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SEP 11 1995

CLERK, SUPREME COURT

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**IN THE SUPREME COURT OF FLORIDA**

CASE NO.: 86,291

**HERBERT M. JOHNSON, TOMMY HARRISON  
and JEAN SWITZER, Private Citizens,  
Individually, and as REPRESENTATIVES  
for TACO, an Unincorporated Association,  
AND OTHERS,**

**Appellants,**

**vs.**

**ST. JOHNS COUNTY, a political  
subdivision of the State of Florida,**

**Appellee.**

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**INITIAL BRIEF ON APPEAL**

**APPEAL** from the Circuit Court of the Seventh Judicial  
Circuit of Florida, in and for St. Johns County, Hon. E. L.  
Eastmoore, Presiding.

St. Johns County Case No. CA 95-928, DIV: 55

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## INTRODUCTION TO THE CASE

This appeal addresses alleged statutory non compliance, unconstitutionality, irregularities and errors in a proposed bond issue by the Board of Commissioners of St. Johns County Florida ("the County", hereafter). The County, on July 18, 1995, presented for validation, to the Circuit Court of the Seventh Judicial Circuit, a proposed Eighteen Million Dollar (\$18,000,000) bond issue that was approved. This appeal is from the order validating the bonds.

## FACTS

The project plan (Exhibit A) on the record shows that St. Johns County proposes to enter into an arrangement by which it will own a portion of a hotel/resort building (A-1). The County proposes to finance the acquisition, for a price of \$11,000,000, by issuing \$18,000,000 in "Taxable Convention Center Revenue Bonds" and to retire the bonds from accumulations into a sinking fund from a variety of sources, including the bond proceeds (during the first three years), "legally available non-advalorem revenues", and "Project Revenues". To assure the proposed bond holders that payments will be made, as they become due, and to provide for marketability of the bonds, the County will promise to subsidize, if necessary, the payments from its legally available, non-ad-valorem revenues. This can only happen, however, should a shortfall in the sinking fund occur as a result of insufficient accumulation of "pledged funds" or

or "project revenues".

In their Complaint (Exhibit D), the Board of County Commissioners alleged that they found that the bond issue "serves a paramount public purpose," complies with the requirements of the Constitution and Statutes of Florida, and that the bonds would not contemplate a pledge of the "taxing power" of the county.

The bonds are alleged to be "revenue bonds" issued pursuant to the County's home rule authority (Ch. 125, FLA. STAT.), as codified by St. Johns County Ordinance No. 95-21, (Exhibit E) and no authority under Ch. 159, FLA. STAT. is contemplated.

This Court is authorized to consider only legal arguments, appellant has included his answer to the complaint for background information purposes only.

#### SUMMARY OF ARGUMENT

In Florida, it is established that judicial inquiry into the validity of a proposed bond issue is strictly limited to; (a) whether the issuer has the authority to issue the bonds sought to be validated; (b) whether the financial structuring of the bonds falls within the purview of the Constitution and Statutes of Florida; and (c) whether the bonds serve a "paramount public purpose". The relevant documents on the record, selected portions of which are to be found in the appendix, show that the first condition is not met; this appeal will not address the other two issues.

**ISSUE: WHETHER THE COUNTY HAS THE AUTHORITY TO ISSUE THE  
BONDS; WHETHER THE CONTEMPLATED PROJECT IS ONE THAT  
CAN BE LAWFULLY FINANCED BY COUNTY REVENUE BONDS**

**ARGUMENT**

St. Johns County, Fla., Ordinance 95-21 (June 13, 1995) (Exhibit E) is, arguably, an unlawful ordinance, a "legislative chimera" whose purported authority arises from partial definitions lifted "out of context" from two separate chapters of the Florida Statutes (Sections 125, 159, FLA. STAT. (1993)). The County, regardless of its home rule power, has no authority to issue county revenue bonds for a project unless specific authority exists for the project by Florida Statute, and not local ordinance. A county or municipal ordinance is inferior to state law, doubts as to conflict between an ordinance and a state law are to be resolved against the ordinance and in favor of the statute, CITY OF MIAMI BEACH V. ROCHIO, 404 So.2d 1066, 1069-1071 (Fla. 3d DCA 1981) rev. den & dismissed 408 So.2d 1092 (Fla. 1981). A project authorized under Section 159, FLA. STAT. (1993), cannot be presumed permissible under Section 125, FLA. STAT. (1993).

