

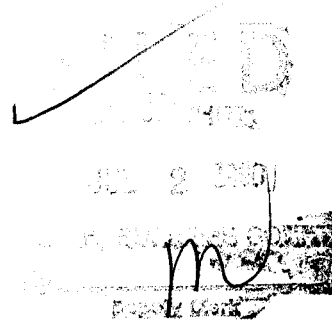
SUPREME COURT OF FLORIDA

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

REPLY OF APPELLANT
STATE OF FLORIDA

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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 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 Reply 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 Rules of Appellate Procedure 9.110(o) a supplemental 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

Abbreviations used throughout this reply are:

IB = Initial Brief
An = Answer Brief

SUMMARY OF ARGUMENT

POINT I

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, in any manner.

POINT II

The County does not have the power to issue the bonds because the State Constitution and Florida Statutes reserved to the State Board of Education and the local boards districts any governmental authority and prohibited public officials from financing private school in any manner.

POINT III

The proposed bond proceeds are for a purpose which neither serve a public purpose nor provides a substantial benefit to the public and therefore are not authorized.

ARGUMENT

POINT I

PINE CREST IS IMPROPERLY CONSTITUTED AS A NOT-FOR-PROFIT CORPORATION UNDER CHAPTER 617, FLORIDA STATUTES AND IS GOVERNED BY CHAPTER 623 FLORIDA STATUTES.

The County is simply mistaken that the School operations could not have become a private school corporation. (An 6). Florida Statutes provides that the provisions of Chapter 617, Fla. Stat. (1989), apply to Chapter 623 corporations. Section 623.14 Fla. Stat. (1989). This would include the ability to merge a chapter 607 corporation such as the School into a Chapter 623 private school corporation through Section 617.015(b), Fla. Stat. (1989)

To carry out the changeover, a Chapter 623 private school corporation would have to be created. Following the creation of this corporation a merger between the School and the private school corporation would be effected pursuant to a plan of merger, Section 617.051(2) (b), Fla. Stat. (1989). The Chapter 623 corporation would be the surviving corporation. Section 617.051(1) (b), Fla. Stat. (1989). The result would be that everything related to the School would be carried on through the surviving corporation i.e., contracts etc. In fact, the only change would be that the new corporation would then include the words private school it its corporate name. Section 623.02, Fla. Stat. (1989)

At the time of the attempted unlawful conversion, September 26, 1989, section 623.14, Fla. Stat. (1989), was in effect having been enacted in 1959 as was section 617.051, Fla. Stat. (1989) having been last amended in 1983. The School could have availed itself of these laws and continued its business via the statutory merger reorganization as have hundreds of other corporations in the State of Florida profit and non-profit alike.

POINT II

THE COUNTY DOES NOT HAVE THE POWER TO ISSUE THE BONDS BECAUSE THE STATE CONSTITUTION AND FLORIDA STATUTES RESERVED TO THE STATE BOARD OF EDUCATION AND THE LOCAL BOARDS DISTRICTS ANY GOVERNMENTAL AUTHORITY REGARDING EDUCATION AND PROHIBITED PUBLIC OFFICIALS FROM FINANCING PRIVATE SCHOOL IN ANY MANNER.

Clearly, the Florida Constitution has specifically delegated all governmental authority and power regarding education to the State Board of Education, Article IX, Section 2, Fla. Const. and the local school districts Article IX, Section 4, Fla. Const. The Florida Statutes do not address the administration, supervision, operating, financing and control of private schools such as the School except for the prohibition against any of these activities being performed "in any manner" by any person acting in their public official capacity. Section 623.13, Fla. Stat. (1989)

The reason of course is abundantly clear. The basic rights of persons in Florida include the right to enjoy and defend life and liberty and to pursue happiness. Art. I, Section 2, Fla. Const. Further, each natural person has the right to be let alone and free from government intrusion into his private life except or otherwise provided in the Florida Constitution. Article I, Section 23. Thus the legislative intent enacted in Chapter 623 giving private schools the benefit of non-profit status without any intrusion from government into such basic rights reinforces the basic rights guaranteed in the Florida Constitution.

