

IN THE SUPREME COURT OF FLORIDA

THE STATE OF FLORIDA, ET AL.,

Appellants,

vs.

FLORIDA DEVELOPMENT FINANCE
CORPORATION, a public body
corporate and politic in the
State of Florida,

Appellee.

CASE NO. 84,683
(Lower Court Case
No.: Circuit Court,
Leon County,
94-4620)

APPELLANTS' INITIAL BRIEF

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STATEMENT OF THE ISSUES

I. WHETHER THE FLORIDA CONSTITUTION PERMITS AN INVESTMENT OF STATE TRANSPORTATION TRUST FUND EARNINGS IN THE FLORIDA DEVELOPMENT FINANCE CORPORATION ("FDFC") TO ASSIST THE FDFC IN MEETING ITS SPECIAL OBLIGATIONS UNDER AN AGREEMENT GUARANTEEING PAYMENT ON REVENUE BONDS ISSUED BY THE FDFC.

II. WHETHER, BECAUSE THE FDFC'S BOND ISSUE INVOLVES NEITHER THE TAXING POWER NOR A PLEDGE OF CREDIT, BOND PROCEEDS MAY BE USED TO BENEFIT A PRIVATE PARTY, WHERE A PUBLIC PURPOSE IS ALSO SERVED.

STATEMENT OF THE CASE AND OF THE FACTS

On appeal is a judgment of the Leon County Circuit Court validating the first bond issue of the Florida Development Finance Corporation ("FDFC").¹ This Court has jurisdiction under Article V, Section 3(b)(2), Florida Constitution; Section 288.9606(5), Florida Statutes; and Rule 9.030(a)(1)(B)(i), Florida Rules of Appellate Procedure.

A. The Florida Development Finance Corporation

Created by the Florida Development Finance Corporation Act of 1993, the FDFC is body corporate and politic and an "instrumentality of local government." The FDFC "has the power to function within the corporate limits of any public agency with which it has entered into an interlocal agreement" §288.9604(1). Orange County and the FDFC entered into an Interlocal Agreement dated as of April 12, 1994 (PX-5, A. 3), to which Alachua county later became a party by joinder. (Joinder to Interlocal Agreement PX-5A, A. 4).²

The legislature empowered the FDFC to issue "revenue bonds . . . for the purpose of financing and refinancing any capital projects for applicants" §288.9605(2)(f). These bonds "are declared to be for an essential public and governmental purpose." §288.9606(2). In addition, the FDFC

¹ A copy of the Final Judgment Validating Florida Development Finance Corporation Revenue Bonds is submitted as Appendix 2 ("A. 2").

² References to plaintiff's exhibits admitted into evidence by the trial court will be abbreviated as "PX."

is authorized to guarantee any of the revenue bonds that it issues. §288.9607. To be eligible for a guaranty, a qualified applicant must pay a premium, give a first mortgage in the property to be financed, and provide the personal guaranty of the applicant's principal or principals. §288.9607(2)-(4).

The FDFC's guaranty agreements are declared to be special rather than general obligations. §288.9607(7)(c). They are not to be debts of the FDFC, the State or any political subdivision within the meaning of any constitutional or statutory limitation. Id. Instead, the FDFC's guaranty obligations can be satisfied only as mandated by law.

The first funds required to be used would be those proceeds of the bond issue in the "debt service reserve account." §§288.9607(7)(a)5; 288.9608(1). This account must contain a sum "not less than 6 months' debt service reserves from the proceeds of the sale of any bonds guaranteed by the [FDFC]." §288.9608(1). Also in the debt service reserve account would be any monies realized on the liquidation of collateralized property and enforcement of the personal guaranties of the project owner's principals. Id.

A Guaranty Fund, contemplated by law, provides a second source of security. §§288.9607(7)(a)6; 288.9608(2), Fla. Stat. The FDFC must maintain on deposit in the Guaranty Fund an amount equal to at least one year's "maximum debt service on all outstanding bonds of the [FDFC]." §288.9608(2).