For authority against the proposition that the County can issue the proposed bonds under the general grant of "home rule" powers, see HARLEY V. BOARD OF PUBLIC INSTRUCTION OF DUVAL COUNTY, 103 So.2d 111 (Fla. 1958) (special grant of power or special act of the Legislature takes precedence over

a general grant or law on the same subject).

While the County seeks to issue bonds under color of Section 125, FLA. STAT. (1993), the only authority found in that Chapter that specifically confers authority to the County for bond funding of the public acquisition of a convention facility arises under Section 125.0104, FLA. STAT. (1993). However, the County has not amended its "Tourist Development Plan" to accommodate a bond issue or to designate "bed tax" revenues to that purpose. Section 125.011(2), FLA. STAT. (1993) specifically defines certain projects that qualify for county bond financing; "convention center" is not enumerated; Section 125.012(22), FLA. STAT. (1993) extends the list of 125.011(2), FLA. STAT. (1993) by adding "trade marts", exposition halls, and buildings for the display, exhibition, and sale of goods, wares, and merchandise." However, the overall content of Section 125.012, FLA. STAT. (1993), clearly shows intent that these defined "projects" exist within the larger context of the definitions of Section 125.011(2), FLA. STAT. (1993); they must be constructed and operated as part of or incident to one of the projects defined as "public mass transportation facilities". Therefore, it is clear that given the enumerated permissible statutory "projects" of Sections 125.011(2), 125.012(22), FLA. STAT. (1993), the County is not vested with authority under its "home rule powers", to deviate from the list of permissible projects by claimed authority under any general



grant. Further, because Section 125.0104 FLA. STAT. (1993) specifically provides authority and establishes a permissible funding source for a "convention center", the County is prohibited from acquiring a "convention center" under any other provision of Section 125, FLA. STAT. (1993), ALSOP V. PIERCE, 19 So.2d 799 (Fla.1944) (a legislative direction as to how a thing shall be done is, in effect, a prohibition against its being done in any other way).. The intent of the

Legislature controls the construction of statutes; that intent is determined primarily from the language of the statute. ST. PETERSBURG BANK & TRUST CO. V. HAMM, 414 So.2D 1071 (Fla. 1982). Since the Legislature is presumed to know the meaning of the words it uses and to convey that intent by use of specific terms, the Court (and presumably County Commissioners) must apply the plain meaning of those words if they are unambiguous. See, CALOOSA PROPERTY OWNERS ASSOCIATION, INC. V. PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS, 429 So.2d 1260 (Fla. 1 DCA 1983). Here the

county is attempting to finance part of a resort/convention hotel by implementing a far-fetched scheme that proposes: (a) county ownership of all real estate below ground level of the building; (b) grant of an "air rights easement" to a private party together with rights of ingress and egress to any improvement of the "air"; (c) county ownership of part of the floor space and all of the equipment in a kitchen that serves a privately owned and operated

hotel; and, (d) split ownership of the entire structure.

Nowhere within the purview Section 125.012(22), FLA. STAT. (1993), can the proposed convention hotel be a lawful project under the authority claimed by the County. If the legislature had intended that a "convention center" could be a permissible project under Sections 125.011(2), 125.012(22), FLA. STAT. (1993), it would have specified such a purpose as they did under Sections 125.0104, 159.02(5), 159.02(13), FLA. STAT. (1993).

The law respecting statutory construction is clear. Where a particular circumstance or situation is defined in clear language, the clear language rules the construction. The list of permissible projects defined under the statutes needs no interpretation. The definitions of Sections 125.011(2) and 125.012(22), FLA. STAT. (1993), must control.

