

IN THE SUPREME COURT OF FLORIDA

THE STATE OF FLORIDA AND THE SEVERAL PROPERTY OWNERS, TAXPAYERS AND CITIZENS OF THE STATE OF FLORIDA, INCLUDING NON-RESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN, AND OTHERS **HAVING** OR CLAIMING ANY RIGHT, TITLE OR INTEREST IN PROPERTY TO BE AFFECTED BY THE ISSUANCE OF THE BONDS HEREIN DESCRIBED, OR TO BE AFFECTED THEREBY,

CASE NO. 89,332

FILED

SID J. WHITE

JAN 7 1997

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

Defendants/Appellants,

vs.

FLORIDA HURRICANE CATASTROPHE FUND FINANCE CORPORATION, a public benefits corporation,

Plaintiff/Appellee.

BRIEF OF APPELLANTS THE STATE OF FLORIDA
AND THE SEVERAL PROPERTY OWNERS, TAXPAYERS AND CITIZENS
INCLUDING CERTAIN NON-RESIDENTS OWNING PROPERTY
AND ALL OTHERS CLAIMING ANY INTEREST IN PROPERTY TO BE
AFFECTED BY THE ISSUANCE OF CERTAIN REVENUE BONDS

William N. Meggs, Esq.
State Attorney
Second Judicial Circuit
C. W. GOODWIN
Assistant State Attorney
301 S. Monroe Street, Suite 475
Tallahassee, Florida 32399
(904) 488-6701

TABLE OF CONTENTS

| | Page (s) |
|---|----------|
| Table of Authorities | ii |
| Statement Of The Case And Facts | 1 |
| Summary of Argument | 5 |
| Argument | 6 |

ISSUE ON APPEAL

| | |
|---|----|
| WHETHER THE CIRCUIT COURT COMMITTED ERROR IN VALIDATING THE REVENUE BONDS TO BE ISSUED BY THE FLORIDA HURRICANE CATASTROPHE FUND FINANCE CORPORATION, A PUBLIC BENEFITS CORPORATION CREATEDBYLAW. | 6 |
| Conclusion | 13 |
| Certificate of Service | 13 |

TABLE OF AUTHORITIES

| <u>CASES</u> | <u>PAGE(S)</u> |
|--|------------------|
| <u>American Bankers Insurance Company</u> <u>v. Chiles,</u> 675 So. 2d 922 (Fla. 1996) | 8 |
| <u>Lodwick v. School District of</u> <u>Palm Beach County,</u> 506 So. 2d 407, 409 (Fla. 1987) | 6 |
| <u>Taylor v. Lee County,</u> 498 So. 2d 424, 425 (Fla. 1986) | 6 |
| <u>Town of Medley v. State,</u> 162 So. 2d 257, 258 (Fla. 1964) | 6 |
| <u>Warner Cable Communications, Inc.</u> <u>v. City of Niceville,</u> 520 So. 2d 245 (Fla. 1988) | 6 |
| <u>FLORIDA STATUTES</u> | |
| Chapter 75, Florida Statutes | 2, 4-6, 8, 9, 11 |
| Section 75.08, Florida Statutes | 1, 4 |
| Section 215.555, Florida Statutes | 2, 4, 6-8, 11 |
| Section 215.555(6)(a)2, Florida Statutes | 1, 4 |
| Section 215.555(6)(c)1.a., Florida Statutes (1996) | 8 |
| Section 215.555(6)(c)2.a, Florida Statutes | 1 |
| Section 215.555(6)(c)3.a, Florida Statutes | 4 |
| Section 215.555(9), Florida Statutes | 8 |
| <u>OTHER</u> | |
| Article III, Section 19(f) (1) | 8 |
| Article III, Section 19(f) (2), Florida Constitution | 8 |
| Article III, Section 19(f) (3), Florida Constitution | 8 |
| Article V, Section 3(b) (2), Florida Constitution | 1, 5 |

Article VII, Section 11(d), Florida Constitution 12
Chapter 96-194, Laws of Florida 1