If the funds in the debt service reserve account and the Guaranty Fund are not sufficient to satisfy the FDFC's obligations under a guaranty, then the FDFC could obtain "supplemental funding" for the Guaranty Fund by borrowing "earnings accrued and collected upon the minimum balance of funds required to be maintained in the State Transportation Trust Fund." §288.9608(3)(c). Under Section 288.9607(7)(a), the FDFC "is authorized to enter into an investment agreement with the Department of Transportation and the State Board of Administration [collectively, the "State"] concerning the investment of [these] earnings." §288.9607(7)(a). In return for the State's commitment to invest in the FDFC, the FDFC must pay the State a fee "comparable [to that payable] for similar investments in terms of size and risk." §288.9607(7)(a)3. Plus, the FDFC must reimburse the State, on a first priority basis with interest, for any sums invested in the FDFC's Guaranty Fund. §288.9608(3)(b) and (4).

B. The Investment Agreement

In accordance with Section 288.9607(7)(a), the FDFC and the State executed an Investment Agreement dated as of June 1, 1994. (PX-4, A. 5). Following the directions of the legislature, the parties, by this Investment Agreement, created the accounts from which funding for the FDFC's guaranties will come.

Specifically, Section 2 of the Investment Agreement establishes the Debt Service Reserve Account as the primary source of funding for any guaranty. It also forms the Florida Development Finance Corporation--Revenue Bond Guaranty Reserve Account, Guaranty Fund (The "Guaranty Fund") to be the secondary funding source.

Making up the Debt Service Reserve Account will be sub-accounts for each applicant receiving financing through FDFC revenue bonds. Into each applicant's sub-account the FDFC must deposit, from bond proceeds, a 6 months' debt service reserve, as well as any recoveries realized on collection activity.

The Guaranty Fund will be composed of (1) the Florida Development Finance Corporation--FDFC Bond Guaranty Reserve Account (the "Reserve Account"); and (2) the Florida Development Finance Corporation--Supplemental Bond Guaranty Reserve Account (the "Supplemental Account"). The Reserve Account must contain, for each bond issued, a year's debt service, such money to be obtained from sources other than Transportation Trust Fund earnings. The proceeds of any investment by the State of Transportation Trust Fund earnings would go into the Supplemental Account.

C. The Maddox Project

On July 28, 1994, the FDFC adopted a Bond Resolution (PX-6, A. 6) approving an issue of revenue bonds of not to exceed \$1.5 million to raise money for a loan to Maddox Foundry &

Machine Works ("Maddox"), a company that has been in existence, according to the testimony of FDFC Chairman Thomas D. Stewart, for more than 50 years. (Tr. 10, A. 7)³. Located in Alachua County, Maddox would use the loan proceeds to expand its physical plant and acquire new equipment (the "Maddox Project"). This project is expected to "increase the amount of business that [Maddox conducts in Alachua County] and the number of people that [Maddox] employ[s] within that community." Id. Mr. Stewart, who in addition to being Chairman of the FDFC's Board of Directors is the Senior Executive Vice-President in charge of corporate banking in North Florida for Sun Bank (id. at 8), testified that Maddox was selected "through a due diligence process that indicate[d] to us [its] credit worthiness, and [its] ability to use the funds in a productive capacity, and . . . ensure[d] repayment of those funds" Id. at 10.

The Bond Resolution provides that the FDFC will lend Maddox the net proceeds of the bond issue, the loan to be secured by a first chattel mortgage on and security interest in the financed project. (PX-6, A. 6, at 5). In addition, Maddox's principals are obligated to execute personal guaranties promising to repay the loan. Id. at 5-6. Upon the filing of a formal application and delivery of the loan agreement, promissory note, mortgage and personal guaranties,

³ The transcript of proceedings before the circuit court will be referenced by the abbreviation "Tr."

together with the payment of a premium pursuant to Section 288.9607, Florida Statutes, the FDFC has approved the issuance of a Guaranty Agreement (the "Guaranty")⁴ to "enhance[] the marketability of the bonds." (Tr. 13, A. 7).

