

IN THE SUPREME COURT OF FLORIDA

THE STATE OF FLORIDA AN-D 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,

Defendants/Appellants,

vs.

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

Plaintiff/Appellee.

CASE NO. 89,332

FILED

SID J. WHITE

FEB 7 1997

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BRIEF OF APPELLEE
THE FLORIDA HURRICANE CATASTROPHE
FUND FINANCE CORPORATION

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SUMMARY

This is a mandatory direct appeal of a circuit court judgment which validated the issuance of up to \$10 billion of revenue bonds by the Florida Hurricane Catastrophe Fund Finance Corporation (the "Corporation"), a public benefits corporation established by the Legislature in 1996 for the specific purpose of issuing these bonds.

The Corporation, the plaintiff below, filed its Complaint for Bond Validation and the State Attorney, acting as the designated representative of the public, filed an Answer. No other party appeared, and, after final hearing at which all the issues raised were addressed, the trial court entered its judgment validating the bonds.

The revenue bonds are statutorily designated to provide additional funding to the Florida Hurricane Catastrophe Fund (the "Trust Fund"), a trust fund established in 1993 in the aftermath of Hurricane Andrew to protect Florida residential property insurers and owners of insured residential property in this state in case of catastrophic hurricanes. The Trust Fund is administered by the State Board of Administration (the "SBA"). The bonds are to be repaid from the revenues of the Trust Fund, which are not derived from state tax revenues but instead come from payments by certain insurers.

The Florida Hurricane Catastrophe Fund Act, section 215.555, Florida Statutes, as amended in 1996, (the "Act") provides all of the detailed legislative authorization and direction pertaining to

issuance of these bonds by the Corporation. The Corporation is not the State of Florida or an agency of the State, and the Act declares that the bonds "are not a debt of the state" and that "[t]he corporation does not have the power to pledge the credit, the revenues, or the taxing power of the state or of any political subdivision."

The trial court applied the Act to the uncontested facts and approved and validated the bonds and the security therefor.

STATEMENT OF THE CASE

After proper notice, pleadings and hearing, the issuance of up to \$10 billion in revenue bonds by the Corporation was approved by judgment of the circuit court on November 12, 1996. As required, the State has appealed, and this Court has jurisdiction. See art. V, § 3(b)(2), Fla. Const.; §§ 75.08, 215.555(6)(a)2, Fla. Stat.

The Corporation was created by the Legislature in section 215.555(6)(c)2, as part of the Hurricane Insurance Affordability and Availability Act of 1996 (Chapter 96-194). This legislation amended section 215.555 and specifically authorized the Corporation to issue these revenue bonds. As mandated by chapter 75, the Defendants are the State, its citizens, property owners and any other interested non-residents. General notice of the validation proceeding was given, and the State Attorney of the Second Judicial Circuit is the statutorily designated representative of the Defendants. § 215.555(6)(c)3.a, Fla. Stat. No person or party other than the State Attorney appeared or intervened. (T.28,29).

In the Answer of the State, the State Attorney raised various

defenses and, after entry of the judgment validating the bonds, filed an immediate appeal as required by the Act. The appeal raises the same issues which were addressed at the circuit court hearing. Respectfully, the circuit court's rulings on all issues were correct and the judgment should be affirmed.

The Appellants' brief is designated herein as the brief of the State.¹ The Appellants' brief makes it clear that there were no procedural or contested factual issues below. Thus, this Appellee's brief consists primarily of an analysis of the pleadings and documents and the provisions of the law which created the Corporation and gave it the capacity to issue revenue bonds for the public purpose of financially assisting the Trust Fund in assuring that there will be insurance and reinsurance protection to residential property owners for catastrophic hurricane damage.

STATEMENT OF THE FACTS

In response to the property damage and insurance/reinsurance crisis resulting from Hurricane Andrew, in 1993 the Legislature enacted the Florida Hurricane Catastrophe Fund Act, as section 215.555, Florida Statutes. The "Florida Hurricane Catastrophe [Trust] Fund" was created to maintain insurance capacity for insurers writing residential property insurance ("covered policies") in the state in the event of a catastrophic hurricane.

¹The State brief includes an Appendix containing every pleading and document which was before the circuit court, along with a transcript of the final hearing. The Appendix by the State is thus complete and will be used as the record for this brief. The Appendix is designated (A.) with the transcript of the hearing as (T.).

The 1993 law required that such insurers enter into reimbursement contracts which obligate them to pay premiums to the Trust Fund in exchange for a commitment by the Trust Fund that a percentage of their hurricane-caused losses would be reimbursed from the Trust Fund. §§ 215.555(4), (5), Fla. Stat.

It is important to distinguish among these four entities: (1) the SBA, (2) the Trust Fund, (3) the Corporation and (4) the private insurers who are required by the Act to pay moneys into the Trust Fund. The SBA and the Trust Fund are state agencies or entities. The Corporation is a separate public benefits corporation and not a state agency or entity. The insurers are private insurance companies doing business in the State. The SBA supervises and administers the Trust Fund, while the Corporation may issue revenue bonds for the benefit of the Trust Fund.

