IN THE SUPREME COURT OF FLORIDA

BERNARD J. PENN,

Appellant,

vs. Case No. 81,201

FLORIDA DEFENSE FINANCE AND ACCOUNTING SERVICE CENTER AUTHORITY, et al.,

Appellees.

ANSWER BRIEF OF APPELLEE, FLORIDA DEFENSE FINANCE AND ACCOUNTING SERVICE CENTER AUTHORITY

On Appeal from the Circuit Court in and for Escambia County, Florida

Case No.: 92-5672-CA-01

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PRELIMINARY STATEMENT

Appellant, Bernard J. Penn, shall be referred to as "Penn" herein. Appellee, Florida Defense Finance and Accounting Service Center Authority shall be referred to as "the Authority." References to the Appendix shall be "App." followed by the referenced Appendix number and page number, as, for example, "App. 1, p. 15."

STATEMENT OF THE CASE AND OF THE FACTS

This is an appeal from a final judgment of the Circuit Court of Escambia County validating revenue bonds to be issued by the Florida Defense Finance and Accounting Service Center Authority ("the Authority"), a public instrumentality created pursuant to the Interlocal Cooperation Act of 1963.

Pursuant to the Interlocal Cooperation Act, the Authority adopted a resolution on December 11, 1992, providing for the issuance by the Authority of not exceeding $100,000,000.00 of its revenue bonds, series 1992 (App. 1, Complaint for Validation, Ex. F). The bonds are to be issued for the public purpose of financing necessary public improvements to assist the Department of Defense (DOD) in effecting and implementing a program of economic development, including financing the acquisition, construction, equipping, leasing, subleasing, maintenance and operation of a Defense Finance and Accounting Service Center and related ancillary facilities, including office and administrative buildings and related child care, health club, computer center, parking facilities and other facilities to be used by DOD as a finance and accounting service center (App. 1, p. 11).

On December 11, 1992, the City of Pensacola adopted a resolution approving the financing of the cost of the project as provided in the Interlocal Agreement, approving the resolution providing for the issuance of the bonds by the Authority, and authorizing and approving the lease of the project from the Authority to the City (App. 1, Ex. D). On December 10, 1992, Escambia County adopted a resolution approving the financing of the

cost of the project as provided in the Interlocal Agreement, and approved the resolution authorizing the issuance of the bonds, and authorizing and approving the lease of the project from the Authority to the County (App. 1, Ex. E).

On December 11, 1992, the Authority filed a Complaint for Validation in the Circuit Court for Escambia County, Florida, wherein the Authority requested that the court enter a show cause order as to why the relief requested in the complaint should not be granted, and the Resolution, the City Authorizing Resolution, the County Authorizing Resolution, the Bonds, the City Lease, the County Lease, the City Tax Increment Ordinance, the County Tax Increment Ordinance, the Indenture, the Mortgage and the Interlocal Agreement and proceedings related thereto, be validated (App. 1). The referenced agreements and resolutions were incorporated in the complaint as exhibits. (See App. 1).

On December, 11, 1992, the court entered a show cause order, with the notice of the bond validation hearing to be held on January 4, 1993 (App. 2). The order was duly published for the first time in the Pensacola News Journal on December 14, 1992. Thereafter, the State Attorney on December 31, 1992, filed an Answer to the complaint (App. 3).

At the bond validation hearing, witnesses were called by the Authority, and the State Attorney was present to cross-examine witnesses and call witnesses. Appellant Penn was present at the final hearing, but did not seek intervenor status at that hearing. However, he was afforded the opportunity to speak, and did so (App.

10, p. 15). He had no witnesses or other evidence to present, however. Unbeknownst to the trial court at the time of the final hearing, Penn had filed a "Motion for Continuance and Answer" on December 31, 1992. However, Penn did not bring this to the attention of the trial court at the hearing (App. 10, pp. 4-5, 22), and accordingly, the court did not recognize him as an intervenor.

A final judgment was entered by the court on January 4, 1993 (App. 4). Thereafter, Penn filed a Petition and Affidavit for Rehearing (App. 5). The Authority moved to strike the petition (App. 6), and Penn responded to said motion, wherein he indicated that his "second answer" contained the substance of what he would have testified to if he had been allowed to testify at the final hearing (App. 7). This "second answer" was filed together with Penn's Motion for Rehearing.

