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MAY 24 1996

CLERK, SUPREME COURT

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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

GORDON LOZIER,  
Appellants,

-vs-

Appeal No. 87,609  
Lower Court Case 95-4491-CA

COLLIER COUNTY FLORIDA, a  
political subdivision  
Appellee.

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APPELLANT'S REPLY BRIEF

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## SUMMARY OF ARGUMENT

The use of tourist tax revenues to pay for bonds issued by an MSTU and secured by a pledge of ad valorem revenues is not an authorized use of tourist tax revenues, because the bonds are not being issued to further the purposes set forth in the tourist tax authorization legislation.

Tourist tax revenues under F.S. 125.0104(5)(c) can only be used to refinance revenue bonds previously issued that were secured by tourist tax revenues.

The Collier County tourist tax ordinance approved in a referendum of the voters specifically restricts the use of tourist tax revenues to secure the refinancing of revenue bonds. It does not authorize the use of such revenues to secure the refinancing of general obligation bonds.

## ARGUMENT

### I.

#### **THE BONDS ARE NOT BEING USED FOR A LEGISLATIVELY APPROVED PURPOSE.**

Despite the protestations of Appellee in its brief and Marco Association of Condominiums, Inc. in its amicus brief filed in connection with this Appeal, when form is stripped away and substance is examined, the Board of Collier County Commissioners is attempting to use the proceeds of tourist tax revenues, not to renourish the beach as the voters approving the tourist tax had contemplated, but to pay off a pre-existing obligation of the Marco Island condominium owners. The result would be that those owners would no longer have to pay assessments they agreed to pay in 1988. As Appellee shows in its brief, the MSTU was formed, and the property owners in the Unit agreed to be assessed, because they were getting a special project (their beach was being renourished) and they were the beneficiaries of that project. Now the county wants to apply countywide tourist tax revenues to pay for that special project.

This Court must be vigilant in its supervision of local political governments who are tempted to use tourist tax revenues as a piggy bank to cover a multitude of payments not contemplated by the referendum of the voters. Imagine, for example the County using the tourist tax to pay off transportation bonds in order to reduce the obligation of developers

to pay impact fees. The County could justify it on the grounds that roads are necessary to get to the beach to prevent erosion. Or further, tourist tax revenues are used to pay off school bonds on the excuse that the school teaches erosion prevention to its students.

The test for this Court should be whether the direct application of tourist tax revenues will accomplish the legislatively authorized purpose. To say that the use of the tourist tax funds in the instant case will protect against floods and will result in beach erosion control strains the imagination. The only thing that these bonds will do is to eliminate the erosion of monies from the taxpayers in the MSTU. If the Court accepts Appellee's argument, then it is a virtual certainty that no further projects will be undertaken at the beaches. Local government will be too busy finding politically acceptable ways of eliminating prior financial burdens of its residents. One can only look at the Florida lottery to see this principal in action.

## II.

### **F.S. 125.0104(5)(c) DOES NOT AUTHORIZE THE USE OF TOURIST TAX REVENUES TO REFUND GENERAL OBLIGATION BONDS**

Appellees rely on F.S. 125.0104 (5) (c) for authority to issue refunding bonds. F.S. 125.0104 (5) (c) states:

"(c) The revenue to be derived from the tourist development tax may be pledged to secure and liquidate revenue bonds issued by the county for the purposes set forth

in subparagraphs (a) 1. and 4. or for the purpose of refunding bonds previously issued for such purposes, or both; however, no more than 50 percent of the revenues from the tourist development tax may be pledged to secure and liquidate revenue bonds or revenue refunding bonds issued for the purposes set forth in subparagraph (a) 4. Such revenue bonds and revenue refunding bonds may be authorized and issued in such principal amounts, with such interest rates and maturity dates, and subject to such other terms, conditions, and covenants as the governing board of the county shall provide. The legislature intends that this paragraph shall be full and complete authority or accomplishing such purposes, but such authority shall be supplemental and additional to, and not in derogation of, any powers now existing or later conferred under law."

What appellees have conveniently ignored is the language of the statute itself. The statute speaks of refunding previously issued revenue bonds. Paragraph (c) provides that tourist tax revenues -

"may be pledged to secure and liquidate revenue bonds or revenue refunding bonds . . ."

It says nothing about ad valorem bonds. Of course, previously issued tourist tax revenue bonds should be used to refinance previously issued tourist tax revenue bonds. Without such a provision, the local government could never obtain better rates or terms or lengthen or shorten maturities on previously issued bonds. The statute recognizes the desirability of refinancing bonds and specifically provides the vehicle to achieve such refinancing.

It is a vastly different matter when the argument is made that the tourist tax revenues can be pledged, not to add new sand on the beach, but to reimburse someone who has already paid to have sand put on the beach seven years ago. The purpose in the latter case is not to achieve more economical financing, but to use the vehicle of the refinancing mechanism to use tourist tax revenues for an entirely different purpose. In the latter case tourist tax revenues are refinancing bonds previously secured by tourist tax revenues, but to

refinancing bonds secured by a pledge of ad valorem taxes. That is not what F.S. §125.0104 (5)(c) intends.

### III.

#### THE COUNTY ORDINANCE APPROVED BY VOTER REFERENDUM LIMITS THE USE OF TOURIST TAX REVENUES TO A REFUNDING OF REVENUE BONDS

Finally, Appellee concedes that on November 3, 1992, the voters of Collier County approved the 1992 tourist development tax ordinance (Ordinance 92-60). Section Three of the Ordinance provides for the use of revenues and adopts a tourist development plan. Paragraph 2 of Section Three states:

"2. The revenues to be derived from the tourist development tax may be pledged to secure and liquidate revenue bonds. . . Such revenue bonds and revenue refunding bonds may be authorized and issued in such principal amounts with such interest rates and maturity dates and subject to other terms and conditions and covenants as the governing board of Collier County shall provide."

Ordinance 92-60 was amended by a super majority of the Board of Collier County Commissioners in 1995 (Ordinance 95-56) but the provisions of Paragraph 2 described above were unchanged.

Thus, assuming arguendo, that the State statute gives the County authority to refinance bonds other than revenue bonds from tourist tax dollars, the local tourist tax plan adopted by the voters does not confer any such right on the Board of County Commissioners. To the contrary, the Ordinance approved by the voters in a referendum specifically limits refinancing to previously issued bonds that are secured by tourist tax revenues.



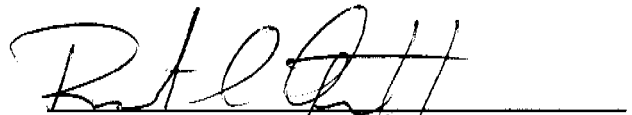
**CONCLUSION**

The use of the bonds secured by tourist tax revenues is unlawful and as a result, the decision of the Circuit Court should be reversed.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Appeal has been furnished to Gregory T. Stewart, Esq., Nabobs, Goblin & Nickerson, P.A., 315 South Calhoun Street, Suite 800, Tallahassee, Florida 32301, David E. Bryant, Esq., Office of the Collier County Attorney, 3301 Tamiami Trail East, Naples, Florida 33962 and Michael Provost, Assistant State Attorney, Post Office Drawer 2007, Naples, Florida 33939 this 23rd day of April, 1996.

Respectfully submitted this 23rd day of April, 1996.



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