OA 10-4-91

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES,

Petitioner,

vs. CASE NUMBER 78-763

HONORABLE E. D. "BUD" DIXON, ETC.,

Respondent.
_____/

INITIAL BRIEF OF PETITIONER

JOSEPH R. BOYD, ESQUIRE
WILLIAM H. BRANCH, ESQUIRE
BOYD & BRANCH, P.A.
1407 Piedmont Drive East
Post Office Box 14267
Tallahassee, Florida 32317
(904) 386-2171

and

CHRISS WALKER, ESQUIRE
DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES
1317 Winewood Boulevard
Tallahassee, Florida 32301
(904) 488-9900

Attorneys for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

FLORIDA STATUTES

OTHER AUTHORITIES

STATEMENT OF THE CASE AND FACTS

The Department of Health and Rehabilitative Services, along with the State of Florida, accepts the statement of facts and the statement of the case set forth in the Florida Attorney General's brief. HRS also adopts the argument set forth in the Attorney General's brief, and supplements the argument with the following argument directed to part two of the brief filed by the State of Florida.

SUMMARY OF ARGUMENT

Petitioner adopts the summary of argument of the Florida Attorney General's Office in regard to arguments I and III of the Attorney General also adopted by HRS.

Section 61.181(5), Florida Statutes, is not violative of the Florida Constitution. The payment scheme established by the Legislature through the section does not pledge or loan money of the State to a child support obligor whose personal check for the payment of child support has been returned for nonsufficient funds.

The Clerk of the Court, by its statutorily imposed administrative functions through its local domestic relations depository, acts as a clearinghouse for the collection and disbursement of child support and alimony payments. If an obligor's personal check is not backed by sufficient funds after payment has already been made by the Clerk to the obligee, a mechanism has been established by the Legislature whereby the local depository can obtain reimbursement for the sums paid out.

Therefore, the Clerk of the Court is not "loaning" money from its own account to the obligor.

The statutory scheme establishing the receipt and payment procedures of the various domestic relations depositories serves an extremely important public function. The protection of dependent spouses and children is an obviously high priority and function of any governmental body. This Court has recognized the public policy priority of providing such protection. Lamm v. Chapman, 413 So.2d 749 (Fla. 1982).

The statute is presumed to be valid, and the trial court's order to the contrary is clearly erroneous.

Even if one assumes for the sake of argument that public monies are being pledged for a private purpose as claimed by the Clerk of the Court, the statute in question is still not invalid. If there are public benefits to the extension of credit, then the legislative enactment and the extension of credit is constitutional. State Housing Finance Authority of Polk County, 376 So.2d 1158 (Fla. 1979). Ensuring that dependent children are supported by their parents instead of from the public treasury clearly serves an important public interest.

The Legislature has wide latitude in determining activities and functions of public interest which are to be funded through a county extending credit. Nohrr v. Brevard County Educational Facilities Authority, 247 So.2d 304 (Fla. 1971). The statutory mechanism created by section 61.181(5), clearly serves an important public function. As such, it does not violate the

Florida Constitution.

ARGUMENT I

GRANTING DIXON'S MOTION FOR REHEARING CONSTITUTES REVERSIBLE ERROR.

HRS adopts Argument I set forth in the Florida Attorney General's brief.

ARGUMENT II

SECTION 61.181(5), FLORIDA STATUTES, REQUIRING DIXON TO DISBURSE FUNDS PAID INTO THE CSDA BY PERSONAL CHECK WITHIN FOUR(4) DAYS OF RECEIPT, IS NOT VIOLATIVE OF ARTICLE VII, SECTION 10, OF THE FLORIDA CONSTITUTION.

1.Public Credit Has Not Been Pledged Or Loaned.

Section 61.181(5), Florida Statutes, requires the clerk of the court or the court depository official to disburse to the judicially identified recipient of child support or alimony funds presented by personal check within four days of their presentment. The trial court ruled that the four day turnaround period violates Article VII, Section 10 of the Florida Constitution. The trial court's order is clearly erroneous. The record illustrates that in only a minuscule number of instances have personal checks presented to the child support depository for the payment of child support been dishonored for insufficient funds. However, the trial court ruled that these few incidents invalidated the entire statute as violative of the Constitution.

When the Legislature enacted Section 61.181(5), it contemplated that personal checks might not be backed by sufficient funds to pay the amount drafted. In order to provide for this contingency, the Legislature established a state depository trust fund. (T- 73, 74) This provides a mechanism by which the clerk of the court or depository administrator can obtain reimbursement for dishonored checks. The trust fund is funded from other payor's fees that are collected and forwarded to the state depository trust fund and/or made up by legislative

appropriation.

In this case, the Honorable E.D. "Bud" Dixon, is not pledging or loaning money of the State or county, Instead, the Clerk acts as a clearinghouse for the receipt and disbursement of child support and alimony payments. Any shortfalls resulting from bad checks presented by obligors are reimbursed by the State from legislative appropriations earmarked to cover any checks returned for insufficient funds.

The implementation of the collection and disbursement of child support and alimony funds through the court depository as mandated by the statute is clearly logical. It is a legitimate exercise of the State's police power. It also serves a important public purpose -- that is, to provide for the expeditious receipt of funds by dependent children and former spouses for their use to purchase food, clothing and shelter. There is ample legislative determination of public policy that the support of dependents is indeed a public function and has a high priority on the government's agenda. See Section 409.2552, Florida Statutes (1987). This Court has spoken to society's concern for the care of children and dependent spouses. Lamm v Chapman, 413 So.2d 749 (Fla. 1982).

The determination of public purpose in Section 61.181(5) is presumed to be valid and should not be rejected by a court unless it is clearly erroneous as being beyond the power of the legislature. State v. Housing Finance Authority of Polk County, 376 So.2d 1158 (Fla. 1979).

