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IN THE SUPREME COURT OF THE
STATE OF FLORIDA

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CLERK, SUPREME COURT

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JAMES NOBLE, M.D.,

Appellant,

vs.

CASE NO. 87,857
(LOWER COURT CASE NO.
96-54 CA - MARTIN COUNTY)

MARTIN COUNTY HEALTH
FACILITIES AUTHORITY,

Appellee.

APPELLANT'S INITIAL BRIEF

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CASE NO. 87,857
NOBLE V. MARTIN COUNTY
HEALTH FACILITIES
AUTHORITY

CERTIFICATE OF INTERESTED PERSONS

Counsel for the Defendant/Appellant, JAMES NOBLE, M.D., certifies that the following persons and entities have or may have an interest in the outcome of this case.

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STATEMENT OF THE CASE AND FACTS

This is an appeal, pursuant to Chapter 75, Florida Statutes, of a bond validation proceeding. The Order appealed is a Final Order validating the Martin County Health Facilities Authority, sections 1996A and 1996B revenue bonds. (See Appendix at Tab 7) The revenue bonds and proceeds therefrom go to Martin County Health Facilities Authority for capital improvements to Martin Memorial Hospital in Stuart, Florida. Martin Memorial Hospital is a not for profit hospital, located in Stuart, Florida. Martin Memorial Hospital provides a variety of health care facilities and services at various locations in Martin County. Martin Memorial Hospital has also branched out and provides health care facilities and services in St. Lucie County. (See Appendix at Tab 4.a, pages 1-40).

The Appellant, JAMES NOBLE, M.D., is a local physician. Dr. Noble intervened his objection to the bond notice procedure and that he was not able to present his general and specific concerns with the bond validation procedure and raise the issue of whether these bonds were satisfied the public purpose doctrine. (See Appendix at Tab 4.a, pages 1-40).

The Court heard the evidence and summarily rejected all arguments as collateral and not within the Court's jurisdiction.

SUMMARY OF THE ARGUMENT

- I. The intervenor/appellant raised issues which were not collateral matters. The court does have jurisdiction to try the issue of whether subject bonds are within the public purpose doctrine.
 - A. the public purpose test for bonds has been liberally construed;
 - B. the courts have unique jurisdiction to hear public purpose arguments and such matters on a case by case basis,

- II. As a result of Martin Memorial Medical Center operating in both Martin and St. Lucie Counties, the public purpose doctrine invalidates the bonds.
 - A. The intent of Section 154.201, et seq is to allow counties to assist hospitals meet the public need.

 - B. The courts should entertain economic analysis of revenue bonds.

POINT I. WHETHER THE INTERVENOR/APPELLANT'S MOTION TO INTERVENE RAISED ISSUES THAT WERE NOT COLLATERAL MATTERS AND WERE WITHIN THE SUBJECT MATTER JURISDICTION OF THE CIRCUIT COURT.

The broad point of this appeal is that Dr. Noble's objections to the validation of the subject bonds raised issues that were not merely collateral and that the bonds violate the public purpose doctrine.

While general obligation bonds issued by the State and local Governments require voter approval before tax revenues may be obligated, revenue bonds are different. Revenue bonds, and in particular revenue bonds raised under Florida Statutes Chapter 154 do not require voter approval. Fla. Const. Art. VII, §11, 12. In particular, as set out in Florida Statutes Chapter 154, the Counties are allowed to create health facility authorities which can issue revenue bonds to supplement the needs of health facilities in providing assistance for the health needs of the counties or local governmental entities. This is a statutory doctrine codifying the Legislative determination that municipal bond type debt is a way of financing the future and current medical needs of Florida's residents. The taxpayer, who becomes a party to a bond validation proceeding by intervening, can appeal to this Court if he is dissatisfied with the trial court's ultimate validation of the bonds. Fla. Stat. §75.08 (1994).