The money in the Trust Fund will consist of premiums paid by the residential property insurers with reimbursement contracts, the proceeds of any revenue bonds, emergency assessments, if necessary, on insurers writing property and casualty business in this State,² and the earnings of the Trust Fund.

When initially enacted in 1993, the law provided for revenue bonds to be issued only by local government units. The Legislature amended section 215.555 in 1996 to add section 215.555(6)(c), creating the Corporation specifically to establish a more "cost-effective and efficient mechanism for issuance of bonds." This special entity, designated by the Legislature as a "public benefits

²§ 215.555(6)(a)3, Fla. Stat. (1996) .

corporation," operates under a five member board of directors consisting of the Governor or a designee, the Comptroller or a designee, the Treasurer or a designee, the director of the Division of Bond Finance of the SBA, and the chief operating officer of the Trust Fund. § 215.555(6)(c)2.c, Fla. Stat. The Corporation was legislatively created with all of the powers of corporations under chapter 607 (Business Corporation Act) and chapter 617 (Not For Profit Corporation Act), Florida Statutes. The Corporation's Articles of Incorporation thereafter filed with the Department of State designate it as a not for profit entity. (A.15). In the words of the Legislature, "[t]his mechanism [issuance of revenue bonds by a public benefits corporation] will eliminate unnecessary costs in the bond issuance process . . ." § 215.555 (6) (c)1.a, Fla. Stat.

The Act provides that the SBA will administer the Trust Fund and permits issuance of revenue bonds (1) upon the occurrence of a hurricane and a determination that monies in the fund are or will be insufficient to pay reimbursements at promised levels or (2) in the absence of a hurricane, upon a determination by the SBA that to do so would maximize the ability of the Trust Fund to meet future obligations. § 215.555(6)(a)1, Fla. Stat. On July 23, 1996, the SBA adopted its resolution determining that the Trust Fund's ability to meet future obligations would be maximized by taking the necessary actions in the absence of a hurricane to enable the Corporation to issue these bonds. (A.23-24).

The trial court received oral and written argument, the

exhibits³ offered by the Corporation and the oral testimony of Dr. Jack Nicholson, who was the president of the Corporation and the chief operating officer of the Trust Fund. (T.8-21). The trial court ruled on all issues and entered its Final Judgment of Bond Validation on November 12, 1996. (A.133-140). A copy of the judgment is attached to this brief. Without reservation or condition, the trial court validated the revenue bonds in an amount not to exceed \$10 billion, to be issued in the future. The judgment addresses each of the substantive issues raised before the trial court and each of those issues will be addressed in detail in the following argument section.

ARGUMENT

THE CIRCUIT COURT CORRECTLY VALIDATED THE REVENUE BONDS TO BE ISSUED BY THE FLORIDA HURRICANE CATASTROPHE FUND FINANCE CORPORATION, A PUBLIC BENEFITS CORPORATION CREATED BY LAW EXPRESSLY FOR THE PURPOSE OF ISSUING THE BONDS.

Section 215.555(6)(a)2. provides:

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 the insurers, thereby enabling insurers to pay the claims of policyholders to assure that policyholders are able to pay the cost of construction, reconstruction, repair, restoration, and other costs associated with damage to property of policyholders of covered policies after the occurrence of a hurricane.

³The exhibits included (a) the Articles of Incorporation of the Corporation, (b) the July 23, 1996 Resolution of the SBA, (c) the July 23, 1996 Resolution of the Corporation, (d) the form of the Master Trust Indenture, (e) the form of the Pledge and Security Agreement and (f) the three proofs of publication of the Order to Show Cause. See (A.13-104).

The benefits to the State's insured policyholders and the public in general are unquestioned and substantial.

Fulfilling his statutory duty, the State Attorney has raised for review by this Court the **same** ten issues addressed below. (A.109-113). The State's brief acknowledges that there were no contested facts, no arguments over the exhibits and no technical objections of any sort. At the final hearing, the Corporation presented the testimony of its president, Dr. Jack Nicholson, who described the functions of the Trust Fund and the new Corporation, the reasons for validating the bonds now and the fact that no state tax revenue would be used to repay the bond obligations. (T.8-20). He testified that the bonds are to be repaid from the premiums and, if necessary, emergency assessments received by the Trust Fund from insurance companies. (T.20). Dr. Nicholson identified and authenticated all documents offered in evidence. At the conclusion of the hearing the State Attorney advised the trial court that:

THE COURT: Mr. Goodwin?

MR. GOODWIN: Judge McClure, we were served the notice and order to show cause on the complaint being filed back on August 28 of 1996. Since that time, we have not had any inquiry, we have not had any comments, and to my knowledge, there is no one with any legal cause to show why this should not be granted. (T.28,29).

