 3 , p 31-32 and Ap: t 4 , p 33-35 respectively).

The State's Amended Answer (Ap: t 4 , p 34 ) denied paragraph 3 of the Complaint that the County had the power and authority to issue revenue bonds to pay the cost of, or to make loans for, the acquisition of certain educational facilities projects. (Ap: t 2 , p 9-10).

The State's Amended Answer (Ap: t 4 , p 34 ) denied paragraph 6 of the Complaint that the issuance of the Bonds constitutes a valid county and public purpose and is proper and lawful under the Constitution of the State of Florida. (Ap: t 2 , p 11 ).



The State's Amended Answer (Ap: t 4 , p 34 ) denied paragraph 14 of the Complaint that the County had lawful power and authority to enter into the Memorandum of Agreement with the School to make a loan to the School for financing the School's project and to take all other actions contemplated in the Bond Resolution and the Memorandum of Agreement (Ap: t 2 , p 13 ).

The State further challenged the Bond Issue claiming that since the School is unlawfully organized and there exists a specific statute for the organization of a private school corporation, Chapter 623, Florida Statutes, the School is unlawfully organized under the omnibus Corporations Not For Profit Statute, Section 617.01(1) Fla. Stat. (1989). Accordingly, the County may not authorize or issue revenue bonds of any type for such an unlawfully organized corporation. (Ap: t 4 , p 34 ).

An additional challenge to the Bond Issue by the State was that since, pursuant to Section 623.23, Fla. Stat. (1989), "all persons while acting in any public official capacity are hereby specifically prohibited from engaging in any manner in such administration, supervision, operation, financing and control of the affairs of a private school corporation". The School is a private school therefore the County may not authorize or issue Industrial Revenue Bonds for the benefit of the School. (Ap: t 4 , p 34 ).

A hearing on this cause was conducted before the Honorable Edward Fine, Judge of the Fifteenth Judicial Circuit; on January 8th and March 15, 1990. All substantive testimony was heard at the March 15, 1990 hearing. (Ap: t 6, p 43-82 ). A Final Order validating the Bonds was rendered March 16, 1990. (Ap: t 1 , p 1-8 ).

It is from this Final Order validating the Bonds that this appeal ensues.

STATEMENT OF THE FACTS

This action was initiated March 16, 1989 by the County filing a Complaint with the Clerk of the Circuit Court of the Fifteenth Judicial Circuit of Florida in and for Palm Beach County, Florida. (Ap: t 2 , p 9-30).

The Pine Crest Preparatory School, Inc., hereinafter the "School" , was formed in January, 1959 as a for-profit corporation under the laws of the State of Florida. (Ap: t 8 , p 85 ). Although it had a Federal Tax Exemption, the School remained as a Florida for-profit corporation until September 26, 1989. (Ap: t 8 , p 86 ). At that time, in an ex-parte proceeding the School obtained a Broward County Circuit Court Order declaring the School to be a not-for-profit corporation under Chapter 617 Florida Statutes. (Ap: t 8 , p 87-94).

The School has its base in Fort Lauderdale, Florida. (Ap: t 12 , p 97-98). The Palm Beach County branch campus (the "Boca Campus") of the School is located in Boca Raton. (Ap: t 12 , p 97 ). It became part of the School when the School acquired Boca Raton Academy-A. (Ap: t 12 , p 97 ). The Bonds will generate funds, some of which will be used on the Boca Campus. (Ap: t 6 , p 55-57).

The Boca Campus has classes from pre-kindergarten through eighth grade. (Ap: t 6 , p 63 ). Boca Campus graduates continue through high school at the main campus of the School in Broward County. (Ap: t 6 , p 63 ). There are no classes offered beyond the eighth grade level at the Boca Campus. (Ap: t 6 , p 63 ).

Out of the \$3,214,000 bond issue proceeds, \$2,200,000 is going to refinance existing mortgages on the Boca Campus in place when the School purchased Boca Academy-A; \$500,000 is going to repay a working capital loan and only \$800,000 is going to be used to finance real new construction. (Ap: t 6 , p 57-60). The interest savings generated from refinancing taxable loans to a tax-free bond backed loan will finance existing teachers salary increases at the Boca Campus. (Ap: t 6 , p 59 ).