STATEMENT OF THE CASE AND FACTS

Jurisdiction

This is appellants' brief by William N. Meggs, State Attorney of the Second Judicial Circuit of Florida. The State Attorney has been statutorily designated as the representative of the State of Florida, its property owners, taxpayers, and citizens, including non-residents and others. This is a bond validation case brought by the plaintiff, The Florida Hurricane Catastrophe Fund Finance Corporation, a public benefits corporation. The plaintiff corporation was created in 1996 by the Florida Legislature in Section 215.555(6)(c)2.a, enacted as part of Chapter 96-194, the "Hurricane Insurance Affordability and Availability Act of 1996". The trial court entered a final judgment validating up to \$10 billion dollars in revenue bonds on November 12, 1996, and pursuant to the mandatory appeal provisions of Section 215.555(6)(a)2 the State Attorney filed a Notice of Appeal on November 13, 1996. This Court has jurisdiction to entertain this mandatory direct appeal pursuant to Article V, Section 3(b)(2) of the Florida Constitution, Section 75.08 and Section 215.555(6)(a)2, Florida Statutes, as amended in 1996. This brief is accompanied by an appendix containing the entire record below which will be designated herein as (A.___). The transcript of the final hearing of November 12, 1996, is designated as (T.___).

The Pleadings and Proof Below

The suit seeking validation of the to be issued revenue bonds in an amount up to \$10 billion dollars was filed in the Circuit

Court for the Second Judicial Circuit in and for Leon County. (A.114 104). The case called for a combined application of Section 215.555, Florida Statutes concerning revenue bonds to be issued by a public benefits corporation, and Chapter 75, Florida Statutes which is the general statute on bond validation. Although Chapter 75 deals with bonds issued by the State of Florida or its agencies and subdivisions, the instant case concerns bonds to be issued by an entity which was held to be neither the State nor an agency of the State. Instead, here the bonds are to be issued by a public benefits corporation created by the Florida Legislature in Section 215.555 for the specific purpose of issuing such bonds.

The complaint was filed on August 28, 1996, and the Circuit Court immediately issued a Notice and Order to Show Cause. (A.107). This order scheduled a hearing for November 12, 1996, in the Leon County Courthouse and called upon any citizen or interested party to show cause at that time why the revenue bonds should not be validated as prayed for in the complaint. The order further required the filing of written defenses by the State Attorney of the Second Judicial Circuit and required publication of the entire Notice and Order in three statewide newspapers, The Tallahassee Democrat, The Miami Herald and the St. Petersburg Times.

The Notice and Order was served upon the office of the State Attorney of the Second Circuit on September 3, 1996, and the State Attorney filed an Answer and Defenses on September 5, 1996. (A.109-113). The required publication in the three designated newspapers took place and the matter was then called for the scheduled hearing

on November 12, 1996. The proofs of publication had been filed with the clerk below and the hearing took place in a public courtroom. (A.114-116).

The transcript of the hearing shows that no party or entity other than the plaintiff and the State Attorney appeared. The State Attorney acted on behalf of the State of Florida, its citizens and all other interested parties. The corporate plaintiff **was** represented by attorney John K. Aurell of the firm of Ausley & McMullen and the Office of the State Attorney was represented **by** Assistant State Attorney C. W. Goodwin. No other counsel or any individual sought to enter a formal appearance **or** to otherwise participate in the hearing. The case was presided over by the Honorable Charles D. McClure, Circuit Judge. (T.3).

The plaintiff called Dr. Jack Nicholson as its sole witness and presented Exhibits A through F, which documents had been attachments to the original complaint. (A.1-104). Dr. Nicholson serves as the president and chief operating officer of the plaintiff corporation. (T.8). The State offered no contrary evidence. (T.20).

The Answer of the State had raised various defenses and the plaintiff had submitted a pre-trial written argument in the form of a memorandum addressing the issues raised in the Answer. (109,117). The plaintiff also provided the court and the State Attorney with a proposed form of judgment at the beginning of the hearing. At the conclusion of the hearing, counsel for the State Attorney advised that since being served with the original Notice and Order

to Show Cause in August of 1996, his office had received no objection, inquiry or comment of any sort, and that the State Attorney was not aware of any **legal** cause why validation should not be granted. (T.29).

At the conclusion of the proceeding, the Court orally announced its findings in favor of validation and signed the judgment tendered by the corporate plaintiff. (A.133-140). In compliance with Section 215.555 (6)(a)2, the State Attorney immediately filed a Notice of Appeal so that this matter could be expeditiously presented to this Court for a ruling on **all** issues.