The circuit court's judgment addressed and found in favor of the Corporation on every issue. The receipts of the Trust Fund were found not to be state revenue and the revenue bonds were held to be legally "authorized by the Authorizing Resolution to pay for the costs of construction, reconstruction, repair, restoration and

other costs associated with damage to properties of policyholders of covered policies due to the occurrence of a hurricane."

Although all ten issues have been incorporated into the State's brief, they are summarized as follows:

- Does the Corporation have standing to bring this action under chapter 75 to validate these revenue bonds?
- Must a subsequent amendment to an act which created a trust fund be enacted in a separate bill and passed by 3/5 vote of both houses of the Legislature?
- Whether the Trust Fund is of unlimited duration **as** an exception to the four year sunset provision of the Constitution?
- would issuance of these revenue bonds effect an impermissible pledging of the State's credit or taxing power?
- Would issuance of these bonds conflict with article VII, section 11(d) of the Florida Constitution?
- Were the resolutions of the SBA and the Corporation which authorized issuance of these bonds validly adopted?

We will now address in detail each of the issues numbered 2 through 11 as stated in the opposing brief at pages 9-10. This detailed analysis may well be unnecessary, but we beg the Court's indulgence in view of the mandatory nature of the appeal.

A. The general denial and the creation of the Corporation, defenses 2 and 3.

Defenses 2 and 3 are formalities only. Defense 2 is no more than a general denial. Defense 3 denies that the Corporation was

properly created by the Act. Section 215.555(6)(c)2.a., Florida Statutes (1996) expressly created the Corporation as a public benefits corporation,⁴ and its Articles of Incorporation were duly filed with the Department of State. App. at 13-20. Section 215.555(6)(a) expressly authorizes the Corporation to issue its revenue bonds in both pre- and post-hurricane circumstances, as mentioned above.

It is worthwhile noting that this was not the first time that the Florida Legislature has recognized specialized corporations with bond powers.

The Florida Development Finance Corporation (FDFC) was created by section 288.9602, Florida Statutes (1993), as a "public instrumentality" with power to issue revenue bonds. The bonds were the subject of a chapter 75 proceeding and were held valid because they did not pledge the state or public credit. FDFC, the corporation issuing the bonds, **was** a hybrid entity. See State v. Florida Dev. Fin. Corp., 650 So. 2d 14 (Fla. 1995), where this Court stated it was a "corporate and political entity and an instrumentality of local government" with power to issue revenue bonds for capital projects.

"Public benefit corporations" were initially recognized by name by the Florida Legislature in 1984 with passage of chapter 84-321, enacted as section 216.015, entitled the "Capital Facilities Planning and Budgeting Act." This act recognized the almost urgent need of repair, expansion and replacement of much of the infra-

⁴This provision of the Act is self-executing by its terms.

structure of the State and recognized the need for coordination "among the various branches of state government, local government, and public benefit corporations." (emphasis added). The statute implicitly recognizes that public benefit corporations are separate and distinct from state and local governments and not a part thereof. The 1984 legislation was the first step in a comprehensive capital facilities planning and budgeting process, and the use of public benefit corporations was expressly recognized as part of this process.

In 1995 the Legislature created a public benefits corporation and a companion state trust fund to deal with petroleum contamination sites in section 376.3075, Florida Statutes (1995). This statute created the Inland Protection Financing Corporation, which functions in regard to petroleum tank contamination site rehabilitation and which is also authorized to issue revenue bonds subject to a similar chapter 75 approval process.

Thus in 1984 the Legislature recognized public benefit corporations and their appropriate relationship with capital asset improvements, and since then the Legislature has created at least two public benefits corporations and given both the power to issue revenue bonds and to function along with a State trust fund. It is noteworthy that the Legislature has chosen public benefits corporations to issue revenue bonds in regard to both hurricane disaster protection and oil contamination protection, two of the most critical environmental and health threats to the State and its residents.

B. The Corporation has standing under chapter 75 and is a proper party plaintiff, defense 4.

Chapter 75, entitled Bond Validation, has been in existence since 1915, and section 75.02 names the plaintiffs who may initiate validation proceedings thereunder. A public benefits corporation, such as the Corporation herein, is not one of the named plaintiffs, but this absence of detail in the eighty year old statute does not deprive the Corporation of standing nor does it frustrate the intent of the 1996 amendments to the Act.

The Legislature obviously knew the content of section 75.02 in 1996 when it amended section 215.555 to require that "[r]evenue bonds may not be issued [by the Corporation] under this subsection until validated under chapter 75." § 215.555(6)(a)2, Fla. Stat. (1996) ; see also, § 215.555(6)(c)3.a, Fla. Stat. ("In actions under chapter 75 to validate any bonds issued by the corporation"). Statutes are to be construed in harmony with each other, and not in a way that would invalidate or conflict with one another. State v. Parsons, 569 So. 2d 436 (Fla. 1990). Chapter 75 and section 215.555(6) are to be harmonized if reasonably possible. Further, because section 215.555(6) is the latest expression of legislative will it should be accorded deference over any arguably conflicting provision in chapter 75. McKendry v. State, 641 So. 2d 45 (Fla. 1994).