Students admitted to the School must meet two requirements. The first is the School sets minimum intelligence standards. (Ap: t 6 , p 61-63). The second is the payment of a substantial tuition for attending the School. (Ap: t 12 , p 97 ).

## SUMMARY OF ARGUMENT

### POINT ONE

The intended beneficiary of the bond issue proceeds is a private school and therefore prohibited by Florida law from receiving financial aid through the acts of public officials, i.e., the Palm Beach County Board of County Commissioners.

### POINT TWO

The County lacked the requisite municipal power to lend the bond proceeds to any school public or private since schools are not a municipal purpose of the County.

### POINT THREE

The project being financed is not of substantial benefit to the public and the County may not participate at all in such a project.

### POINT FOUR

The proposed bonds violate a Florida constitutional prohibition by giving public aid to a corporation which does not serve a public purpose.

POINT ONE

THE CIRCUIT COURT ERRED IN VALIDATING THE BOND ISSUE SINCE PALM BEACH COUNTY LACKED THE AUTHORITY TO ISSUE THE SUBJECT BONDS DUE TO A SPECIFIC STATUTORY PROVISION PROHIBITING PERSONS ACTING IN ANY PUBLIC OFFICIAL CAPACITY FROM ENGAGING IN ANY MANNER IN FINANCING A PRIVATE SCHOOL CORPORATION.

This is a case of first impression. Though this Court has determined the judicial inquiry into bond validation is limited, a court must still make four determinations:

(1) that the public body has the authority to issue the subject bonds;

(2) that the purpose of the obligation is real;

(3) that the bond issuer complies with the requirement of law, and;

(4) that the issuing agency may legally expend the proceeds for the contemplated purpose. State v. City of Panama City Beach, 529 So.2d 250 (Fla. 1988).

Palm Beach County is prohibited from expending the proceeds for the contemplated purpose. The School is unlawfully organized under Florida Statutes, Chapter 617. It is uncontroverted that the School is (a) private corporation whose sole purpose is to provide education through the operation of secondary and elementary schools. The School operates as a private school, as shown by testimony of the School president, Mr. William McMillan, (Ap: t 6 , p 61-63) and by definition of a private school as secondary or elementary school run and supported by private individuals or a corporation

rather than by a government or public agency. The American Heritage Dictionary, 1042 1980 Edition (Ap: t 10 , p 95 ). Florida Statutes, Chapter 623 provides for the incorporation of private school corporations. Such corporation must operate as not-for-profit corporations. Section 623.14, Fla. Stat. (1989). Chapter 623 specifically prohibits the financing of private schools through any manner of public assistance:

"Any corporation organized and existing under this act shall be administered, supervised, operated, financed and controlled exclusively (emphasis added) by private persons and private entities and their funds. All persons while acting in any public official capacity are hereby specifically prohibited (emphasis added) from engaging in any manner (emphasis added) in such administration, supervision, operation, financing and control of the affairs of such corporation".

Section 623.13, Fla. Stat. (1989).

The legislative intent clearly shows that private schools must remain completely separate from any government involvement. It must be noted that Chapter 623 provisions are "accumulative and supplemental to any powers and authority for the creation of corporation not-for-profit as set out in Chapter 617" the general not-for-profit corporation Chapter.

The School operated as a Florida for-profit corporation at the time this bond validation proceeding was begun. To avoid the restrictions of being a Chapter 623 corporation, the School obtained a Court Order in an ex-parte proceeding declaring it to be a Chapter 617 not for profit corporation. However, this action violated Florida Statutes, Section 617.01(1) and is therefore invalid.

"Corporations may be organized and incorporated under this Chapter for any one or more lawful purposes, not for pecuniary profit; provided however that corporations not for profit which may be incorporated under any other law of this state governing particular types of corporation may not be incorporated hereunder".

Section 617.01(1), Fla. Stat. (1989).

The meaning of the law in Florida Statutes, Section 617.01(1) is clear and must be given its plain meaning. Winter v. Playa del Sol, Inc., 353 So.2d 598 (Fla. 4th DCA 1977). This directive is mandatory and not permissive. "The words are clear and unambiguous and hence (the Court) need not resort to other rules of Statutory construction." Orange County Industrial Development Authority v. State, 427 So.2d 174 (Fla. 1983). "To hold otherwise would be to give the words an unreasonable construction; such unreasonable construction is not entitled to the same deference as a reasonable one". Id at 177 (citing Wakulla County v. Davis, 395, So.2d 540 (Fla. 1981), superceded by Statute (Metropolitan Dade County v. Bridges, 402 So.2d 411 (Fla. 1981)).