On January 15, 1993, the trial court denied the Authority's motion to strike Penn's Motion for Rehearing, and denied the Motion for Rehearing (App. 8). At that hearing, Penn was afforded an additional opportunity to present evidence and testimony, and he spoke on his own behalf (App. 10, pp. 27-30). A copy of the transcript of the rehearing is incorporated as Appendix 10.

Penn filed his Notice of Appeal on February 2, 1993 (App. 9). Thereafter, the Authority filed a motion with the trial court to require Penn to post a supersedeas bond, and an order was entered requiring Penn to post a bond in the amount of $750,000, being conditioned upon Penn and a surety being liable for all damages incurred by the Authority as a result of Penn's appeal. These

matters have been referred to by the Authority in previous pleadings filed with this Court.

SUMMARY OF THE ARGUMENT

The scope of judicial inquiry in a bond validation proceeding is limited to whether the public body had authority to incur the obligation, whether the purpose of the obligation is legal, and whether the proceedings authorizing the obligation were proper. State v. City of Daytona Beach, 431 So.2d 981 (Fla. 1983). Consequently, questions concerning political issues, or the financial and economic feasibility of a proposed plan are to be resolved at the executive or administrative level, and are beyond the scope of judicial review in validation proceedings. Id.

In the instant case, Penn's Initial Brief raises a number of issues which are outside the scope of judicial inquiry in this proceeding and are not a proper subject for appeal. Further, many of Penn's arguments are now raised for the first time on appeal, and were not put at issue in the proceeding below. Penn should not be afforded the opportunity to raise such issues for the first time, but rather should be found to have waived any right to contest the bond validation on such grounds.

The final judgment entered by the trial court in this matter is supported by evidence and testimony in the record, and in fact, there is no conflicting testimony in the record other than Penn's pleadings and his testimony at the Motion for Rehearing, most of which concerns collateral matters beyond the proper scope of bond validation proceedings. There is nothing in the record nor in Penn's Initial Brief to demonstrate that any factual findings or legal conclusions by the trial court are not supported by the

record. Under these circumstances, a review of the record reflects competent, substantial evidence supporting the findings of the trial judge, and the judgment should be affirmed.

A review of the provisions of Chapter 75 will demonstrate that Penn's arguments regarding venue and notice of the hearing are totally without merit. Penn's challenge to the trial court's finding regarding the appropriateness of the City and County's emergency ordinances is likewise without merit, as Penn has cited nothing in the record nor any legal authority for his position. Nor will a review of the record substantiate Penn's argument that a referendum is required to approve the issuance of the bonds, because the general taxing powers of the City and County have not been pledged to the repayment of the bonds. Penn's attempt to raise Florida and federal constitutional issues lacks any legal basis. Finally, Penn seems to assert that there were a number of improprieties in connection with the final hearing; however, Penn was afforded an opportunity to present testimony and evidence at the final hearing as well as at the hearing on the Motion for Rehearing, and the hearing was in all respects proper and in compliance with the requirements of Chapter 75. For all the foregoing reasons, the final judgment entered by the trial court should be affirmed.

ARGUMENT

I. PLAINTIFF IS AUTHORIZED TO FILE PROCEEDINGS TO VALIDATE ITS OBLIGATIONS IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY UNDER THE AUTHORITY OF §75.02, FLORIDA STATUTES.

Penn's assertion that the Circuit Court of the First Judicial Circuit of Florida, in and for Escambia County, was not the proper jurisdiction or venue for the validation proceeding at issue is based upon a reading of an isolated section of Chapter 163, Part I, Florida Statutes (1991), without considering other sections of the Florida Statutes which Chapter 163, Part I, itself required be considered in pari materia.

