IN THE SUPREME COURT OF THE STATE OF FLORIDA

MARTIN KESSLER,
Appellant,

v.

CITY OF WINTER PARK,
Appellee.

SUPREME COURT CASE NO. 89,501

LOWER TRIBUNAL CASE NO 96-48 3

APR 7 1

APPEAL FROM THE CIRCUIT COURT, NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND THE FACTS

This case is an appeal of a final judgment validating general obligation bonds of the City of Winter Park, Florida (the "City"), entered by the Circuit Court, Ninth Judicial Circuit, in and for Orange County, Florida, upon complaint filed by the City in accordance with Chapter 75, Florida Statutes (1995). The State of Florida, through an Assistant State Attorney, filed an answer, but is not participating in this appeal. Martin Kessler ("Kessler"), pro se, intervened in the lower court proceeding, filed an answer to the complaint and appealed the final judgment.

Kessler's Statement of the Case and the Facts in his Initial Brief, Second Amended (the "Initial Brief"), omits important facts essential to a proper decision by this court, While the City agrees with the substance of most of Kessler's stated facts, those factual statements are incomplete, confusing and disorganized, making it difficult to understand the nature and chronology of events. Accordingly, the City offers the following factual sequence to assist the court in understanding the case:

1. During the City of Winter **Park** City Commission (the "Commission") Joint Work Session, duly noticed, open to the public, and held in the Commission Meeting Room in Winter Park, Florida, on December 12, 1995, Gary Brewer, Mayor of the City (the "Mayor"), reviewed the background and history leading to the proposed purchase by the City of the Winter Park golf course property (holes 2 through 8) from the Elizabeth Morse Genius Foundation (the "Foundation"), and expressed his support of the proposed option agreement which would permit the purchase by the City of such golf

course property then owned by the Foundation. Discussed during that meeting were a proposed purchase price of $8,000,000, an approximate balance of $1,200,000 contained in a Golf Course Acquisition Fund established by the City approximately 10 years prior to the meeting, and a bond referendum timetable. (Appendix, Tab A1, pp. 1-3)

2. In the January 4, 1996, Joint Work Session of the Commission, duly noticed, open to the public, and held in the Commission Meeting Room, the Mayor and several City Commissioners discussed the financial implications of purchasing the golf course property, and the possible commercial development of such property if not purchased by the City. (Appendix, Tab A2, p. 4)

3. An article in the January 4, 1996, edition of the Winter Park-Maitland Observer (the "Observer"), a newspaper of general circulation in the area of the City, discussed the proposed $8,000,000 purchase price for the golf course property to be contained in the option agreement, and the bond referendum. (Appendix, Tab B, p. B-1)

4. During the Commission Work Session on January 8, 1996, duly noticed, open to the public, and held in the Commission Meeting Room, there was discussion among the City Attorney and several City Commissioners regarding (a) the length of the general obligation bond issue proposed to finance part of the cost of the golf course property, (b) the bond referendum date, (c) the use of reserve funds of the City to finance part of the cost of the golf course property, and (d) the effect on the City's credit rating should reserve funds be used for that purpose. (Appendix, Tab A3, pp. 6, 7)

5. On January 9, 1996, Kessler addressed the Commission during its Regular Meeting, which was duly noticed, open to the public, and held in the Commission Meeting Room, and asked several questions regarding the purpose for the bond referendum. He also expressed disagreement with the proposed $8,000,000 purchase price for the golf course property. (Appendix, Tab A4, pp. 3, 4)

6. An article in the January **14**, 1996, edition of The Orlando Sentinel (the "Sentinel"), a newspaper of general circulation both in Orange County, Florida, and in the City, entitled "Winter Park seeks vote date on greens" stated:

> The city will **ask** voters whether they want to finance up to $7 million in bond issues to buy seven holes of the nine-hole Winter Park Golf Course. The city owns the other two holes. (emphasis supplied)

The article also discussed the proposed $8,000,000 purchase price, the amount of approximately $1,100,000 already saved by the City for the purchase, and the reasons why the City proposed to purchase the golf course property. (Appendix, Tab B, p. B-2)