D. Course of Proceedings And Disposition In The Lower Tribunal.

The FDFC filed its Complaint for Validation of Florida Development Finance Corporation Revenue Bonds in the Leon County Circuit Court⁵ on September 26, 1994. (A. 1) That same day, the circuit court issued its Order to Show Cause Why Bonds Should Not be Validated. (A. 8). The FDFC, in compliance with Sections 75.06 and 288.9606(5), caused notice of the proceedings to be published in newspapers of general circulation in Alachua, Leon, and Orange Counties.

An evidentiary hearing was held in the Leon County Circuit Court on November 1, 1994, at the conclusion of which the court entered its Final Judgment Validating Florida Development Finance Corporation Revenue Bonds. (A. 2).

On November 9, 1994, the State timely filed its Notice of Appeal in the Supreme Court of Florida as directed by Section 288.9606(5). In this appeal the State, in the discharge of its duty under that section, respectfully requests that this Court rule upon the constitutionality of using the investment of the earnings accrued and collected upon the investment of

⁴ The Guaranty form is attached to the Bond Resolution as Exhibit C.

⁵ Section 288.9606(5) dictated the venue.

the minimum balance of funds required to be maintained in the State Transportation Trust Fund to guarantee the subject revenue bonds.

STANDARD OF REVIEW

As articulated by the Florida Supreme Court, the applicable standard of review is as follows:

The scope of judicial inquiry in bond validation proceedings is limited to the following issues: 1) determining if the public body has the authority to issue the bonds; 2) determining if the purpose of the obligation is legal; and 3) ensuring that the bond issuance complies with the requirements of law.

Northern Palm Beach County Water Control Dist. v. State, 604 So.2d 440, 441 (Fla. 1992).

In testing the legality of a proposed bond issue, a "legislative finding of constitutionality is presumptively correct" and must be upheld unless so clearly erroneous as to be "beyond the power of the legislature." State v. Miami Beach Redev. Agency, 392 So.2d 875, 894 (Fla. 1980); Nohrr v. Brevard County Educational Facilities Auth., 247 So.2d 304, 309 (Fla. 1971); Linscott v. Orange County Indus. Dev. Auth., 443 So.2d 97, 101 (Fla. 1983) (legislative determination is entitled to great weight).

Finally, in appellate proceedings generally

the trial court's findings of fact are shielded from attack and are clothed with a presumption of validity. Even if the appellate court disagrees with the trial court and would have reached a different conclusion had it been in the shoes of the trial court, barring a lack of substantial evidentiary support for the findings of the trial court, the judgment should be affirmed.

Herzog v. Herzog, 346 So.2d 56, 58 (Fla. 1977); First Federal

Sav. and Loan of Broward County v. Blinn, 422 So.2d 1104, 1104 (Fla. 4th DCA 1982) (in face of competent substantial evidence an appellate court cannot second guess trial court's decision); Manufacturers Nat. Bank of Hialeah v. Canmont Intern., Inc., 322 So.2d 565, 566 (Fla. 3rd DCA 1975) (on question of sufficiency of evidence, appellate court's duty ceases upon determination that some substantial evidence supports the judgment).

SUMMARY OF ARGUMENT

Two questions are presented for the Court's consideration: (1) Whether the proposed bond issue violates the Florida Constitution's ban on pledging the public credit due to the State's agreement to invest Transportation Trust Fund earnings in the FDFC, if necessary, to back the guaranties that secure the revenue bonds; and (2) Whether a legitimate public purpose would be served by the project to be financed from the bond proceeds.