Appellant argues that the words "trade marts", "exposition halls", and buildings for the display exhibition and sale of goods, wares, and merchandise", of Section 125.012(22), FLA. STAT. (1993), describe public markets or other facilities that are part of larger transportation terminal projects as defined in Section 125.011(2), FLA. STAT. (1993). These are words of common usage that convey a meaning that these defined projects are for specific purposes of commercial market activities; words of common usage, when used in a statute, should be construed in their plain and ordinary sense. PEDERSEN V. GREEN, 105 So.2d 1, 4 (Fla.

1958). See also, STATE V. TUNNICLIFFE, 124 So. 279, 281 (Fla. 1929); GASSON V. GAY, 49 So.2d 525, 526 (Fla. 1950); STATE V. EGAN, 287 So.2d 1, 4 (Fla. 1973).

St. Johns County, Fla., Ordinance 95-21 (June 13, 1995), the Ordinance that authorizes the bond issue defines "project" for purposes of the bond issue as, "any capital project consisting of a Convention Center, etc.. (Exhibit E) This presents an obvious conflict with the statute.

It has been held that where the Legislature has provided those things upon which a statute is to operate, it is generally implied that the statute does not operate upon those things not mentioned. See, PW VENTURES, INC. V. NICHOLS, 533 So.2d 281 (Fla. 1988). Furthermore, where a statute contains a definition of specific words used in the legislation, that definition is controlling. See, ERVIN V. CAPITAL WEEKLY POST, INC., 97 So.2d 464 (Fla. 1957) (statutory definition of a word is controlling and will be followed).

In construing the meaning of a statute, the primary purpose is to give effect to the intention of the Legislature. In accomplishing this, the language of the statute itself should be considered first. See, PEOPLE'S BANK OF JACKSONVILLE V. ARBUCKLE, 90 So. 458 (Fla. 1921), and CITY OF ST. PETERSBURG V. SIEBOLD, 48 So.2d 291 (Fla. 1950). The statutory rule of construction, *expressio unius est exclusio alterius*, the express mention of one thing

necessarily implies the exclusion of all other things not mentioned, is applicable to this situation. Thus, the Legislature has specifically vested the County with the authority to issue bonds for certain projects under the home rule power conferred by Section 125, FLA. STAT. and projects not specifically enumerated are not authorized. See generally, THAYER V. STATE, 335 So.2d 815 (Fla. 1976); DOBBS V. SEA ISLE HOTEL, 56 So.2d 341 (Fla. 1952), ALSOP, supra.

Therefore, when the statute does not state that a convention center is a permissible project for which county revenue bonds may issue there can be no implied authority for bond funding of such a project.


In drafting St. Johns County, Fla. Ordinance 95-21 (June 13, 1995), the County has attempted to incorporate part of the definitions of Section 159, FLA. STAT. (1993) into St. Johns County Ord. 95-21 for establishing color of authority (Exhibit E). The County, obviously can not claim authority under Section 159, FLA. STAT. (1993) because the bonds are not "industrial revenue bonds" funding a "self-liquidating project". The definitions of "project" for Section 159, FLA. STAT. (1993) bond proposals, are clearly irrelevant as authority for a purported Section 125, FLA. STAT. (1993) bond issue.

#### **CONCLUSION AND STATEMENT OF RELIEF REQUESTED**

Where the County attempts to rewrite State Statutes by County Ordinance by passing an ordinance such as St. Johns

County, Fla., Ordinance 95-21 (June 13, 1995), it must fail. The ordinance is unlawful and cannot create authority for bond funding the contemplated unlawful project.

**WHEREFORE**, appellant prays that the judgment validating the bonds be vacated.

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Hon. Steve Alexander, State Attorney, St. Johns County Courthouse, St. Augustine, FL 32084 and James G. Sisco, Esquire, 4020 Lewis Speedway, St. Augustine, FL 32095 by U. S. Mail this 7th day of September, 1995.

  
Attorney