The Circuit Court had jurisdiction and venue over the validation proceeding pursuant to Article V, Section 5, of the Constitution of the State of Florida and Chapter 75, Florida Statutes (1991), as amended. The validation procedure set forth in §163.01(7)(d) is permissive and is intended only to facilitate the process of validation when instituted by entities which are established by interlocal agreement and comprised of members located in more than one county. Section 163.01(13), Florida Statutes (1991), specifically provides that:

> The powers and authority granted by this section shall be in addition and supplemental to those granted by any other general, local, or special law. Nothing contained herein shall be deemed to interfere with the application of any other law. (emphasis added).

In the present case, the Florida Defense Finance and Accounting Service Center Authority was created by interlocal agreement between the City of Pensacola, located in Escambia County, and Escambia County. It is logical and proper that validation

proceedings would be filed in the circuit court in and for Escambia County, pursuant to the general law of Chapter 75, Florida Statutes (1991).

This Court held that the language of §75.02, Florida Statutes (1991) encompasses "all entities with authority to issue bonds." State v. Miami Beach Redevelopment Agency, 392 So.2d 875, 884 (Fla. 1980). Section 75.02 states that a complaint for validation purposes 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." Contrary to Penn's contention in the instant case, it was not necessary or required by Florida law that the validation action be instituted in Leon County, Florida. To require that such an action be brought only in Leon County would interfere with the venue mandated by §75.02, Florida Statutes (1991) and therefore be contrary to §163.01(13), Florida Statutes (1991).

In addition, such a requirement would impose significant inconvenience upon potential intervenors, such as Penn, by having to appear for validation proceedings in Leon County. Moreover, the provisions of §163.01(7)(d) were established as a matter of convenience for governmental, multi-jurisdictional bond issuers to avoid having to validate bonds for financings affecting multiple counties in each relative county across the state. The fact that the Authority did not find the provisions of §163.01(7)(d) convenient in this case, because no other counties were to be affected by the proposed bonds, in no way deprives the circuit court in and for Escambia County of proper jurisdiction.

Notwithstanding Penn's assertions, the provisions of §163.01(7)(d) are not jurisdictional but, at best, relate to the question of venue. The question as to venue raised by Penn has been determined properly by the circuit court in and for Escambia County. Absence a showing of some prejudice on account of alleged improper venue, there is no basis for this Court to reverse the circuit court's decision. See Taylor v. Dasilva, 401 So.2d 1161 (Fla. 3d DCA 1981) (when venue is proper in more than one county, choice rests with plaintiff and should not be disturbed without showing of substantial inconvenience).

II. PUBLICATION OF NOTICE OF THE BOND VALIDATION HEARING WAS GIVEN AT LEAST TWENTY DAYS PRIOR TO THE DATE OF THE HEARING, AS REQUIRED BY §75.06, FLORIDA STATUTES.

In his Initial Brief, Penn argues that the Order to Show Cause issued by the trial court on December 11, 1992 (App. 2), was not published in accordance with the requirements of §75.06, Florida Statutes.

That statute contains the following requirements:

> (1) Before the date set for hearing, the clerk shall publish a copy of the order in the county where the complaint is filed, and if plaintiff is a municipality or district in more than one county, then in each county, at least once each week for 2 consecutive weeks, commencing with the first publication, which shall not be less than 20 days before the date set for hearing but if there is a newspaper published in the territory to be affected by the issuance of the bonds or certificates, and in the county or counties the publication shall be therein unless otherwise ordered by the court. By this publication all property owners, taxpayers, citizens, and others having or claiming any right, title or interest in the county, municipality or district, or the taxable property therein, are made parties defendant to the action and the court has jurisdiction of them to the same extent as if named as defendants in the complaint and

personally served with process. §75.06, Fla. Stat. (1991)

Penn admits that the notice was first published in the Pensacola News Journal on December 14, 1992, and that the bond validation hearing was held on January 4, 1993 (Penn initial brief, pages 2-3).

Florida Rules of Civil Procedure 1.090 governs the computation of time prescribed or allowed by any applicable statute, in the absence of specific provisions to the contrary. Health Quest Corporation IV v. Department of Health and Rehabilitative Services, 593 So.2d 533 (Fla. 1st DCA 1992). That rule provides that, in computating any period of time prescribed by applicable statute, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

Applying these rules to the instant proceeding, it is clear that the twentieth day following the first date of publication was January 3, 1993. Since that day was a Sunday, the next day, Monday, January 4, 1993, is considered to be the twentieth day. Accordingly, it is clear that the first publication of the show cause order on December 14, 1992, was accomplished "not less than twenty days" before the hearing date, January 4, 1993.