Section 623.13, Fla Stat. (1989) is applicable to the School and explicitly prohibits the County from engaging "in any manner" in the financing of a private school corporation. This includes the issuance of the contemplated Industrial Revenue Bonds which are the subject of this appeal.

POINT III

THE CIRCUIT COURT ERRED IN VALIDATING THE BOND ISSUE WHERE AID IS BEING GIVEN TO A CORPORATION WHICH DOES NOT SERVE A PUBLIC PURPOSE.

The State reasserts its argument regarding this point (IB 14) that the public purpose test is not met. The County's argument does not refute the State's argument on this point.

The State agrees with the County that what is a sufficient public purpose for a bond issue is flexible and not static (An 11), however the public purpose for the Bond contemplated in this appeal do not meet the sufficiency test.

The approved projects laundry list compiled by the County (An 17) are all for projects which deal with real expansion and new projects and not refinancing the acquisition of a corporation or providing working capital to a corporation. The Industrial development Financing Act does not contemplate such authority. Chapter 159, Part II, Fla. Stat. (1989) The State has set forth the types of projects for which educational facilities may be built in the Initial Brief (IB 15).

Chapter 159, Part II explains with specificity what may be done with Revenue Bonds for Industrial Development and simply does not include the project intended to be built with the proceeds of these Bonds.

The general powers given to the County for using industrial development bonds are limited to the purpose (emphasis added), of providing funds to pay all or any part of the cost (emphasis added), of any project.

The definition of cost of a project is defined as follows:

- "(2) "Cost," as applied to any project, shall embrace:
- (a) The cost of construction;
 - (b) The costs of acquisition of property, including rights in land and other property, both real and personal and improved and unimproved;
 - (c) The cost of demolishing, removing, or relocating any buildings or

structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated;

(d) The cost of all machinery and equipment, financing charges, interest prior to and during construction, and, for a reasonable period after completion of construction, the cost of engineering and architectural surveys, plans, and specifications; and

(e) The cost of consultant and legal services, other expenses necessary or incident to determining the feasibility or practicability of constructing such project, administrative and other expenses necessary or incident to the construction of such project, and the financing of the construction thereof, including reimbursement to any state or other governmental agency or any lessee of such project for such expenditures made with the approval of the local agency that would be costs of the project hereunder had they been made directly by the local agency."

Section 159.27(2), Fla. Stat., 1989

Therefore, the County's project does not meet the statutory requirements to allow the issuance of Industrial Development Revenue Bonds.

The Court had the ability to review the public purpose of the project. State v. City of Panama City Beach, 529 So.2d 250. In State v. Leon County, 400 So.2d. 949, this Court reviewed the public purpose of the project and found that the project did in fact fulfill a paramount public purpose. Bonds may not be issued for a non-municipal purpose. State v. City of Panama City Beach, Supra. The financing of a dormitory and a cafeteria in Nohrr v. Brevard County Educational facilities Authority, 247 So.2d. 304 (Fla. 1971) for a private college, an institution of higher learning is specifically authorized by Chapter 159 and is distinguishable from the case at bar. Nohrr recognized the benefit of utilizing financing such as contemplated in the case for the purpose of benefiting an institution of higher education since higher education is considered a privilege and not a right. However, this is distinguishable from the case at bar, wherein the government is seeking to help finance a private secondary institution which the State is mandated by the constitution of this state to provide and is indeed providing the same education services free of charge. Art. IX, Fla. Const.

There is no substantial benefit to the public as previously argued in the Initial Brief (IB 15).

There is no allowable purpose for which the Bonds are authorized.

CONCLUSION

The County's Answer Brief does not refute the State's Arguments made previously in the Initial Brief.

THEREFORE, for the reasons stated in the Initial Brief and herein, Appellant again respectfully requests that this 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,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished via U. S. mailed to the following persons this 27th day of June, 1990:

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