The issuance of these bonds would not contravene Article VII, Section 10 of the Florida Constitution for several reasons. First, the legislature has declared, and the evidence confirms, that the Guaranty obligations of the FDFC are special rather than general in nature. The bondholders' recourse under the Guaranty would be against defined, limited revenues that already have been appropriated and invested. The legislative determination that this Guaranty does not pledge the full faith and credit of the FDFC, any local government, or the State is not clearly erroneous and is well within the power of the legislature.

Second, as is clear from the plain language of the statute, Bond Resolution and Guaranty, the bondholders would have no right, if the funds pledged to meet the Guaranty were insufficient, to compel the FDFC to levy any tax against the public or to fulfill the Guaranty from public funds. Nor would the State, for its part, have any power to force the

FDFC to repay any investment of Transportation Trust Fund earnings out of money belonging to the public.

Finally, the State's agreement to invest Transportation Trust Fund earnings in the FDFC does not pledge the State's taxing power or credit. In return for its commitment to invest Transportation Trust Fund earnings in the FDFC, the State will receive a market-based fee commensurate with the risk undertaken by the State. Moreover, the State's agreement is to invest--not give away--the Transportation Trust Fund earnings. The constitution expressly authorizes the investment of Transportation Trust Fund earnings, recognizing that those investments do not involve a pledge of the State's taxing power or public credit.

Because this proposed bond issue does not contemplate a pledge of public credit, the substantial benefits to the public from the project to be financed are more than constitutionally sufficient. Even if the bond proceeds were to be used primarily to benefit a private party, the benefits to the public would need only to be incidental.

The test is whether a reasonable and adequate public interest would be served. On the record in this case, the proposed project easily passes. The FDFC and the circuit court determined that the financed project is calculated to enhance economic growth and development in Alachua County, creating new jobs for the residents of that community. The legislature has determined, and the trial court found, that

these public benefits are of sufficient strength and import to support the use of revenue bonds to finance the Maddox Project. These findings of public purpose are presumptively correct and should be given great weight.

ARGUMENT

- I. THE FLORIDA CONSTITUTION PERMITS AN INVESTMENT OF STATE TRANSPORTATION TRUST FUND EARNINGS IN THE FLORIDA DEVELOPMENT FINANCE CORPORATION ("FDFC") TO ASSIST THE FDFC IN MEETING ITS SPECIAL OBLIGATIONS UNDER AN AGREEMENT GUARANTEEING PAYMENT ON REVENUE BONDS ISSUED BY THE FDFC.

Revenue bonds are "popular vehicles for public borrowing . . . [b]ecause they are not supported by the full faith and credit of the issuer [and] are not considered to be, strictly speaking, debts of the issuer." State v. City of Panama Beach, 529 So.2d 250, 251 (Fla. 1988), receded from on other grounds, State v. City of Orlando, 576 So.2d 1315 (Fla. 1991). Consequently, "[g]overnmental entities have sought to issue revenue bonds for many and diverse projects." Id.

The validity of all revenue bonds turns on two issues. The first is whether the transaction contemplates a pledge of the public credit or taxing power. The answer to that initial question frames the second: "If either [the taxing power or a pledge of credit] is involved, then the improvements [to be financed] must serve a paramount public purpose, [but if] neither is involved, then . . . 'it is enough to show only that a public purpose is served.'" Northern Palm Beach County Water Control Dist. v. State, 604 So.2d 440, 442 (Fla. 1992) (quoting Linscott v. Orange County Indus. Dev. Auth., 443 So.2d 97, 101 (Fla. 1983)) (emphasis added; citation omitted).

Two facets of the instant bond issue must be examined to determine if the public credit or taxing power would be pledged. One is the FDFC's guarantee to the trustee of the

bondholders that principal and interest on the bonds will be paid. The other is the State's agreement to invest Transportation Trust Fund earnings in the FDFC. The proceeds of the State's investment (if made)--which the FDFC would be obligated to repay with interest--would be used by the FDFC to meet its obligations under the Guaranty. The State concurs with the trial court's conclusion that the possible use of Transportation Trust Fund earnings as a source of revenue for payment of the bonds does not render this transaction unconstitutional.