Chapter 75 proceedings to validate bonds have been recognized as proper in regard to various corporate plaintiffs, such as the "public instrumentality" in the Florida Development Finance Corporation case previously discussed. Florida Dev. Fin. Corp.,

650 So. 2d at 15. The statute creating FDFC as a corporation **also** required validation under chapter 75. § 288.9605(5), Fla. Stat.

The Corporation has standing to bring this bond validation proceeding under chapter 75 notwithstanding that a public benefits corporation is not among the "plaintiffs" listed in section 75.02, because the Legislature has clearly said so in section 215.555(6).

C. The 1996 amendment to the Act is not covered by the constitutional provision on "creation" of trust funds, defense 5.

Defense 5 asserts that the 1996 amendments to the Act, as passed by a simple majority of the Legislature, were unconstitutional. The initial legislation which created the Trust Fund in 1993 **was** challenged by various insurance companies, which contended that the Trust Fund was not properly created under the 1992 revision to article III, section 19(f)(1) of the Florida Constitution. This 1992 revision governs creation of trust funds and states:

(f) TRUST FUNDS

(1) No trust fund of the State of Florida or other public body may be created by **law** without a three-fifths (3/5) vote of the membership of each house of the legislature in a separate bill for that purpose only.

This Court rejected the challenge by the insurance interests, holding that the Trust Fund was properly created under article III, section 19(f)(1). American Bankers Ins. Co. v. Chiles, 675 So. 2d 922 (Fla. 1996). The Answer in the instant case raises the issue of whether the 1996 amendments to the Act which created the Corporation must also have been enacted in compliance with article III, section 19(f)(1), i.e., whether a later amendment to an act

which created a trust fund must also be enacted in a separate bill and be passed by 3/5 vote of both houses.

The 1996 amendments to the Act which created the Corporation were enacted by the Legislature according to the normal requisites of the Florida Constitution -- by majority vote of both houses as part of chapter 96-194, Laws of Florida (the Hurricane Insurance Affordability and Availability Act). The special requirements of article III, section 19(f)(1) pertain solely to the creation of trust funds, not to a subsequent act containing an amendment to an existing trust fund.

The Tax and Budget Reform Commission proposed article III, section 19(f) in order to (1) make it more difficult for the Legislature to create trust funds, (2) ensure that new trust funds are not buried in larger bills, and (3) ensure that trust funds are accountable to the budget and appropriation process. Notably absent from section 19(f)(1) or the legislation (section 215.3207) enacted immediately after its passage is any language which would require that a subsequent act which amends a trust fund also meet the requirements of section 19(f)(1) .

Every word of the constitution is, of course, to be given meaning and effect, and words of common usage are to be construed in their plain and ordinary sense, as it is presumed that the legislature knows the plain and ordinary meaning of words used. Leisure Resorts v. Frank J. Rooney, Inc., 654 So. 2d 911 (Fla. 1995) ; Carlton v. Mathews, 137 So. 815 (Fla. 1931); Brooks v. Anastasia Mosquito Control Dist., 148 So. 2d 64 (Fla. 1st DCA

1963). Under the doctrine of expressio unius est exclusio alterius, the use of one word necessarily implies the exclusion of another. Dobbs v. Sea Isle Hotel, 56 So. 2d 341 (Fla. 1952). By its own terms, article III, section 19(f)(1) applies only to the "creation" of a trust fund, not to an act containing an amendment to a previously created and presently existing trust fund. To interpret the provision differently ignores the clear language of the section's provisions and would impute words into its provisions that are not there.

Further, the provision should be interpreted in light of the purpose for which it was enacted. Weiss v. Leonardy, 36 So. 2d 184 (Fla. 1948). Here, section 19(f)(1) was intended to make it more difficult to create trust funds, to prevent logrolling, and to ensure that trust funds are accountable to the budget and appropriation process. These purposes deal with the creation of trust funds. Nowhere is there any expressed purpose that article III, section 19(f)(1) is to apply to amendments to existing, lawfully created trust funds that might facilitate their ongoing existence. To read into the constitution such a provision would impose an unnecessary, unintended and nonsensical consequence. Such an interpretation would result in a construction that would lead to an absurd or unreasonable conclusion and should be avoided. Amente v. Newman, 653 So. 2d 1030 (Fla. 1995).

Importantly, if the drafters had intended that section 19(f)(1) impose a super majority or separate bill requirement for all amendments to trust funds, then the drafters could have so

provided. For example, article III, section 11(a) (21) provides that, "[t]here shall be no special law or general law of local application pertaining to . . . any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote."

(Emphasis added). The fact that the constitution contains such a provision in article III, section 11 shows that a similar requirement was not intended in article III, section 19(f) (1). See generally, United States v. Atchinson, Topeka & Santa Fe Ry. Co., 220 U.S. 37, 44 (1911); State v. Keller, 191 So. 542, 545 (Fla. 1939). In short, the 1996 legislation which amended the Act to create the Corporation with the power to issue revenue bonds was properly enacted by a majority vote.

