

Supreme Court of Florida

No. 76,984

IN RE: ADVISORY OPINION
TO THE GOVERNOR -
LAND ACQUISITION TRUST FUND

[December 20, 1991]

The Honorable Bob Martinez
Governor, State of Florida
The Capitol
Tallahassee, Florida 32399

Dear Governor Martinez:

We have the honor to acknowledge your communication of November 27, 1990, requesting our advice pursuant to article IV, section 1(c), of the Florida Constitution, relating to certain executive powers and duties.

The pertinent parts of your letter read as follows:

Pursuant to Article **IV**, Section 1(c) of the 1968 Constitution of the State of Florida (the "1968 Constitution"), your opinion is requested as to the interpretation of Article **XII**, Section 9(a)(1) of the 1968 Constitution as it affects my executive duties and responsibilities (described below) as chief executive of the State of Florida (the "State").

Pursuant to Sections 215.57-215.83, Florida Statutes, the State Bond Act, in my capacity as chairman of the governing board of the Division of Bond Finance of the Department of General Services of the State of Florida (the "Division"), I am charged with the responsibility of directing the structuring of revenue bonds to be issued by the State pursuant to Article **XII**, Section 9(a)(1) of the 1968 Constitution and Section 375.051, Florida Statutes.

The Department of Natural Resources through the Division intends to issue revenue bonds pursuant to Article **XII**, Section 9(a)(1) of the 1968 Constitution, as implemented by Section 375.051, Florida Statutes, under the "Preservation 2000" program established pursuant to Section 259.101, Florida Statutes, to acquire certain lands, water areas and related sources in the furtherance of outdoor recreation and natural resources conservation. Under the Preservation 2000 program and pursuant to Section 375.051, the revenue bonds will be payable from monies required to be deposited in the Land Acquisition Trust Fund pursuant to Section 201.15(1)(a) and Section 212.235(5), Florida Statutes. A question has arisen regarding the date the Land Acquisition Trust Fund terminates pursuant to Article **XII**, Section 9(a)(1) of the 1968 Constitution. Below is a brief description of the history of the creation of the Land Acquisition Trust Fund.

The 1885 Constitution of the State of Florida (the "1885 Constitution") was amended in 1963 (the "1963 Amendment") to add Article **IX**, Section 17 which authorizes the issuance of revenue bonds for the purpose of acquiring lands, water areas and related resources in furtherance of outdoor recreation, natural resources conservation and related facilities. The 1963 Amendment created the Land Acquisition Trust Fund for the purpose of collecting revenues and tax sources designated by the legislature for deposit therein to serve the purposes of the Land Acquisition Trust Fund, including the payment of such revenue bonds. The 1963 Amendment provided that the existence of the Land Acquisition Trust Fund was to "continue from the date of the adoption of this

amendment for a period of fifty years." When the 1963 Amendment was adopted, therefore, the Land Acquisition Trust Fund was to terminate in 2013.

In 1968, the 1885 Constitution was superseded by the adoption of the 1968 Constitution. The 1968 Constitution did not initially contain a provision continuing Article IX, Section 17 of the 1885 Constitution.

In 1972, Article XII, Section 9(a)(1) of the 1968 Constitution was amended (the "1972 Amendment") to incorporate, by reference, the provisions of Article IX, Section 17 of the 1885 Constitution. The 1972 Amendment (effective January, 1973) provides:

Article IX, Section 17, of the Constitution of 1885, as amended, as it existed immediately before this Constitution, as revised in 1968, became effective, is adopted by this reference as a part of this revision as completely as though incorporated herein verbatim, except revenue bonds, revenue certificates or other evidences of indebtedness hereafter issued thereunder may be issued by the agency of the state so authorized by law.

The question presented is whether the fifty-year period during which the Land Acquisition Trust Fund shall exist as provided in the 1963 Amendment terminates in 2013, or whether the period started over again commencing with the effective date of the 1972 Amendment and thus terminates in 2023 as a result of the incorporation by the 1972 Amendment of the provision of Article IX, Section 17, of the 1885 Constitution which provides that the Land Acquisition Trust Fund "shall continue from the date of the adoption of this amendment for a period of 50 years."

The resolution of this question is necessary to permit me to perform my executive duties and responsibilities as chief executive of the State and Chairman of the Division to structure the Preservation 2000 revenue bonds in the manner most beneficial to the State. It would be in the best financial interest of the State and would enable the State to better provide for natural resource conservation and outdoor recreation to permit the bonds issued pursuant to the 1972 Amendment to have a maximum maturity date of January, 2023.

Upon receipt of your communication, an interlocutory order was entered announcing that the question propounded was answerable and directing all interested parties to file briefs. No briefs have been filed.

The question to be answered requires us to determine whether the land acquisition trust fund terminates in **2013** or in **2023**.