Penn argues that January 1, 2, and 3 should not be counted in the calculation of time because "all business activity had in fact stopped in preparation for merriment." However, it is clear under

the rules that Saturdays, Sundays and legal holidays are included in the computation, unless the period of time prescribed or allowed is less than seven days. Fla.R.Civ.P. 1.090.

The trial judge made the following findings of fact with regard to proper publication of notice:

> Due and proper notice addressed to the State of Florida and the several property owners, taxpayers and citizens of the City of Pensacola and Escambia County, Florida, including non-residents owning property or subject to taxation therein, and all others having or claimed any right, title or interest in property to be affected by the issuance by Plaintiff of the Bonds was duly published by the Clerk of this Court, once each week for three consecutive weeks, the first publication being at least twenty days prior to the date of said hearing, as required by law, all as will more fully appear from the affidavit of the publisher of The Pensacola News Journal filed herein. (App. 4, p. 17)

The record will reflect no testimony or evidence to contradict these findings of fact made by the trial judge. Further, the trial court specifically explained its findings at the Hearing on Penn's Motion for Rehearing (App. 10, pp. 33-34). Accordingly, the trial court's findings should be sustained by this Court.

III. THE TRIAL COURT'S FINDING THAT THE DETERMINATIONS BY THE CITY AND THE COUNTY THAT A VALID EMERGENCY REQUIRED IMMEDIATE ADOPTION OF THE TAX INCREMENT ORDINANCES WAS BASED UPON SUBSTANTIAL COMPETENT EVIDENCE AND SHOULD NOT BE DISTURBED BY THIS COURT.

In his Initial Brief, Penn argues that the "emergency" which is described in City Ordinance No. 38-93, and County Ordinance No. 92-45 "has never been explained to the public, and the taxpayers, and the persons who will be getting bureaucratically inspired tax-bills . . .." He further states that the findings and declaration of necessity contained in each ordinance "do not describe the

Causes of residents' problems, or the Solutions." He goes on to argue that "nothing Good can come out of $100,000,000.00 Bond issue for Tax-payers to pay, and the Banks-Super Rich to pick up Interest Income not subject to federal income tax." Penn also argues, in this portion of his brief, that the city council, county commissioners and various others organized and formed the Authority in "secrecy."

First, it should be noted that there is no evidence whatsoever in the record of any "secrecy" by any parties or entities involved in the formation of the Authority, or otherwise involved in this proceeding. Secondly, the trial court specifically found that no evidence of any kind had been produced indicating that the determinations by the City and County, respectively, that a valid emergency required immediate adoption of the Tax Increment Ordinances, were made on the basis of fraud or abuse of discretion. (App. 4, p. 11). The court went on to state as follows:

> In the absence of such evidence, such determinations of the City Council and the Board of County Commissioners are legislative matters not subject to question by this Court. Furthermore, the Court finds that the deadline imposed by the United States Department of Defense for submission of final offers, including elimination of the contingencies of bond validation created an emergency situation because the City and the County could not comply with the normal notification requirements for validation and still complete the application submission in a timely manner. Compliance with the normal procedures for ordinance adoption would have delayed the validation beyond the application filing deadline, rendering adoption of the ordinances moot. In such circumstances, the declaration of an emergency so as to enable the ordinances to accomplish their intended purposes is reasonable and appropriate. (App. 4, pp. 11-12).

The trial court was correct in holding that the action of the Board of County Commissioners and City Council in declaring an emergency and using the emergency enactment procedures for the enactment of the ordinances was reasonable and appropriate. The law in Florida with respect to declaration of an emergency is that an emergency ordinance is presumptively valid, and the question of whether or not an emergency exists as to warrant its being made immediately effective rests in the judgment and discretion of the governing body. See State ex rel. Swift v. Dillon, 75 Fla. 785, 79 So. 29 (1918). Dillon was cited with approval in Metropolis Publishing Company v. City of Miami, 100 Fla. 784, 129 So. 913 (1930), in which a Miami zoning ordinance enacted under the charter emergency provisions was upheld. Likewise, in Speer v. Olson, 367 So.2d 207 (Fla. 1978), a case involving the validation of general obligation bonds issued by county municipal service taxing unit for acquisition of sewer and water systems, the court found that an emergency ordinance adopted by the Board of County Commissioners of Pasco County would not be disturbed, where there was no evidence before the trial court which would compel a conclusion that the Board's declaration of an emergency amounted to a sham or fraud. 367 So.2d at 213.