A. The FDFC's Agreement To Guarantee Repayment Of These Revenue Bonds Does Not Pledge The Public Credit, Because The Public Is Neither Directly Nor Contingently Liable Under The Guaranty.

Article VII, Section 10 of the Florida Constitution proscribes the use of public credit to aid private persons. Orange County Indus. Dev. Auth. v. State, 427 So.2d 174, 177 (Fla. 1983). It provides:

Pledging credit. - Neither the state or any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person, but this shall not prohibit laws authorizing:

- (a) the investment of public trust funds;
- (b) the investment of other public funds and obligations of, or insured by, the United States or any of its instrumentalities;

- (c) the issuance and sale by any county, municipality, special district or other local governmental body of (1) revenue bonds to finance or refinance the cost of capital projects for airports or port facilities, or (2) revenue bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants to the extent that the interest thereon is exempt from income taxes under the then existing laws of the United States, when, in either case, the revenue bonds are payable solely from revenue derived from the sale, operation or leasing of the projects. If any project so financed, or any part thereof, is occupied or operated by any private corporation, association, partnership or person pursuant to contract or lease with the issuing body, the property interest created by such contract or lease shall be subject to taxation to the same extent as other privately owned property.
- (d) a municipality, county, special district, or agency or any of them, being a joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person.

The constitutional permission to issue revenue bonds, given in Subsection (c), "is a far cry from previous state constitutions," State v. City of Panama City Beach, 529 So.2d 250, 252 (Fla. 1988), under which revenue bonds were forbidden "as an invalid lending of the public credit for private purposes," Orange County Indus. Dev. Auth., 427 So.2d at 176.

The specific projects listed in Subsection (c), however, are not the only ones that may be financed through revenue bonds. Wald v. Sarasota County Health Facilities Auth., 360 So.2d 763, 769 (Fla. 1978) (Section 10(c) is not sole authority for issuance of public revenue bonds). "[T]he naming of these particular projects [in Section 10(c)] was not intended to be exclusive." Nohrr v. Brevard County Educational Facilities Auth., 247 So.2d 304, 308 (Fla. 1971). Rather, "subsection (c) is actually an interpretation of the first paragraph: non-recourse bonds do not pledge the public credit." Linscott v. Orange County Indus. Dev. Auth., 443 So.2d 97, 100 (Fla. 1983). Whether a governmental body impermissibly has pledged the public credit for a private entity depends upon the particular circumstances in each instance. Nohrr, 247 So.2d at 308.

Naturally, "if the project falls within one of the four subsections of article VII, section 10, then no constitutional prohibition is involved." Northern Palm Beach County Water Control Dist. v. State, 604 So.2d 440, 441 (Fla. 1992). The proposed FDFC bonds satisfy all of the conditions of Subsection (c)(2) except one: Because of the Guaranty, the bonds would not be payable solely from revenue generated by the Maddox Project. Therefore, one must analyze the particulars of the transaction at hand to determine if it involves a pledge of the public credit.

As used in Section 10, the word "credit" denotes "the imposition of some new financial liability upon the State or a political subdivision which [creates] a State or political subdivision debt for the benefit of private enterprises." Nohrr, 247 So.2d at 309 (emphasis added). Put another way, "the public must be either directly or contingently liable to pay something to somebody." Id. (emphasis added). "Where there is no direct or indirect undertaking by the public body to pay [a third party's debt] from public funds, and no public property is placed in jeopardy by a default of the third party, there is no lending of public credit." State v. Housing Finance Auth. of Polk County, 376 So.2d 1158, 1160 (Fla. 1979) (emphasis added).