While direct appeals to this Court are authorized and permitted under Section 75.08, Florida Statutes, the appeal in the present case is mandatory by virtue of Section 215.555(6)(a)2, which provides as follows:

The Legislature **finds** and declares that the issuance of bonds under this subsection is for the public purpose of paying the proceeds of the bonds to insurers, thereby enabling insurers to pay the claims of policy holders to assure that the policy holders are able to pay the cost of construction, reconstruction, repair, restoration, and other costs associated with damage to property of policy holders of covered policies after the occurrence of a hurricane. Revenue bonds may not be issued under this subsection until validated under Chapter 75. The validation of at least the first obligations incurred pursuant to this subsection shall be appealed to the Supreme Court, to be handled on an expedited basis.

Pursuant to Chapter 75, the above quoted portion of Section 215.555, and the further notice requirements of Section 215.555(6)(c)3.a., the State Attorney for the Second Circuit **is** the only necessary party to this bond validation proceeding. The State Attorney is given the statutory responsibility of presenting the

defenses to the action below and then proceeding with the appeal herein. As appellant, the State Attorney notes the statutory duty of handling this matter on an expedited basis.

SUMMARY OF ARGUMENT

This was a **bond** validation proceeding in which the trial court granted validation pursuant to Chapter 75. This Court has jurisdiction under Article V, Section 3(b)(2) of the Florida Constitution and the appeal to this Court is mandatory. The State Attorney of the Second Judicial Circuit **was** the designated representative of the State of Florida and all interested citizens and filed various defenses. The plaintiff public benefits corporation presented documentary evidence and oral proof in support of the allegations of the complaint and there were no factual disputes of any sort below. The State Attorney asserted various legal defenses, and other than those defenses as set out and argued in the Answer he is unable to suggest any reason or cause for denial of the requested validation. **All** issues raised in the Answer were addressed and ruled upon in favor of the plaintiff **by** the trial court.

There were no technical objections to the proceedings and the public purpose of this bond issue has been clearly resolved by legislative findings. There is no real question as to the obviously appropriate goal of protecting property owners and policy holders from the catastrophe of hurricane losses. The State Attorney has thus fulfilled his statutory duty in presenting all reasonable defenses and in further presenting this matter to this

Court for a final decision on validation of the revenue bonds.

ARGUMENT

WHETHER THE CIRCUIT COURT COMMITTED ERROR IN VALIDATING THE REVENUE BONDS TO BE ISSUED BY THE FLORIDA HURRICANE CATASTROPHE FUND FINANCE CORPORATION, A PUBLIC BENEFITS CORPORATION CREATED BY LAW.

Appellant initially notes that the scope of judicial inquiry in a bond validation case is extremely limited. As this Court has held, the court will only: (1) determine if a public body has the authority to issue the subject bonds; (2) determine if the purpose of the obligation is legal; and (3) insure that the authorization of the obligations complies with the requirements of law. Taylor v. Lee County, 498 So. 2d 424, 425 (Fla. 1986); Lodwick v. School District of Palm Beach County, 506 So. 2d 407, 409 (Fla. 1987); and Warner Cable Communications, Inc. v. City of Niceville, 520 So. 2d 245 (Fla. 1988). Collateral issues will not be resolved in a Chapter 75 bond validation proceeding and questions of business policy and judgment concerning the issuance of revenue bonds are beyond the scope of judicial review. Such decisions have been held by this Court to be the responsibility and prerogative of the body issuing the bonds, absent fraud or a violation of a legal duty. Town of Medley v. State, 162 So. 2d 257, 258 (Fla. 1964) and Lodwick v. School District of Palm Beach County, supra. Thus, the scope of this appeal is restricted and narrow.

As alleged in the complaint and as indicated by applicable Florida Statutes, the Legislature enacted the Florida Hurricane Catastrophe Fund Act, in Section 215.555, Florida Statutes. This

1993 legislation created a trust fund known as the Florida Hurricane Catastrophe Fund (the Fund) to assist in maintaining insurance capacity for insurers writing residential property insurance in Florida in case of a catastrophic hurricane. The Fund was created in response to the insurance and reinsurance crisis in the aftermath of Hurricane Andrew. The **Act** requires insurers to pay premiums to the trust fund in exchange for a commitment that a percentage of the insurer's hurricane-caused losses would be reimbursed from moneys in the Fund. The Act authorizes issuance of revenue bonds in the absence of a hurricane upon a determination by the State Board of Administration (SBA) that to do so would maximize the ability of the fund to meet its obligations after a hurricane. The Act also permits the issuance of such revenue bonds after the occurrence of a hurricane, but the present complaint sought bond validation under the pre-catastrophe alternative and sought approval and validation of up to \$10 billion in revenue bonds to be issued in the future.