In the instant case, there is no evidence whatsoever in the record to refute the findings by the trial court on this issue, and accordingly, based upon the record and the authorities cited above, the finding should be sustained.

Penn also challenges the Findings and Declaration of necessity in both the City and County ordinances. The trial judge, however, found that the City Tax Increment Ordinance and the County Tax Increment Ordinance ". . . are for a valid and proper public purpose within the powers respectively of the City and the County to address in the manner provided therein, and such ordinances are legal, proper and valid in all respects." (App. 4, p. 13).

There is no testimony or evidence in the record to support any contrary finding, and accordingly, the trial court's determination in this regard should be upheld.

IV. THE GENERAL TAXING POWERS OF THE CITY OF PENSACOLA AND ESCAMBIA COUNTY HAVE NOT BEEN PLEDGED TO THE REPAYMENT OF THE BONDS OF THE FLORIDA DEFENSE FINANCE AND ACCOUNTING SERVICE CENTER AUTHORITY; THEREFORE, NO REFERENDUM WAS REQUIRED TO APPROVE THE ISSUANCE OF THE BONDS.

Initially, it should be noted that neither the City of Pensacola nor Escambia County have issued any bonds. The only "bonds" involved in the validation proceeding are the bonds of the Defense Finance and Accounting Service Center Authority. The Authority has no taxing power; therefore, it cannot pledge any ad valorem taxes to the payment of the bonds. The bonds are secured by lease payments from the City of Pensacola and Escambia County. These lease payments are secured by tax increment revenues which are measured in part by future increases in ad valorem tax receipts.

This exact financing mechanism has been approved by this Court in State v. Miami Beach Redevelopment Agency, 392 So.2d 875 (Fla. 1980). In that case, as in this instant case, trust funds were

created in which to deposit revenues measured by ad valorem tax increases. Only after the revenues are deposited in the trust fund would the bondholders' lien attach. Since the ad valorem tax is not necessarily deposited directly into the fund but is merely the measure of the annual contributions to be made by the City and the County, there is no pledge of the County and City ad valorem taxing power. Id. at 894.

The model of the ordinances involved in this bond financing has been approved by this Court in Miami Beach Redevelopment Agency. Id. at 898-99. Neither the City Tax Increment Ordinance nor the County Tax Increment Ordinance gives bondholders the right to compel the City or the County to levy ad valorem taxes. Therefore, in the constitutional sense, the general taxing power is not implicated, and no referendum is required. See Miami Beach Redevelopment Agency at 898; Tucker v. Underdown, 356 So.2d 251, 253-54 (Fla. 1978). The ordinances of the City and the County pledge the tax increment as a measure of the funds which will be appropriated each year. Even though the moneys used to make lease payments may come from ad valorem tax revenues, this does not bring the bonds within the referendum requirement. See Miami Beach Redevelopment Agency at 898.

The requirements of Article VII, Section 12 of the Constitution of the State of Florida apply only to bonds which pledge the full faith, credit and taxing power of governmental entities. Contrary to Penn's assertions, the City and the County have validly covenanted to budget and appropriate, in each of their

fiscal years during the term of their respective leases, a sufficient amount of non-advalorem revenues to make the required lease payments, in the event the tax increment revenues are insufficient therefor. Such a covenant does not constitute a pledge of the general taxing power of the City or of the County which would require the issuance of the bonds to be approved by referendum. This Court stated in finding that a similar covenant did not require bonds to be approved at an election in Miami Beach Redevelopment Agency:

> That the statutory duty to make the annual contributions would become a contractual duty, part of the obligation of the bonds, does not mean, however, that these bonds are payable from ad valorem taxation, in the constitutional sense of the term.