Notwithstanding the creative attack by the Clerk of the Court upon Section 61.181(5), there is no public credit pledged or loaned if the Clerk follows the statutory plan. Indeed, the Clerk's self devised policy of holding all checks for fourteen days before disbursing payment to the recipients, and holding those funds in a non-interest bearing account in banks selected by the Clerk, constitutes an interest fee loan of the funds by the Clerk to the selected banks for the interest earned on the float of the checks. In view of the fact that 1.167 million dollars was paid into the court depository in 1988 by personal check, the float which accrued in favor of the bank and not in favor of the dependent children or divorced spouses residing in Polk County, Florida, was indeed substantial.

2. If This Court Finds That Credit Has Been Loaned Or Pledged, The Purpose Of The Pledge Or Loan Is A Public One.

In analyzing this case, it is important to note that the constraints of Article VII, Section 10, of the Florida Constitution do not prohibit the extension of credit by the State of by the county. Rather, this constitutional provision requires that the extension of credit by a county be for purposes which are for the public benefit, as contrasted to purely private ventures.

If there are public benefits to the extension of credit, even though outweighed by private benefits, the legislative enactment and the extension of credit is constitutionally permissible. This Court stated in State v. Housing Finance Authority of Polk County, supra, at age 1160,

> Under the Constitution of 1968, it is immaterial that the primary beneficiary of a project be a private party, if the public interest, even though indirect, is present and sufficiently strong.

In the case at bar, it is arguable that the eight child support payors, who bounced checks and whose total deficiency was less than $1000.00, are the primary beneficiaries of the Clerk being required to cover those bad checks. However, on a much larger scale, the public interest would have been greatly served if the Clerk had followed its requirement under the statute by timely disbursing the support payments to the dependent children and ex-spouses whose day to day welfare depends so greatly on the

receipt of those funds. It is noteworthy, that Mr. Dixon and his staff testified that there were numerous instances in which they received complaints from recipients about the tardy disbursement by the Clerk of child support. (H. 40)

The utilization of depositories or intermediaries to receive claims and to disburse monies owed on those claims, such as child support and alimony, is well known and is well accepted. in O'Mally v. Florida Insurance Guarantee Association, 257 So.2d 9 (Fla. 1971), the Legislature had established a mechanism whereby the person who were insured through an insurance company which subsequently became insolvent could obtain reimbursement for their claims through a private corporation which was reimbursed and supervised by the Treasurer's office. It was claimed that this statutory scheme was an inefficient and unconstitutional exercise of governmental power, and the payments being made were loans by the State. This Court rejected that argument.

In the present case, the Clerk, as the administrator of the child support depository, is charged by statute with disbursing funds within four days of receipt of payment by personal check. If there are deficiencies in those checks or if the checks bounce, there are well established mechanisms for the clerk to receive reimbursement for those funds. Furthermore, the Clerk can receive reimbursement for the cost of pursuing collection of the bad checks. The welfare of the recipient dependents is a legitimate exercise of social concern and the State's public purpose of ensuring that dependent children are supported by

their parents and not from the State's coffers. Lamm v. Chapman, supra.

Certainly, the care for dependent children and spouses is at least as important as providing a facility for Mickey Mouse and his friends to inhabit. State v. Reedy Creek Improvement District, 216 So.2d 202 (Fla. 1968).

Article VII, Section 10, has been construed to provide wide latitude to the Legislature in determining those activities which are public and can be funded via the county extending credit. Nohrr v. Brevard County Educational Facilities Authority, 247 So.2d 304 (Fla. 1971). The full faith and credit of Florida and Polk County is not endangered by the legislative scheme of Section 61.181(5) and the State's depository trust fund. Any bank honoring a check does not have the authority to call forth the full faith and credit of the State, but rather can look to the monies lawfully appropriated by the Legislature in its exercise of its taxing and spending authority to make good any deficiency of any bounced check by any child support obligor.

As pointed out in the Attorney General's brief, the trial court misconstrued the Constitution's prohibition against extending credit by county government. The trial court's construction was clearly erroneous, and should be corrected by this Court reversing the trial court's order.

ARGUMENT III

THE LOWER COURT ERRED WHEN IT FAILED TO LIMIT ITS HOLDING TO THE CENTRAL DEPOSITORY FOR THE TENTH JUDICIAL CIRCUIT OF POLK COUNTY.

HRS adopts the Attorney General's third argument.

CONCLUSION

The Department of Health and Rehabilitative Services respectfully requests this Honorable Court reverse the trial court's order and hold that Section 61.181(5) Florida Statutes, is constitutional on its face and as applied.

JOSEPH R. BOYD, ESQUIRE
WILLIAM H. BRANCH, ESQUIRE
BOYD & BRANCH, P.A.
1407 Piedmont Drive East
Tallahassee, Florida 32312
(904) 386-2171

and

CHRISS WALKER, ESQUIRE
DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES
1317 Winewood Boulevard
Tallahassee, Florida 32301
(904) 488-9900

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to **VICTOR J. TROIANO, ESQUIRE**, Post Office Drawer 829, Lakeland, Florida 33802, **JOSEPH LEWIS, JR., ESQUIRE**, Department of Legal Affairs, The Capitol, Suite 1501, Tallahassee, Florida 32399-1050, **FRED W. BAGGETT, ESQUIRE**, Post Office Drawer 1838, Tallahassee, Florida 32302 and **STEVEN CARTA, ESQUIRE**, Post Office Box 1686, Fort Myers, Florida 33902, this 24th day of September, 1991, by U. S. Mail.

WILLIAM H. BRANCH, ESQUIRE