D. An Exception to the Sunset Requirement.

With respect to the existing Trust Fund's ongoing operation and the long term validity of the revenue bonds, article III, section 19(f) (2) of the Florida Constitution requires that a trust fund terminate no more than four years after creation; however, section 19(f) (3) of the same article exempts various trust funds from the four year sunset provision. The 1993 law which created this Trust Fund includes a legislative finding that the Trust Fund was within the meaning of section 19(f) (3), the exemption section. Section 215.555(9) states:

APPLICABILITY OF S. 19, ART III OF THE STATE CONSTITUTION. The Legislature finds that the [Trust Fund] created by [section 215.5551 is a trust fund established for bond covenants, indentures, or resolutions within the meaning of s. 19(f) (3), Art. III of the State Constitution.

Section 215.555(6) (a) provides that the term of the bonds may extend to thirty years, and subsection (6) (c)6 gives the Corporation unlimited existence so long as there are bonds outstanding. These two provisions are dependent upon the Trust Fund not sunseting after four years and make the Legislature's exemption of the Trust Fund from the four year sunset provision logical and necessary. The final judgment of the circuit court correctly found in paragraph C that the four year sunset provision of section 19(f) (2) did not apply.

E. Issuance of the Corporation's revenue bonds will not constitute the pledging of the State's or its agencies' credit or taxing power, defense 6.

Defense 6 raises the issue of whether in issuing the revenue bonds the Corporation will pledge the credit of the State. Article VII, sections 10 and 11(a) of the Florida Constitution prohibit the State from pledging its credit or its taxing power except in certain limited circumstances.

In the 1995 Florida Development Finance Corporation opinion, the Court announced that it would look to the statute creating the corporation and the bond resolution of the corporation on the issue of whether the State's taxing power had been pledged by the FDFC. Since both the statute and the resolution expressly negated the pledging of the State's or its agencies' credit, the revenue bonds were held valid. In that case FDFC, although a corporation, **was** much closer to being an agency of local government; yet this Court held that the "prohibition of the pledge of public credit shall not apply to the investment of public trust funds." 650 So. 2d at 16,

18-19. Under the rationale of the FDFC opinion, the bonds of the Corporation in the instant case are clearly valid.

Here, the Act specifically provides that the revenue bonds to be issued by the Corporation are in no way a debt of the State or its political subdivisions nor a claim on the State's credit, revenues or taxing powers. The Act specifically states in section 215.555(6) (a) 1:

The funds, credit, property, or taxing power of the State or political subdivision of the State shall not be pledged for the payment of such bonds.

Further, section 215.555(6) (c)4, states:

The bonds of the corporation are not a debt of the State or of any political subdivision, and neither the State nor any political subdivision is liable on such bonds. The corporation does not have the power to pledge the credit, the revenues, or the taxing power of the state or of any political subdivision.

Based on this language, the Corporation cannot bind the State nor are the revenues for repaying the bonds in any way tied to taxation. See Town of Medley v. State, 162 So. 2d 257 (Fla. 1964). The declared intent of the Legislature eliminates any potential conflict with the constitutional prohibition against the State lending its taxing power to a corporation. See e.g., State v. Housing Finance Auth. of Polk County, 376 So. 2d 1158, 1160 (Fla. 1979) .

Both the resolution adopted by the Corporation authorizing the bonds and the form of the Master Trust Indenture approved thereby contain express language to the effect that neither the bonds nor any other obligations created thereby shall constitute a debt of the State or any political subdivision thereof or a pledge of the

faith and credit of the State or any political subdivision thereof. (A.36-37 and 63) , Issuance of these revenue bonds by the Corporation will not conflict with either section 10 or section 11(a) of article VII.

F. Issuance of these bonds will not conflict with article VII, section 11(d) of the constitution, defenses 7-9.

Defenses 7, 8 and 9 assert that the Corporation is actually a state agency imposing state taxes and further that a vote of the electorate **was** necessary. The power of the State or its agencies to issue state revenue bonds is controlled by article VII, section 11(d) of the Florida Constitution:

Revenue bonds may be issued by the state or its agencies without **a** vote of the electors to finance or refinance the cost of state fixed capital outlay projects authorized by law, and purposes incidental thereto, and shall be payable solely from funds derived directly from sources other than state tax revenues.

There **are** several reasons why this provision does not affect the validation or issuance of these bonds, First, and most importantly, the revenue bonds are to be issued by the Corporation **and not** by the State or its agencies; therefore, section 11(d) simply does not apply.

Although the Corporation was created for strong public policy reasons by the Legislature, it is nonetheless a legal entity separate and distinct from the State and its agencies. Although incorporated solely under chapter 617, the Corporation was created by the Legislature and endowed with all the powers granted to corporations under chapters 607 and 617, Florida Statutes, including the power to issue bonds, incur debt and other obliga-

tions, and to engage in other transactions without liability to its members, incorporators or affiliated entities, § 215.555(6)(c)2.c, Fla. Stat.; see generally Ch. 607, § 607.0302 (General Powers), Ch. 617, § 617.0302 (Corporate Powers), Fla. Stat.