Miami Beach Redevelopment Agency at 898.

The obligations of the City and the County to make payments under their respective leases are limited and special obligations, payable solely from the revenues pledged in the leases, and the leases do not constitute general obligations of or indebtedness of the Authority, the City, the County, the State of Florida, or any political subdivision thereof. Id.

This Court held in Miami Beach Redevelopment Agency that "where there is not direct pledge of ad valorem tax revenues, but merely a requirement of an annual appropriation from any available funds, the referendum provision of Article VII, Section 12 is not involved." Id. at 894. Thus, in the present case, the circuit court properly found that the taxing powers of the City and the County were unimpaired; therefore, no vote of the electors to

approve issuance of the bonds was required under the laws of Florida.

V. CHAPTER 163, FLORIDA STATUTES, DOES NOT VIOLATE THE FEDERAL OR FLORIDA CONSTITUTION.

Penn argues that Chapter 163, Florida Statutes, which contains the Florida Interlocal Cooperation Act, is invalid, contrary to Florida law, and contains provisions which ". . . are a form and substance of slavery and destroying the dignity of men and women." Penn goes on to state that the statute violates the Florida Constitution and the Fifth and Fourteenth Amendments of the federal Constitution.

First, it should be noted that Penn did not raise any issue regarding the constitutionality of Chapter 163 in the bond validation proceeding below. Accordingly, he has waived his right to question the validity of the statute on appeal. Not having raised a constitutional question before the trial court, Penn is wrong in his effort to attempt to activate the jurisdiction of this Court in considering a constitutional question. See, e.g., Davis v. State, 383 So.2d 620 (Fla. 1980).

Further, Penn has failed to enunciate any grounds for his argument that the legislation is unconstitutional. Unless a legislative act is shown to be in direct conflict with a constitutional mandate, courts are without authority to interfere. Satan Fraternity v. Board of Public Instruction, 156 Fla. 222, 22 So.2d 892 (1945). Before a statute can be declared unconstitutional, it must be violative of some express or implied specific provision of the organic law. State ex rel. McMullen v.

Johnson, 102 Fla. 19, 135 So. 816 (1931). If a statute does not violate the federal or state constitution, the legislative will is supreme, and its policies not subject to judicial review. Id.

In the instant case, Penn's objection to Chapter 163 seems to apply not to the constitutionality of the law, but to the policy, justice, or wisdom of the law. Well-established principles, however, require that the judiciary cannot hold laws invalid merely because they are inexpedient, unwise, unjust, unreasonable, arbitrary, oppressive, impolitic, or inconvenient in application and enforcement. See, e.g., State ex rel. Davis v. Giblin, 98 Fla. 802, 124 So. 375 (1929); State ex rel. Davis v. City of Stewart, 97 Fla. 69, 120 So. 335 (1929). Accordingly, Penn's arguments on this issue should be dismissed.

VI. CHAPTER 75, FLORIDA STATUTES, DOES NOT VIOLATE THE DUE PROCESS PROVISIONS OF THE FLORIDA OR FEDERAL CONSTITUTION.

Penn's sixth issue is that Chapter 75, Florida Statutes, violates the due process provisions of the Florida and federal Constitutions, in that it does not allow enough time between decisions of the County or City to issue bonds and the time set for the final hearing thereon. Penn recognizes that the statute calls for twenty days to elapse between the first publication of the show cause order and the date of the final hearing.

The provisions of the bond validating statute regarding publication of notice and amount of time required for notice have been held to be constitutional. In State v. Special Road and Bridge District No. 4 of Martin County, 173 So. 716 (Fla. 1937),

a proceeding to validate refund bonds issued by a road and bridge district, a property owner challenged the attempted service of the show cause order by publication, contending that the service did not comply with the Constitution of the State of Florida. In that case, proof of publication was first published on October 23, 1936, with the bond validation hearing held on the 14th day of November, 1936. The court rejected the taxpayer's argument, stating that ". . . the service complied with the provisions of the statute, Chapter 6868 [now Chapter 75], and there is no provision contained in the statute as to such notice which is in conflict with the Constitution." 173 So. at 718.