A critical question affecting the constitutionality of the bonds is whether a bondholder would have the right, if the specific resources pledged to the payment of the bonds were insufficient to amortize the debt, to compel by judicial action the levy of taxes. State v. Miami Beach Redev. Agency, 392 So.2d 875, 898 (Fla. 1980); Wald, 360 So.2d at 766 (validating bonds where no bondholder would ever have the right to compel the exercise of any taxing power to pay the bonds). If a bond issuer is without authority to levy taxes, the issuance of its bonds would not impose a new financial liability on the public: The public cannot be forced to pay anything to anybody except through the taxing power, and a bond issuer cannot be judicially compelled to do that which it

cannot legally accomplish. See Wilson v. Palm Beach County Housing Auth., 503 So.2d 893, 894 (Fla. 1987); Housing Finance Auth. of Polk County, 376 So.2d at 1160.

The record shows that the proposed FDFC bond issue would not contravene Article VII, Section 10 of the Florida Constitution. The statute, Bond Resolution and Guaranty Agreement all put bondholders on notice that the credit of the State is not pledged to secure bond payments:

[t]he guaranty shall not be a general obligation of the corporation or of the state, but shall be a special obligation, which constitutes the investment of a public trust fund. In no event shall the guaranty constitute an indebtedness of the corporation, the State of Florida, of any political subdivision thereof within the meaning of any constitutional or statutory limitation. Each guaranty agreement shall have plainly stated on the face thereof that it has been entered into under the provisions this act and that it does not constitute an indebtedness of the corporation, the state, or any political subdivision thereof within any constitutional or statutory limitation, and that neither the full faith and credit of the State of Florida nor any of its revenues is pledged to meet any of the obligations of the corporation under such guaranty agreement.

§288.9607(7)(c), Fla. Stat. Although these declarations "are not conclusive," they are "presumptively correct," and this Court must uphold the "legislative finding of constitutionality" unless it is clearly erroneous. Miami Beach Redev. Agency, 392 So.2d at 894.

This Court has drawn a distinction between a public body's general obligation of indebtedness, on the one hand, and its special obligation, payable solely from definite and limited revenue sources, on the other. In Northern Palm Beach County Water Control Dist., for example, this Court validated a drainage district's proposed issue of water control and improvement bonds, finding that these bonds would be a special obligation payable solely from the proceeds of a drainage tax levied on the landowners who would benefit from the district's water management plan. 604 So.2d at 441-42. The Court concluded that, under the circumstances, the bonds did not contemplate a pledge of the district's taxing power or its credit. Id. at 442.

Similarly, in Miami Beach Redev. Agency, this Court validated a city redevelopment agency's proposed issue of community redevelopment bonds that were to be "payable from a trust fund [that would] receive revenue from two sources." 392 So.2d at 898. Continuing, the Court explained:

One source is the money the Agency receives from sales, leases, and charges for the use of, redeveloped property. This source is analogous to revenues generated by a utility or facility. The other source is the money to be contributed each year by the county and city, measured by the tax increment[, an amount equal to the increase in property tax proceeds occasioned by the increased value of redeveloped property.]

Id. The Court ruled that no general obligation was going to be created, even though resources other than the revenues of

the project to be financed, including possibly ad valorem tax revenues when available, would be pledged to payment on the bonds. Id. at 897-98. The key there was that no bondholder would have the power to compel the levy of ad valorem taxes to amortize the bonds. Id. at 898.

Here the funds to which the bondholders could look for payment are definite and limited. The primary source of payment would be the money on deposit in the Maddox Sub-account of the Debt Service Account. The money in the Maddox Sub-account, which would be obtained from the proceeds of the bonds, would be a sum not less than six months' scheduled principal and interest payments on the bonds. Also placed in the Maddox Sub-account would be any recoveries realized by the FDFC's enforcement of the note, personal guaranties, and mortgage given by Maddox to memorialize and secure its promise to repay the loan from the FDFC.