The state legislature clearly wants special requirements and restrictions or powers for this special type of corporation. This type of restriction is consistent with many other special purpose not for profit corporations, including but not limited to, Condominium Associations, Section 718.111, Fla. Stat. (1989), Mobile Home Owner Associations, Section 616.01, Fla. Stat. (1989), Cooperative Associations, Section 619.01, Fla. Stat. (1989).

The School may not escape the special statutory prohibition against financial aid of any manner from public officials, i.e., the Palm Beach Board of County Commissioners, Section 617.01(1), Fla. Stat. (1989), by denying their ability to incorporate under



Chapter 623. Clearly, the School could have dissolved itself and placed its assets into a new entity properly organized under Chapter 623. In any event, Chapter 623 controls corporations organized for the purpose of operating private schools such as this School and therefore the County is prohibited from loaning the bond proceeds to the School.

POINT TWO

THE CIRCUIT COURT ERRED IN VALIDATING THE INDUSTRIAL DEVELOPMENT BONDS WHERE THERE WAS NOT MUNICIPAL POWER TO LEND THE BOND PROCEEDS TO A PRIVATE SCHOOL.

Although the County by its Charter has home rule power it is still limited in its municipal powers to municipal functions. City of Miami Beach v. Fleetwood Hotel, Inc., 261 So.2d 801 (Fla. 1972). Public education is not a municipal function, but rather a state function which has been delegated exclusively to County School Boards. Art. IX, Fla. Const. Public officials are prohibited from any involvement in any manner in the financing of private schools. Section 623.12, Fla. Stat. (1989).

As persuasively set forth by Justice McDonald in the dissent in State v. City of Panama City Beach, 529 So.2d 250 (Fla. 1988) (quoting City of Miami Beach v. Fleetwood Hotel, Inc., 261 So.2d 801 (Fla. 1972)), "municipal powers 'are to be interpreted and construed in reference to the purposes of the municipality and if reasonable doubt should arise as to whether a municipality possesses a specific power, such doubt should be resolved against' such municipality". Id. at 257.

Lending money to any private school, particularly one which operates under a selective admissions policy, fails to serve any valid municipal or county purpose. In any event, power over education has been given exclusively to the county school boards. Art. IX, section 4, Fla. Const.

POINT THREE

THE CIRCUIT COURT ERRED IN VALIDATING BONDS WHERE  
THE PROJECT WAS NOT OF SOME SUBSTANTIAL BENEFIT TO  
THE PUBLIC.

The School by limiting admission only to those with ability to pay and those who it selects through self administered intelligence tests serve those few persons wealthy enough and smart enough to be considered for enrollment in the School. This select group is not "the public".

The public is "not all the people, nor most of the people, nor very many of the people, but so many of them as contradistinguishes them from a few". Black's Law Dictionary, 1104, (5th ed. 1979). Since the School does not service the public and is admittedly private in nature, "neither the State nor any of its subdivisions may expend public funds for or participate at all in a project that is not of some substantial benefit to the public", State v. Miami Beach Redevelopment Agency, 392 So.2d 875 (Fla. 1980).

POINT FOUR

THE CIRCUIT COURT ERRED IN VALIDATING THE BOND ISSUE WHERE AID IS BEING GIVEN TO A CORPORATION WHICH DOES NOT SERVE A PUBLIC PURPOSE CONTRARY TO THE FLORIDA CONSTITUTION, ARTICLE VII, SECTION 10.

The Florida Constitution prohibits generally giving aid to corporations with a few exceptions, Art. VII, Section 10, Fla. Const. One of the exceptions is the issuance of industrial development bonds for specific purposes, to-wit: "to finance or refinance the cost of capital projects for industrial or manufacturing plants. Art. VII, Section 10(c)(2), Fla. Const.