The 1993 legislation permitted the issuance of bonds by counties and cities, but in 1996 the Legislature amended section 215.555, to create the Florida Hurricane Catastrophe Fund Finance Corporation (the "Corporation"), the plaintiff herein. The purpose of this statutorily created corporation is the issuance of revenue bonds to fund reimbursements through the Fund for property losses sustained as a result of hurricane damage. The Corporation is a special type entity known as a "public benefits corporation" which is to operate under a five member board of directors consisting of

1. .

the Governor, the Comptroller, the Treasurer, the director of the Division of Bond Finance of the **SBA**, and the chief operating officer of the Trust Fund. According to the legislation, "[t]his mechanism [issuance of revenue bonds by a public benefits corporation] will eliminate unnecessary costs in the **bond** issuance process, thereby increasing the amounts available to pay reimbursement for **losses** to property sustained as a result of hurricane damage." Section 215.555(6)(c)1.a., Fla. Stat. (1996).

Pursuant to a formal resolution and other corporate actions of July 23, 1996, it was determined that the Corporation should proceed, in the absence of a hurricane, to seek validation of the initial issuance of up to \$10 billion in revenue bonds.

The complaint sought validation of such bonds pursuant to Chapter 75 and Section 215.555, Florida Statutes. The constitutionality of the legislation initially establishing the Fund **had** been determined by this Court in American Bankers Insurance Company v. Chiles, 675 So. 2d 922 (Fla. 1996). The Fund was held to have been validly created over objections based on Article III, Section 19(f)(1). Thus, the Fund was recognized in this litigation as an essential and valid entity, and not subject to the four year sunset requirement of Article 111, Section 19(f)(2) of the Constitution. Section 215.555(9) included a legislative finding that the Fund was within the meaning of Article III, Section 19(f)(3), which exempts certain trust funds from the sunseting requirements.

Defenses Raised Below

In compliance with the trial court's Order to Show Cause and the statutory responsibilities under Chapter 75, the State Attorney of the Second Circuit filed defenses which were ten in number.

All of the exhibits attached to the complaint were admitted to be accurate copies of the public documents in question. Further, the State Attorney admitted the status and capacity of the SBA and the factual assertions concerning the acts of that Board.

The following were asserted as defenses numbered 2 through 11 in the Answer:

2. The State denies that the Complaint is sufficient to authorize the validation of the Revenue Bonds (as defined in the Complaint) or any thereof as prayed for in the Complaint, and denies that the laws of the State, specifically Section 215.555, Florida Statutes (the "Act"), authorize the issuance of the Revenue Bonds or any thereof in the manner and form and for the purposes proposed.

3. The State denies that the Florida Hurricane Catastrophe Fund Finance Corporation (the "Corporation") was properly created by the Act.

4. The Corporation lacks standing under Section 75.02, Florida Statutes, to file a complaint for the validation of the Revenue Bonds under Chapter 75, Florida Statutes (1995), in that the Corporation is not one of the types of organizations permitted to file a complaint under Section 75.02, Florida Statutes.

5. The State denies that the Florida Hurricane Catastrophe Fund (the "Fund") was properly created pursuant to Article III, Section 19, Florida Constitution, in that CS/SB 2314, which effected a substantial amendment to the Act, was not passed by a 3/5ths vote of each house of the Legislature and contained more than one subject.

6. The issuance of these Revenue Bonds would constitute the unauthorized pledging of credit as prohibited by Article VII Section 10 of the Florida Constitution.