The secondary source of payment would be the Guaranty Fund, consisting of the Reserve Account and Supplemental Account. An amount equal to at least one year's principal and interest payments on the bonds would be maintained on deposit in the Reserve Account, the sources of those funds to be other than Transportation Trust Fund earnings. The Supplemental Account would contain the invested Transportation Trust Fund earnings.

The clearly delimited resources available for payment of these bonds make this a special, rather than a general,

obligation of the FDFC, notwithstanding the Guaranty. Both by law and under the operative documents--the Bond Resolution and Guaranty--the bondholders would have no power to compel the FDFC to tax the public to pay the bond obligations. Simply put, the FDFC has no authority to levy any taxes against the public.

The State, for its part, would have no ability to force the FDFC to repay from public funds any investment of Transportation Trust Fund earnings. Under the Investment Agreement, the State's investment would be reimbursed, with interest, from monies (1) on deposit in the Maddox Sub-account; and (2) "otherwise available" to the FDFC. (PX-4, A. 5, at 9). The source of this otherwise available revenue "is not limited to any specific governmental revenue." Miami Beach Redev. Agency, 392 So.2d at 898. Hence, the State would have no right to resort to designated public funds to satisfy the FDFC's special obligation.

The FDFC's limited obligations to the bondholders under the Guaranty, and to the State if an investment of Transportation Trust Fund earnings were required in accordance with the Investment Agreement, must be satisfied out of funds of the FDFC, not the public's property. If the FDFC's resources were not sufficient to satisfy its obligations, then the FDFC's investors and creditors--not the public--would suffer the loss. Under these circumstances, the State must agree with the circuit court that the Guaranty does not run

afoul of the constitution's prohibition against pledging the public credit for a private purpose.

B. The State's Agreement To Invest Transportation Trust Fund Earnings In The FDFC Does Not Pledge The State's Taxing Power Or Credit.

In addition to being satisfied that these bonds do not require the FDFC to pledge the public credit, this Court must also be assured that the State, by entering into the Investment Agreement, has not pledged its credit or taxing power to a private party. The State submits that it has not.

As authorized by Section 288.9607(7)(a), Florida Statutes, the State has agreed to lend the FDFC, under certain limited conditions, money drawn from the "earnings accrued and collected upon the investment of the minimum balance of funds required to be maintained in the State Transportation Trust Fund." The FDFC could not, under any circumstances, compel the State to impose a new tax on the public to fund an investment in the FDFC. And, because the minimum balance of funds will not be disturbed under the Investment Agreement, the State will not need to raise taxes or appropriate other revenue to replenish the Transportation Trust Fund as a result of its commitments under the Investment Agreement. Thus, the State's power and discretion to raise revenue for the Transportation Trust Fund are unimpaired by the Investment Agreement.

Most important, the State's undertaking is to invest--not give away--the Transportation Trust Fund earnings. The State

expects that any investment it makes in the FDFC will be repaid, on a first priority basis, with interest as provided in Section 5 of the Investment Agreement. (PX-4, A. 5, at 9). Additionally, in consideration for its qualified commitment to invest in the FDFC, the State will be paid a market-based fee reflecting the risk undertaken by the State. Id. at 7. The fee for the State's agreement to invest in connection with the Guaranty of these bonds is .35 percent of the principal balance of the bonds issued, payable annually. (Aff. of Thomas D. Stewart PX-7, A. 9, at 2).

Because the State's obligation under the Investment Agreement is to invest public trust funds, its participation in these bonds falls squarely within the scope of Article VII, Section 10(a). Interpreting the first paragraph of Section 10, Subsection (a) announces that "the investment of public trust funds" does not pledge the public credit. "[N]o constitutional prohibition is involved" here. Northern Palm Beach County Water Control Dist., 604 So.2d at 441.