To implement Florida Constitution, Art. VII, Section 10(c)(2), the Florida legislature enacted Florida Statutes, Chapter 159, Part II, the Florida Industrial Development Financing Act describing specifically what was an industrial or manufacturing plant. If "the contested project", here, primarily the refinancing of an existing private elementary and middle school plus providing the School with working capital monies, "does not fall within the authorized type then the project must ... pass scrutiny under the .... paramount public purpose" test. Orange County Industrial Development Authority v. State, 427 So.2d 174 (Fla. 1983). See also Nohrr v. Brevard County Educational Facilities Authority, 247 So.2d 304 (Fla. 1971).

The School's project is primarily the restructuring of the debt of an existing school, refinance or finance the building of a swimming pool and/or gymnasium and give the School more working capital. The debt restructuring and the buildings are for the Boca Campus. The Boca Campus teaches elementary through the eighth grade. Even at the main campus in Broward County, the school offers no classes beyond the high school level.

Projects allowed to be financed by Industrial Development Bonds are defined in the Florida Industrial Development Financing Act and include specific educational facilities. Section 159.27, Fla. Stat. (1989). Educational facilities are defined as:

"...property, limited to a structure suitable for use as a dormitory or other housing facility for a dining facility, that is operated in the public sector and used for or useful in connection with the operation of an institution for higher education, as defined in s. 243.20(8), which offers the baccalaureate or a higher degree and that is constructed in compliance with applicable codes as determined by appropriate state agencies".

Section 159.27(22), Fla. Stat. (1989)

An institution for higher education is expressly defined as:

"...an educational institution which by virtue of law or charter is an accredited, non profit educational institution empowered to provide a program of education beyond the high school level".

Section 243.20(8), Fla. Stat. (1989).

The School's project is not permissible under Chapter 159, since it is not an enumerated project therein. The School's project must run the gauntlet of the Orange County Industrial Development Authority paramount public purpose test.

The School's project fulfills no paramount purpose of the County. First it is not even a County purpose since the power regarding education belongs to the Palm Beach County School Board. Art. IX, Section 4, Fla. Const.. Further, there is no substantial benefit to the public since public access is severely limited by money and arbitrary student intelligence tests. The benefit here is to the wealthy private few who can afford to attend the School. The County,

as a political subdivision of the State, cannot participate at all in a project that is not of some substantial benefit to the public. State v. Miami Redevelopment Agency, 392 So.2d. 875, 886 (Fla. 1980).

Although this Court commented that public interest was served by facilitating private economic development, Linscott v. Orange County Industrial Development Authority, 443 So.2d 97 (Fla. 1983), clearly that is not happening here where the proceeds are going primarily to restructure existing debt of an existing facility, and provide working capital for the beneficiary corporation itself., i.e., the School. There is no factual basis for economic development, only continuance of the existing private school. (Ap: t 6 , p 43-82).

The Court's comment in Linscott, at 101, that "public bodies cannot appropriate public funds indiscriminately, or for the benefit of private parties where there is not a reasonable and adequate public interest" is well taken here where there is neither any substantial public interest served or municipal power.

The Court commented that the Linscott case took much of the viability out of the paramount public purpose test. State v. City of Panama City Beach, 529 So.2d 250, 254 (Fla. 1988). The County must still show that a public purpose is served and clearly that purpose is not present in the School's project or within the County's municipal power.

CONCLUSION

Appellants hereby respectfully request, on the grounds stated herein, that his Court reverse the Final Judgement validating the Three Million Two Hundred Fifty-Four Thousand Dollar (\$3,254,000) Industrial Development Revenue Bond Issue or remand this case to the Trial Court for a determination of the issues raised by the State in these proceedings.

Respectfully submitted,



DAVID H. BLUDWORTH, State Attorney  
15th Judicial Circuit of Florida



HENRY PHILLIP YORSTON  
Assistant State Attorney  
Harvey Building, 7th Floor  
224 Datura Street  
West Palm Beach, Florida 33401  
Telephone: (407) 355-3699  
Florida Bar No.: 0664413

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been mailed to Alan Pellingra, Esquire, Gunster, Yoakley, Criser & Stewart, P.A., Suite 351, 1909 Glades Road, Boca Raton, Florida 33431; William G. Capko, Esquire, Assistant County Attorney, Suite 601, 301 North Olive Avenue, West Palm Beach, Florida 33401 and Hank Morgan, Esquire, Holland and Knight, 92 Lake Wire Drive, Post Office Box 32092, Lakeland, Florida 33802, on this the 14<sup>th</sup> day of MAY, 1990.

  
HENRY PHILLIP YORSTON