An historical perspective of the case law in Florida shows a liberal trend in expanding what is considered a public purpose:

In adopting the Constitution, and later Amendments, however, the people have left questions to be answered on a case by case basis as the structures of particular financing present themselves. 12 Fla. State L. Rev. 710,711 (Winter 1995).

There is a two prong test to determine the validity of revenue bonds. First, is the determination that the full faith and credit of the Governmental entity has not been pledged. The second is that the project serves a requisite public purpose. Orange County Industrial Development Authority v. State, 427 So. 2d 174 (Fla. 1983); Wald v. Sarasota County Health Facility Authority, 360 So.2d 763 (Fla. 1978).

While an analysis of the cases clearly leads to the conclusion that the Courts have been liberal in their interpretation of the public policy doctrine, the review process before the Supreme Court is clearly designed to allow a party dissatisfied to seek this Court's review. Fla. Stat. §75.08.

The validity of a proposed bond issue pledging the public credit for any project not enumerated in the Florida Constitution still depends on whether the project serves a paramount public purpose. State v. Miami Beach Redevelopment Authority, 392 So.2d 875 (Fla. 1980).

The Appellant fully acknowledges that the Supreme Court is aided in making a public policy determination by specific legislative findings such as embodied in Chapter 154 of the Florida Statutes which provides for health care facility authorities. Fla. Stat. §154.03.

Dr. Noble's position is that the trial court incorrectly dismissed his motion that this particular bond project was an

"improper subsidy of private enterprise with public money", State v. City of West Palm Beach, 113 So.2d 324, 377 (Fla. 1959), as a collateral matter, and not within its jurisdiction. Because the Court seems to have a unique responsibility in balancing the public interest and the public's debt, a determination of the public purpose should not be summarily dismissed by the trial court. The Appellant fully recognizes that there is a presumption of validity to the Legislative finding that the health care facility's authority serves a public purpose, and that the standard of review is that the Appellant must show that the trial court's determination that a particular revenue bond is within the Public Purpose Doctrine is clearly erroneous.

The trial court ruled that it had no jurisdiction of the matters presented by Dr. Noble. The Court found that:

. . . d . The purpose of the obligation is legal; g. Further, the court feels that the matters raised by Dr. Noble are collateral issues over which this court lacks subject matter jurisdiction. (appendix)

The Appellant argues that the trial court has subject matter jurisdiction to determine the issue of whether a bond is violative of the public policy doctrine.

POINT II. WHETHER IT IS VIOLATIVE OF THE PUBLIC POLICY DOCTRINE TO ALLOW A HOSPITAL THAT RAISES REVENUE BONDS PURSUANT TO CHAPTER 154 TO ISSUE THOSE BONDS WHILE IT IS DOING BUSINESS IN ANOTHER LOCALITY AND IS NOT REALLY IN NEED OF THE ASSISTANCE OF CHAPTER 154 REVENUE BONDS.

It is uncontested in the record that Martin Memorial Medical Center is doing significant business and providing significant health care facilities in St. Lucie County, as well as Martin County. (See Appendix, Tab 6, pages 1-15)

Section 154.201 provides that it is essential that the people of Florida have access to adequate medical care and health facilities. Fla. Stat. 154,201,203. The requisite for a health care authority to raise revenue bonds is the obtaining of a Certificate of Need as defined in the Florida Statutes. In essence, Dr. Noble's argument, as pointed out in his testimony before the Court, is that troubling economic result created by Martin Memorial Medical Center, based upon its obtaining a Certificate of Need for an additional facility in Martin County, was allowed to raise millions of dollars to fund this new facility. At the same time, it was reserving to its corporate self, its own earned revenues that it had derived from its own existing health care facilities in Martin County to utilize and fund the expansion of facilities in St. Lucie County. (See Appendix 4.a, page 12)

This Court has in the past considered the economic analysis concerning revenue bonds.

. . . Under our organic law, public money cannot be appropriated for a private purpose or used for the purpose of acquiring property for the benefit of a private concern.