Florida has a long history of creating entities for public and quasi-public purposes on both a state and local level. Whether labeled a corporation, association, authority or some other designation, the ability of the Legislature to establish such entities to serve a public purpose has been recognized as a valid exercise of legislative authority. In In re Advisory Opinion to the Governor -- State Revenue Cap. 658 So. 2d 77, 80 (Fla. 1995), the Court determined that the Joint Underwriting Association (JUA), a creature of the Legislature like the Corporation, was not a state entity. See also O'Malley v. Florida Ins. Guaranty Assoc., 256 So. 2d 9 (Fla. 1971). Although this finding was based in part on the express legislative intent that the JUA **was** not a state entity, the Court noted that the JUA acted like a private entity with a public purpose by engaging in the collection and disbursement of funds related to the equitable apportionment and sharing among insurers of property and casualty insurance for applicants unable to obtain insurance through the voluntary market. The Court held:

[T]he Association is not performing a traditional governmental function. Its revenues are not subjected to legislative appropriation and are held solely for the purpose of satisfying insurance claims. Though created by the Legislature, in practical effect the Association operates like a private insurance company. It is evident that the monies collected by the Association are not the kind of revenues contemplated by article VII, section 1(e) .

State Revenue Cap. 658 So. 2d at 81.

In State v. Florida Development Finance Corporation, the FDFC was held to be a "corporate and political entity" and an "instrumentality of local government." 650 So. 2d at 15. That corporation issued revenue bonds pursuant to a guaranty agreement held to be "a special rather than general obligation [which] does not constitute an indebtedness of FDFC, the State or any political subdivision thereof within the meaning of any constitutional or statutory limitation."

Here also, the Corporation is a legal entity separate and apart from the SBA and the State or its agencies, and it is evident that the Legislature intended the Corporation to issue bonds in its own name, and not the State's name. Accordingly, article VII, section 11(d), which pertains to revenue bonds issued by the State or its agencies, does not apply.

Moreover, and in any event, as also found by the trial court in paragraph Q of its judgment, "[e]ven if it should be deemed that the Revenue Bonds are to be issued by the State or its agencies, they will be issued for state fixed capital outlay projects authorized by law or purposes incidental thereto and payable solely from funds derived directly from sources other than state tax revenues."

G. The resolutions were validly adopted, defenses 10 and 11.

The SBA resolution

On July 23, 1996, the SBA, acting as the governing body and administrator of the Trust Fund, adopted a resolution in which it determined that the issuance of revenue bonds now, in the absence

of a hurricane, would maximize the ability of the Trust Fund to meet its future obligations. (A.23 and T.17). The meeting of the SBA was called to order and all its members, and hence a quorum, were present. Fla. Admin. Code R. 19-3.005. The resolution was approved unanimously by the SBA after being moved and seconded. Fla. Admin. Code R. 19-3.012 (a simple majority is required). The requirements for valid action by the SBA were met.

The corporate resolution

Immediately following the SBA meeting, a meeting of the Corporation's board of directors was called to order, all directors being present. The agenda included: (1) election of officers; (2) approval of the Articles of Incorporation; (3) approval of the bylaws; (4) approval of the corporate seal; and (5) approval of the resolution authorizing the issuance of up to \$10 billion of bonds. All agenda items were approved by a single unanimous vote of the SBA, after they were moved and seconded. (T.17-18). Thus, the passage of the Corporation's resolution meets the requirements set forth in Florida Statutes as well as the Bylaws of the Corporation. See §§ 215.555(6)(c)2.c.; 617.0721, .0725, .0824, Fla. Stat.; Bylaws of the Florida Hurricane Catastrophe Fund Finance Corporation, art. III, §§ 4-5.

CONCLUSION

Respectfully, the Final Judgment of Bond Validation should be affirmed.

Respectfully submitted,



JOHN K. AURELL
Fla. Bar No. 0002644

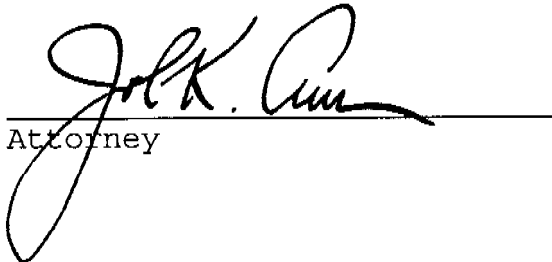


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Attorneys for Plaintiff/Appellee
Florida Hurricane Catastrophe
Fund Finance Corporation

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing has been furnished by mail to William N. Meggs, State Attorney, Second Judicial Circuit, and C. W. Goodwin, Assistant State Attorney, 301 S. Monroe Street, Suite 475, Tallahassee, Florida 32399, this 7th day of February, 1997.