7. The Corporation is an agency of the State and therefore the Revenue Bonds are Revenue Bonds of the State. The use of the proceeds of the Revenue Bonds, as set forth in the Act, does not constitute a fixed capital outlay as required by Article VII, Section 11(d), Florida Constitution. Therefore, it is denied that the Revenue Bonds are permitted to be issued under Article VII, Section 11(d), Florida Constitution,

8. The reimbursement premiums authorized to be collected by the Fund under subsection (5) of the Act and the emergency assessments authorized to be collected by the Fund under subsection (6)(a)3 of the Act (collectively, the "Fund Revenues") constitute tax revenues of the State within the meaning of Article VII, Section 11(d), Florida Constitution, and are pledged to the repayment of the Revenue Bonds pursuant to the Pledge Agreement. Therefore, the Revenue Bonds are not permitted to be issued under Article VII, Section 11(d), Florida Constitution, because such Revenue Bonds are Revenue Bonds of the State and are not payable solely from funds derived directly from sources other than State tax revenues.

9. The use of the Fund Revenues to pay principal of and interest on the Revenue Bonds is not permitted by Article VII, Section 11(a), Florida Constitution, without an approving vote of the registered voters of the State because such use constitutes a pledge of the taxing power of the State.

10. The Corporation Resolution referred to in the Complaint, a copy of which is attached to the Complaint as an Exhibit, was not properly adopted by the Board of Directors of the Corporation, and the Corporation Resolution is not sufficient in form or in substance to authorize or provide for the issuance of the Revenue Bonds or any thereof.

11. The SBA Resolution referred to in the Complaint, a copy of which is attached to the Complaint as an Exhibit, was not properly adopted by the SBA, as the governing body and administrator of the Fund, and the SBA Resolution is not sufficient in form or in substance to authorize the pledge of the Fund Revenues to the Corporation for payment of the principal of and interest on the Revenue Bonds.

12. Other than as stated above, the State has no knowledge of any defects or illegality in the proceedings but nevertheless requests that the Court require proof of the allegations of the Complaint.

The Answer demanded proof of each material allegation in the complaint and sought an order denying **bond** validation unless all allegations were determined in favor of the plaintiff. (A.113)

Despite publication of the Notice and Order to Show Cause, the State Attorney received no comment **or** objection from any source. No one sought to appear in the case and the public hearing occurred as scheduled and noticed before the Honorable Charles D. McClure. (T.29-30). No member of the public, any insurance company or any other entity appeared or sought to be heard.

The plaintiff presented sworn testimony of the chief operating officer of the Corporation, and this witness explained the reasons for the issuance of these revenue bonds in advance of a hurricane. (T.8-19). Dr. Nicholson identified all of the documents and assured the Court that the revenue to pay off these bonds was not tax based and that the faith and credit of the State was not pledged in any way. (T.15,19,20). The plaintiff presented documentary and oral proof concerning each of the defenses raised in the Answer and had previously filed a written argument on **all** of the defensive issues. (A.117-132).

The Court entered judgment ruling on each issue and validated the bonds. The judgment confirmed the Court's jurisdiction and that proper notice of proceedings had been given by publication and by actual notice to the office of the State Attorney. The judgment concludes that the Corporation has standing to bring the action under Chapter 75. The judgment further concluded that the 1996 amendment to Section 215.555 was properly enacted by majority vote

and that a 3/5ths vote *of* both houses was not required.

The Court ruled that the bonds do not **pledge** the State's credit **or** taxing power and that there is no violation of Article VII, Section 11(d). *The* Court further concluded that the resolutions of the SBA and of the Corporation which authorized issuance of these bonds were validly adopted.

In **keeping** with its duty *to raise* defenses, the State Attorney chose not to present evidence or argument in the trial court other than to seek the Court's ruling on each issue as outlined in the Answer. At the conclusion *of* the hearing, counsel for the State Attorney stated that he was aware of no legal cause why validation should not be granted. (T.29) Thus, the State has no further **good** faith argument to offer against the validation *of* these bonds and requests that this Court review the matter based upon the assertions of the Answer and the briefs **by** both parties.

CONCLUSION

Appellant is aware of no just cause for denial of the complaint for validation of the revenue bonds in question.

William N. Meggs, Esq.
State Attorney
Second Judicial Circuit

By: CW Goodwin
C. W. GOODWIN
Assistant State Attorney
301 S. Monroe Street
Suite 475
Tallahassee, Florida 32399
(904) 488-6701
Fla. Bar No. 162206

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to John K. Aurell and John R. Beranek, Ausley & McMullen, Counsel for the Florida Hurricane Catastrophe Fund Finance Corporation, P.O. Box 391, Tallahassee, Florida 32302, this 7th day of January, 1997.

CW Goodwin
Assistant State Attorney

p1d\sba-bond.brf