It does not matter that such undertakings may be called, or how earthwhile they may appear to be at the passing moment. The financing of private enterprises by means of public funds is entirely foreign to a proper concept of our constitutional system. Experience has shown that such encroachments will lead inevitably to the ultimate destruction of the private enterprise system. State v. Town of North Miami Beach, 59 So.2d 779, 785 (Fla. 1952).

Is the trial court's finding that the revenue bonds in question satisfy the statutory prohibition against pledging the full faith and credit of Martin County, and that it satisfies the Public Purpose Doctrine clearly erroneous? The Appellant submits that the answer is in the affirmative as a result of the trial court's summary rejection of the argument as not within its jurisdiction. The judiciary must remain alert to any attempt at misuse of public borrowing authority.

Chapter 154 allows for the creation of health care facilities, and enables them to borrow money for revenue bond issues. However, intertwined with revenue bonds is the obtaining of a Certificate of Need. Fla. Stat.154.201.

The Certificate of Need program, as it exists in Florida, traces its origins to efforts at health planning on the State level in the early 1970's. The Certificate of Need was said to have three major goals; one, controlling health care costs; two, insuring quality of care; and three, insuring indigent access to medical care. These are still basically the core goals of the Certificate of Need program in Florida. 19 Fla. State L. Rev. 477, vol. no. (2 Fall 1991).

It has been said that granting a Certificate of Need to a

hospital is like granting it a property right in its locality. The granting of the Certificate of Need will increase the hospital's income, and improve its competitive advantage. Dr. Noble's position is that since a Certificate of Need (See Appendix, Tab 1.a) is intertwined with revenue bonds under Chapter 154, it requires some judicial inquiry into whether such bonds control costs, insure quality, and insure access for indigent care. The analysis of the public policy argument should include these issues.

A discussion of the public policy issues would include factors such as, (a) Does the hospital have significant funds? (b) Does the hospital do business in more than one county? (c) What economic impact is there where Martin Memorial Medical Center raises revenue bonds when it does business in a neighboring county purely for its own economic benefit? Because of the Legislative intent to Chapter 154, the Appellant urges the Court that such questions, and the analysis of public policy, are not collateral issues. Shouldn't the question be asked that if a hospital, having a need requiring the public assistance of both a Certificate of Need and revenue bonds, have some limitations placed upon it? Under the present scheme, there is no check on the competitive or economic effects in the validation of this bond. (See Appendix, Tab 6, pages 1-20) (Als, See Appendix, Tab 5).

The language of section 154.203 is restricted to each county or municipality and to provide a "measure" of assistance. (Fla. Stat. 154.203). This language invites judicial review.

In the case before this Court, the question of the use of the proceeds of the bond should be analyzed by looking at the unique ability of Martin Memorial Hospital to gain a competitive edge with its own funds to compete with hospitals outside the county. The Appellant urges that the question of the use of such proceeds is never a collateral issue. McCoy Restaurants, Inc. vs. City of Orlando, 392 So.2d 252 (Fla. 1980). Each case must be considered on its own facts to determine whether an issue is collateral.

CONCLUSION

The Appellant submits that the validation of the instant revenue bonds in this case, while not patently illegal, violates the public purpose doctrine and makes this bond issue invalid.

In addition, the decision of the Court to summarily dismiss the Appellant's Motion to Intervene was in error, as the issues raised were not collateral matter, and were within the subject matter jurisdiction of the Circuit Court of Martin County.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief of Appellant has been furnished by U.S. Mail to Robert Kilbride, Assistant State Attorney, 1111 SE Federal Highway, Suite 218, Stuart, Florida 34994; Paul Lester, Esquire, Fieldstone, Lester & Shear, 200 South Biscayne Boulevard, Suite 2100, Miami, Florida 33131-2104, and J.D. Lookadoo, Jr., M.T., 2792 Spruce Ridge Avenue, Jensen Beach, Florida 34957, this 3rd day of May, 1996.



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