Attorney

pld\sba-cat2.brf

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL
CIRCUIT OF FLORIDA, IN AND FOR LEON COUNTY

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

Plaintiff,

vs.

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,

Defendants.

CASE NO. 96-5069

RECEIVED
IN THE CIRCUIT COURT OF THE SECOND JUDICIAL
CIRCUIT OF FLORIDA
LEON COUNTY
NOV 12 11:10:29
AT THE TIME & DATE NOTED
BY THE CLERK
OF THE CIRCUIT COURT



FINAL JUDGMENT OF BOND VALIDATION

This matter came on for final hearing on November 12, 1996, pursuant to the Court's Notice and Order to Show Cause directed to the defendants. The Court having convened a hearing and considered all issues raised, having heard and considered the evidence and argument and being fully advised, finds and rules as follows;

A. This Court has jurisdiction of the subject matter and the parties under chapter 75 and section 215.555(6)(c)3.a, Florida Statutes (1996).

B. Proper notice of these proceedings and of the final hearing, addressed to the State of Florida (the "State") and all concerned property owners, taxpayers and citizens, including non-residents and others having any interest to be affected by the

issuance of the bonds, was duly and properly published in a newspaper of general circulation in Leon County and in two newspapers of general circulation in the State of Florida, once each week for two consecutive weeks at least 20 days prior to the date of this hearing, as required by law; all as shown by the affidavits of the publishers of the Tallahassee Democrat, the St. Petersburg Times, and The Miami Herald, which are accepted into evidence.

C. The Florida Hurricane Catastrophe Fund (the "Fund") was created in 1993 by enactment by the Legislature of chapter 93-409, Laws of Florida, codified at section 215.555, Florida Statutes. The Fund is exempted by article III, section 19(f)(3) of the Florida Constitution from the sunset provisions of section 19(f)(2) of the same article. See § 215.555(9), Fla. Stat. In 1996, section 215.555 was amended by the Legislature to create the plaintiff Florida Hurricane Catastrophe Finance Corporation (the "Corporation"), which here seeks validation of the bonds to be issued by the Corporation. The 1996 amendments to section 215.555 were properly enacted by the Legislature by majority vote. See Ch. 96-194, Laws of Florida.

D. The Corporation is a public benefits corporation created by and existing under section 215,555, Florida Statutes (1996) (the "Act"), with the authority to issue revenue bonds (the "Revenue Bonds") to enable the Fund to meet its obligations under the Act upon the occurrence of a hurricane or, in the absence of a hurricane, if the State Board of Administration of the State of

Florida (the "SBA"), as the governing body of the Fund, determines that the issuance of such Revenue Bonds would maximize the ability of the Fund to meet its future obligations.

E. The Corporation is a proper party plaintiff and has standing to bring this action to validate the Revenue Bonds under chapter 75, pursuant to subsection (6)(a)2 of the Act which requires this validation action.

F. The Fund was created for the purpose of providing reimbursement to insurers for a portion of their catastrophic hurricane losses, in order to create additional insurance capacity sufficient to ameliorate the current dangers to the economy of the State and to the public health, safety and welfare of the citizens of the State.

G. The receipts of the Fund are not state revenues. Art. VII, § 1(e), Fla. Const.; In re Advisory Op. to the Governor - State Revenue Cas., 658 So. 2d 77 (Fla. 1995).

H. The Act requires that each insurer writing residential property insurance in the State enter into a reimbursement contract with the SBA which requires that such insurer pay premiums to the Fund in exchange for a commitment that a portion of the insurer's hurricane-caused losses will be reimbursed from monies in the Fund. Additionally, under circumstances contemplated by the Act, emergency assessments may be levied by the Department of Insurance of the State of Florida on each insurer writing property and casualty business in the State, to be paid to the Fund. The reimbursement premiums and the emergency assessments are hereinafter referred to

as the "Fund Revenues."

I. On July 23, 1996, the SBA, acting as the governing body and administrator of the Fund, adopted a resolution (the "SBA Resolution") in which it determined that the issuance of Revenue Bonds in the absence of a hurricane would maximize the ability of the Fund to meet its future obligations. The SBA Resolution was lawfully adopted and is in all respects valid and legal. A copy of the SBA Resolution is attached to the complaint as Exhibit B and is hereby accepted into evidence.

J. On July 23, 1996, a meeting of the Corporation's board of directors was called, all directors being present. By unanimous vote, the Corporation adopted a resolution (the "Authorizing Resolution") authorizing the validation, execution and issuance of not to exceed \$10 billion in Revenue Bonds, to be called "Hurricane Catastrophe Relief Revenue Bonds." The Authorizing Resolution was lawfully adopted and is in all respects valid and legal. A copy of the Authorizing Resolution is attached to the complaint as Exhibit C and is hereby accepted into evidence.

K. The Revenue Bonds are authorized by the Authorizing Resolution to pay for the costs of construction, reconstruction, repair, restoration and other costs associated with damage to properties of policyholders of covered policies due to the occurrence of a hurricane.