Further, it is well recognized that the intent of the bond validation statute is that validations be expedited at the earliest time reasonably possible. Rianhard v. Port of Palm Beach District, 186 So.2d 503 (Fla. 1966).

While Penn argues that ". . . the Issues have been misrepresented to the taxpayers . . .", there is nothing in the record to indicate that any of the parties or the Circuit Court in any way misled Penn in regard to the matter of affording him an opportunity to present testimony or other evidence at the final hearing in this proceeding or at the hearing on Penn's Motion for Rehearing. Accordingly, Penn's argument on this issue is without merit, and the Authority urges this Court to reject same.

VII. THE BOND VALIDATION HEARING BELOW, AT WHICH PENN WAS PRESENT AND WAS AFFORDED AN OPPORTUNITY TO PRESENT TESTIMONY AND EVIDENCE, WAS PROPER IN ALL RESPECTS, AND COMPLIED WITH THE REQUIREMENTS OF §75.07, FLORIDA STATUTES.

Penn contends that, at the final hearing in this proceeding, the trial judge refused to let him testify or contest the validation proceedings, that the Assistant State Attorney only asked Plaintiff's witnesses several minor questions on cross-examination and presented no witnesses for the State or taxpayers, in contravention of the requirements of §75.05, Florida Statutes, and that the trial judge "continued to cooperate with Plaintiff's attorneys in their arguments and allegations . . .."

There is no transcript of the final hearing in the bond validation proceeding. At that hearing, the trial court ruled there were no intervenors (App. 10, p. 10), unaware that Penn had filed a Motion for Continuance and Answer on December 31, 1992 (App. 10, p. 4). Notwithstanding the foregoing, however, at the close of the taking of testimony at the hearing, the trial judge addressed Penn, and asked him if there was anything he wanted to say (App. 10, p. 15). Penn was permitted an opportunity to respond, and did so (App. 10, p. 15). Penn, a former attorney, proferred no exhibits, witnesses, or testimony. Additionally, the court made a specific finding that the issues raised by Penn's pleadings filed on December 31 were not relevant in light of case law, which has consistently held that the purpose of bond validation proceedings and the scope of judicial inquiry is to determine if a public body has the authority to issue such bonds

under the Florida Constitution and statutes, to decide whether the purpose of the obligation is legal, and to ensure that the authorization of the obligation complies with the requirements of law (App. 10, p. 35). The court went on to hold that the issues raised by Penn's pleadings ". . . were either irrelevant or they were in fact covered by the responsive pleadings filed by the State Attorney and resolved by the evidence which was presented at trial . . . " (App. 10, p. 35). Finally, the court noted that it had given Penn the opportunity to speak at the end of the final hearing, and at that time, Penn did not apprise the court of the existence of any of his December 31, 1992, pleadings (App. 10, p. 35).

A review of Penn's pleadings reveals that most of his arguments are public policy arguments, which are clearly beyond the bounds of the validation proceeding. In one of his post-hearing pleadings, Penn stated that his "Second Answer" (App. 5) contains what he would have testified to at the hearing (App. 7). This answer raised many collateral issues not pertinent to this proceeding. Further, any legal arguments which might have been raised by Penn were also raised by the State Attorney in its Answer and determined by the court.

The trial court's findings regarding the scope of judicial inquiry in bond validations is correct. See, e.g., Risher v. Town of Inglis, 522 So.2d 355 (Fla. 1988). In Penn v. Pensacola-Escambia Governmental Center Authority, 311 So.2d 97 (Fla. 1975), another bond validation proceeding in which Penn intervened, Penn

raised a number of similar objections to the complaint, involving political and policy considerations within the legislative and executive spheres of authority. On appeal, this Court rejected Penn's arguments, stating that "the Court is concerned only with the legal power of the Plaintiff to issue these bonds, not the political or economic wisdom of the Project proposed to be financed with the proceeds of the bonds." 311 So.2d at 102. See also State v. City of Daytona Beach, 431 So.2d 981 (Fla. 1983).