Finally, even if Section 10(a) were not applicable, the State's agreement to invest Transportation Trust Fund earnings still would involve no pledge of the public credit or power to tax. The Investment Agreement does not expressly or impliedly impose any new financial liability upon the citizens of this state or any political subdivision. The State, by virtue of the Investment Agreement, has not committed the taxpayers to come to its rescue if an investment in the FDFC should fail to

perform.

II. BECAUSE THE FDFC'S BOND ISSUE INVOLVES NEITHER THE TAXING POWER NOR A PLEDGE OF CREDIT, BOND PROCEEDS MAY BE USED TO BENEFIT A PRIVATE PARTY, SO LONG AS A PUBLIC PURPOSE IS ALSO SERVED.

The record amply demonstrates that the Maddox Project would serve an adequate and reasonable public purpose, one far more substantial than the benefit minimally required under the relaxed standard established upon the adoption in 1968 of the current Florida Constitution. Prior to 1968, bonds that benefited a private party would survive constitutional scrutiny only if the benefit were merely incidental. Orange County Indus. Dev. Auth. v. State, 427 So.2d 174, 179 (Fla. 1983). Required was a "paramount public purpose," which ruled out bond financing for most new businesses, manufacturing plants, and industrial facilities. Id. With the 1968 constitution, that paramount public purpose test "lost much of its viability." Linscott v. Orange County Indus. Dev. Auth., 443 So.2d 97, 101 (Fla. 1983).

Now, unless the taxing power or a pledge of public credit is involved, "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." State v. Housing Finance Auth. of Polk County, 376 So.2d 1158, 1160 (Fla. 1979). Under this lenient standard, "a legislative declaration of public purpose is presumed to be valid, and should be deemed correct unless so clearly erroneous as to be beyond the power of the legislature." Northern Palm Beach

County Water Control Dist. v. State, 604 So.2d 440, 442 (Fla. 1992).

The legislature's exhaustive findings on the public purposes to be served by these and other bonds issued by the FDFC are recorded in Section 288.9602, Florida Statutes. For numerous reasons enumerated there, the legislature deemed it both necessary and in the public interest "to create a special development finance authority to cooperate and act in conjunction with public agencies of this state and local governments of this state . . . in the promotion and advancement of projects related to economic development throughout the state." §288.9602(8). Concluding the section, the legislature declared:

The purposes to be achieved by the special development finance authority through such projects and such financings of business and industry in compliance with the criteria and requirements of this act are predominately the public purposes stated in this section, and such purposes implement the governmental purposes under the State Constitution of providing for health, safety, and welfare of the people, including implementing the purposes of s. 10(c), Art. VII of the State Constitution and simultaneously provide new and innovative means for the investment of public trust funds in accordance with s. 10(a), Art. VII of the State Constitution.

§288.9602(9), Fla. Stat.

The record demonstrates that a "reasonable and adequate public interest" is present here. Housing Finance Auth. of Polk County, 376 So.2d at 1160. The "public interest is served by facilitating private economic development." Linscott, 443 So.2d at 101. The legislature's findings--which must be given great weight, id.--are in accord with this sound principle. The State acknowledges, as it must, that the legislative declaration of public purposes is well within the power of the legislature.

Accordingly, because these bonds would not pledge the public credit or involve the taxing power of the State, a political subdivision or public agency, the State concurs with the trial court that the proposed Maddox Project satisfies the constitutional public purpose requirement.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the final judgment be affirmed and the proposed bonds be validated as provided in Chapter 75, Florida Statutes, and Section 288.9606(5). The State further requests that this Court specifically uphold the constitutionality of using the investment of earnings accrued and collected upon the investment of the minimum balance funds required to be maintained in the State Transportation Trust Fund to guarantee these bonds.

Respectfully submitted,

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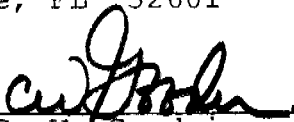
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Appellants' Initial Brief has been furnished by U.S. Mail, this 29th day of November, 1994, to the following:

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