L. To secure the payment of the principal, redemption premium and interest on the Revenue Bonds, it will be necessary for the Corporation and a bank or trust company, to be selected by

resolution of the **board** of directors of the Corporation prior to the issuance of any of the Revenue Bonds authorized herein, acting as "**Master** Trustee," to enter into a "**Master** Trust Indenture." A copy of the form of Master Trust Indenture is attached to the complaint as Exhibit D and is hereby accepted into evidence.

M. In order to provide the Corporation a source of funds for the payment of the principal, redemption premium and interest on the obligations issued under the Master Trust Indenture and on the Revenue Bonds and the payment of **other** amounts, if any, due under the Master Trust Indenture or supplement thereto, it will be necessary for the Corporation, the SBA, acting as the governing body of the Fund, and the Master Trustee to enter into a Pledge and Security Agreement (the "Pledge Agreement"), the form of which is attached to the complaint as Exhibit E and is hereby accepted into evidence.

N. The Revenue Bonds issued by the Corporation shall be payable solely from funds derived directly from sources other than state tax revenues, and state tax revenues are not pledged or encumbered by issuance of the Revenue Bonds. The Revenue Bonds shall be payable solely from the Fund Revenues and other funds anticipated to be received by the Corporation pursuant to the Pledge Agreement and from any other source authorized by the Act, and neither the faith and credit nor the taxing **power** of the State or any political subdivision thereof is pledged for the payment of the principal of or interest on the Revenue Bonds.

O. The Revenue Bonds are not "**state** bonds" pledging the full

faith and credit of the State, the SBA, the Corporation, or any subdivision of the State, within the meaning of article VII, section 11(a), of the Florida Constitution. Issuance of the Revenue Bonds by' the Corporation, will not constitute the unauthorized pledging of the State's credit or taxing power.

P. Issuance of the Revenue Bonds by the Corporation will not conflict with article VII, section 11(d) of the Florida Constitution which pertains to revenue bonds issued by the State or its agencies. The Corporation is a public benefits corporation, and is a legal entity separate and distinct from the State of Florida or its agencies. The Revenue Bonds are not to be issued by the State or its agencies.

Q. Even if it should be deemed that the Revenue Bonds are to be issued by the State or its agencies, they will be issued for state fixed capital outlay projects authorized by law or purposes incidental thereto and payable solely from funds derived directly from sources other than state tax revenues.

R. Issuance of the Revenue Bonds does not require a vote of the electorate under any statute or constitutional provision, including article VII, section 11(a) of the Florida Constitution.

S. The Revenue Bonds, when issued, may bear interest at a rate not exceeding the maximum rates, if any, allowed by law.

T. Interest on the Revenue Bonds may be either excludable from or includable in the gross income of the recipients thereof for federal income tax purposes in the United States.

U. No taxpayer, citizen or other person has intervened or

made application to become a party to these proceedings in the manner provided by law for the purpose of interposing objections to the granting of validation.

V. The final hearing occurred as scheduled and no taxpayer, citizen or other person appeared or sought to be heard.

W. The answer of the State Attorney on behalf of the State shows no just cause why the prayers of the complaint should not be granted and discloses no irregularity or illegality in the proceedings set forth in the complaint.

THEREFORE, it is ORDERED and ADJUDGED that:

1. The allegations of the complaint are true and correct and all exhibits attached to the complaint and the notices described in finding B above are accepted into evidence.

2. The plaintiff is entitled to the relief prayed for in the complaint.

3. Issuance of the Revenue Bonds, in the aggregate principal amount of not exceeding \$10 billion, bearing interest, payable, maturing and callable as determined pursuant to subsequent resolution of the Corporation, is and will be for proper, legal, public and corporate purposes and is fully authorized by law. The Revenue Bonds to be issued as aforesaid, the Pledge Agreement, the Master Trust Indenture, the SBA Resolution, and the Authorizing Resolution, and all proceedings taken in connection with each of them, are hereby validated and confirmed as to all issues raised in this proceeding, by the pleadings and at the final hearing, and as to all other issues which might have been raised.

4. All requirements and conditions precedent of the constitution and laws of the State pertaining to the issuance of the Revenue Bonds and the proceedings in connection therewith have been fulfilled.

5. The proper officer of the Corporation is authorized and directed to execute a certificate as to the Revenue Bonds, in accordance with section 75.11, Florida Statutes.

DONE and ORDERED this 12th day of November, 1996.



CHARLES D. MCCLURE, CIRCUIT JUDGE

Copy provided:
John K. Aurell, Esquire
William N. Meggs, Esquire

STATE OF FLORIDA, COUNTY OF LEON
I HEREBY CERTIFY that the above and foregoing
is a true and correct copy of an instrument recorded
in the official records of Leon County, Florida.
WITNESS my hand and seal of office this 12th
November, 1996.

DAVE LANG
Clerk of Circuit Court



By Daniel S. [Signature]