In the instant case, Penn presented only minimal testimony at the final hearing and the hearing on Penn's Motion for Rehearing. He did not present, nor did he offer to present, any witnesses at any time, nor any other evidence. In his Motion for Rehearing, Penn failed to provide any basis or authority as to why the judgment should be reheard, or to cite any error in the judgment (App. 5). Nor did Penn point out any factual errors in the final judgment. Accordingly, the trial court was correct in denying his Motion to rehear the final judgment.

Penn also faults the State Attorney in failing to present witnesses or vigorously cross-examine Plaintiff's witnesses at the final hearing. However, it is clear that, in suits to validate bonds, the duty of the State Attorney served with process is to carefully examine the petition and to present such defenses as he deems proper. §75.05(1), Florida Statutes (1991); State v. Sarasota County, 118 Fla. 629, 159 So. 797 (1935). In the instant proceeding, the State Attorney filed an answer challenging various allegations in the complaint, and requesting the court to inquire

into and determine the authority of the Plaintiff to issue the bonds and the legality of all the proceedings connected therewith (App. 3). Further, the State Attorney appeared at the hearing and had an opportunity to present witnesses and cross-examine the Plaintiff's witnesses. In short, there is nothing in the record to substantiate Penn's argument that the State Attorney acted with any impropriety or did not meet his obligations under §75.05(1), Florida Statutes. Further, it is well established that the trial court need not hear testimony in a bond validation proceeding, and that the introduction of the supporting resolution in evidence is all that is necessary to justify validation. See Rianhard v. Port of Palm Beach District, 186 So.2d 503 (Fla. 1966); Risher v. Town of Inglis, 522 So.2d 355 (Fla. 1988). Finally, Penn's allegation in his brief that the Circuit Judge "continued to cooperate" with the Authority's attorneys is completely unfounded, and should be summarily dismissed.

XIII. THE BOND VALIDATION DOES NOT CONTRAVENE THE PROVISIONS IN SECTION 8, CLAUSE 12, OF THE UNITED STATES CONSTITUTION, AND THE TRIAL COURT'S JUDGMENT SHOULD NOT BE REVERSED ON THESE GROUNDS.

Penn's final argument is that the project described in the Complaint for Validation and/or the validation of the bonds is contrary to the provisions of Section 8, Clause 12, of the United States Constitution.[1] That section states that Congress shall have the power ". . . to raise and support Armies, but no Appropriation

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[1] It should be noted that this argument was not raised by Penn in the proceedings below and, accordingly, the Authority contends Penn has waived any right to raise this issue on appeal.

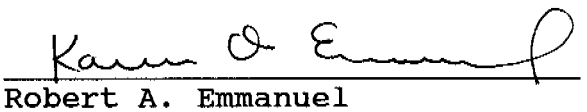
of Money to that use shall be for a longer term than two Years." Sec. 8, Cl. 12, U. S. Constitution. However, Plaintiff's argument in this regard cannot be sustained. A review of the project as described in the complaint and supporting documents shows that the project does not unlawfully contemplate any appropriations of money other than on an annual basis. Further, the project is not one "to raise and support armies," but rather is one which would authorize the Authority to apply the proceeds received from the sale of bonds to pay the cost of the acquisition, construction and equipping, upon federal property, of a project including office and administrative buildings and related health care, health club, computer center, parking facilities and other ancillary facilities to be used by the Department of Defense as a Finance and Accounting Service Center (App. 1, p. 11). Any funds to be appropriated to the project by any governmental entity will be done on a year-to-year basis, and there is no evidence in the record to the contrary.

For the above reasons, the Authority respectfully submits that Penn's argument on this issue is without merit.

CONCLUSION

Penn has raised a number of issues in this Appeal; however, none of them raise any meritorious arguments which would warrant a reversal of the trial court's final judgment. The court's findings of fact and its rulings on the issues are fully supported by the record, and the issues raised by Penn below and at this level are, for the most part, irrelevant and collateral to the purpose of bond validation proceedings. The final judgment entered by the trial court should be affirmed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Peter Williams, Assistant State Attorney, 190 Government Center, Pensacola, Florida 32501, and Bernard J. Penn, 821 Bartow Avenue, Pensacola, Florida 32507, by hand delivery, on this 12th day of March, 1993.

Robert A. Emmanuel

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