A review of the history of the constitutional provision in issue is necessary to properly understand the question propounded. The land acquisition trust fund was created in **1963** through an amendment to the **1885** Constitution of the State of Florida. That amendment became article IX, section 17, and it read as follows:

Bonds; land acquisition for outdoor recreation development.--The outdoor recreational development council, as created by the **1963** legislature, may issue revenue bonds, revenue certificates or other evidences of indebtedness to acquire lands, water areas and related resources and to construct, improve, enlarge and extend capital improvements and facilities thereon in furtherance of outdoor recreation, natural resources conservation and related facilities in this state; provided, however, the legislature with respect to such revenue bonds, revenue certificates or other evidences of indebtedness shall designate the revenue or tax sources to be deposited in or credited to the land acquisition trust fund for their repayment and may impose restrictions on their issuance, including the fixing of maximum interest rates and discounts.

The land acquisition trust fund, created by the **1963** legislature for these multiple public purposes, shall continue from the date of the adoption of this amendment for a period of fifty years.

In the event the outdoor recreational development council shall determine to issue bonds for financing acquisition of sites for multiple purposes the state board of administration shall act as fiscal agent, and the attorney general shall handle the validation proceedings.

All bonds issued under this amendment shall be sold at public sale after public advertisement upon such terms and conditions as the outdoor recreational development council shall provide and as otherwise provided by law and subject to the limitations herein imposed.

(Emphasis added.) This provision was not carried over in the 1968 constitutional revision; rather, that constitution expressly prohibited the issuance of any additional bonds under article IX, section 17, stating: "No additional revenue bonds shall be issued pursuant to Article IX, Section 17, of the Constitution of 1885, as amended." Art. XII, § 9(a), Fla. Const. (1968).

Subsequently, in 1972, this provision was resurrected by Senate Joint Resolution No. 292 and was adopted as part of the constitution during the general election of that year. The pertinent parts of that joint resolution read as follows:

Whereas, Article IX, Section 17 of the Constitution of 1885, as amended, originally authorized the issuance of revenue bonds to acquire lands, water areas and related resources and to construct, improve, enlarge and extend capital improvements and facilities thereon in furtherance of outdoor recreation, natural resources conservation and related purposes; and

Whereas, many worthwhile projects of great natural beauty and public benefit were acquired, preserved and improved with the proceeds of the revenue bonds issued pursuant to such authority; and

Whereas, the State Constitution, as revised in 1968, prohibited the further issuance of revenue bonds pursuant to said Article IX, Section 17, of the Constitution of 1885; and

Whereas, the governmental reorganization act of 1969, chapter 69-106, laws of Florida, acts of 1969, abolished the former outdoor recreational development council and transferred its duties and responsibilities to the department of natural resources, division of recreation and parks; and

Whereas, it is found to be essential and in the public interest to reinstitute such program of capital outlay financing for the above-stated purposes, through the agencies created by law to issue bonds and carry out recreation and conservation programs, now, therefore,

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Article XII, Section 9, Subsection (a), of the State Constitution is agreed to and shall be submitted to the electors of Florida for ratification or rejection at the general election to be held in November, 1972:

SECTION 9. Bonds.--

(a) ADDITIONAL SECURITIES. ~~No additional revenue bonds shall be issued pursuant to Article IX, Section 17, of the Constitution of 1885, as amended.~~ Article IX, Section 17, of the Constitution of 1885, as amended, as it existed immediately before this Constitution, as revised in 1968. became effective, is adopted by this reference as a part of this revision as completely as though incorporated herein verbatim, except revenue bonds. revenue certificates or other evidences of indebtedness hereafter issued thereunder may be issued by the agency of the state so authorized by law.

The 1972 amendment adopts section 17 verbatim except that it contains a provision allowing the legislature to authorize a state agency to issue the bonds. Previously, section 17 provided for the bonds to be issued by the outdoor recreation development council.

The controlling question is whether the "period of 50 years" mentioned in the constitution commenced at the date on

which the amendment was adopted in 1963 or at the date on which it was readopted in 1972. We find that the words of the adopting language in the 1972 amendment require us to hold that the fifty-year period commenced from 1963. It is clear that the authors of the 1972 amendment intended that section 17 "as it existed immediately before" the 1968 Constitution would be "adopted by reference as part of this revision as completely as though incorporated herein verbatim."

Under these circumstances, we must advise you that we find no intent to extend the land acquisition trust fund an additional ten years and that, in our view, the land acquisition trust fund terminates in 2013 under the current provision of article XII, section 9(a), as it now exists.

Respectfully,

/s/ Leander J. Shaw
Leander J. Shaw

/s Ben F. Overton
Ben F. Overton

/s/ Parker Lee McDonald
Parker Lee McDonald

/s/ Raymond Ehrlich
Raymond Ehrlich

/s/ Rosemary Barkett
Rosemary Barkett

s/ Stephen H. Grimes
Stephen H. Grimes

s/ Gerald Koaan
Gerald Kogan

Original Proceeding -

William A. Buzzett, Assistant General Counsel, Governor's Legal
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for Petitioner