7. Another article in the January 25, 1996, edition of the Sentinel entitled "Winter Park may vote on course June 4" stated that the issue before voters will be whether they want to finance up to $7,000,000 in bonds to purchase **24** acres of the downtown golf course property, and as in the previous Sentinel article, discussed the $8,000,000 purchase price and the $1,100,000 already saved **by** the City for the purchase. (Appendix, Tab B, p. B-3)

8. In a February 4, 1996, Sentinel article entitled "Kessler, Murrah vie for commission Seat 2," Kessler was quoted as saying he wanted to "educate voters" about the upcoming referendum for the golf course bond issue. The main thrust of the article was

Kessler's campaign to defeat incumbent Commissioner Murrah in the Seat 2 general election to be held on March 26, 1996. Once again the article stated that the $8,000,000 purchase price was for 24 acres of the golf course property the City currently leased from the Foundation. According to the article, Kessler believed the property was worth less than $1,000,000. (Appendix, Tab B, p. B-4)

9. During the Work Session and Regular Meeting of the Commission, duly noticed, open to the public, and held in the Cornmission Meeting Room on February 12 and 13, 1996, respectively, discussion took place regarding Florida election laws and the responsibilities of the City and the Orange County Supervisor of Elections regarding the June 4, 1996, bond referendum. (Appendix, Tab A5, p. 9; Tab A6, p. 10)

10. The February 15, 1996, edition of the Observer published a "Letter to the Editor" by Kessler, dated February 13, 1996, which objected to the $8,000,000 purchase price for the golf course property, listed 2 telephone numbers for Kessler, and requested interested residents of the City to call Kessler to discuss that issue. (Appendix, Tab B, p. B-5)

11. The February 22, 1996, edition of the Observer published a letter of Commissioner Murrah, responding to Kessler's February 13, 1996, "Letter to the Editor," which disagreed with some of Kessler's statements regarding the golf course purchase. (Appendix, Tab B, p. B-6)

12. During the Work Session of the Commission, duly noticed, open to the public, and held in the Commission Meeting Room on February 26, 1996, the City Attorney discussed the Florida election statutes and the availability of voting machines and personnel for

the June 4, 1996, bond referendum. The City Attorney also advised the Commission that the mail ballot election procedure was not available for the bond referendum. Finally, additional discussion was had by City Commissioners concerning the use of contingency funds of the City to assist in financing the golf course purchase price, and the result was a consensus to use $2,000,000 of contingency funds of the City which, along with the $1,120,000 already saved by the City, and the bond proceeds, would be sufficient to pay the purchase price. (Appendix, Tab A7, pp. 1-3)

13. Thereafter, on the same date, the Commission held its Special Meeting, duly noticed, open to the public, and in the Commission Meeting Room during which the Mayor summarized the consensus of the Commission during the previous Work Session regarding the combination of $2,000,000 from city contingency funds, approximately $1,100,000 from the Golf Course Acquisition Fund, and proceeds of not exceeding $5,125,000 of bonds to finance the purchase of the golf course property. Again, at this public meeting Kessler expressed his opposition to the $8,000,000 purchase price and the use of City contingency funds to partially fund such price. The Mayor responded to Kessler's objections and defended the use of City contingency funds for such purpose. Thereafter, one other resident of the City voiced his opposition to the $8,000,000 purchase price and the use of City contingency funds for such purpose, and 2 other residents expressed their support for the golf course property purchase. (Appendix, Tab A8, pp. 1, 2, 6, 7)

14. The ordinance of the City (Ordinance No. 2137, Appendix, Tab E2), calling the bond referendum (hereinafter the "Referendum Ordinance") was read by title during the February 27, 1996, Regular

Meeting of the Commission, duly noticed, open to the public and held in the Commission Meeting Room. (Appendix, Tab A9 p. 13) Following a public hearing on the Referendum Ordinance, and discussion by the Commission, it was approved on first reading.

15. On February 28, 1996, the Foundation executed the Option Contract for Purchase and Sale (the "Option Contract") with respect to the golf course purchase, and on March 4, **1996**, the Mayor duly executed the Option Contract on behalf of the City, thereby rendering it effective as of March 4, 1996. (Appendix, Tab D)

16. The February 1996 edition of the City of Winter Park Update (the "Update"), a bi-monthly publication prepared and circulated by the City (circulation of 10,000), contained a front-**page** article by the Mayor which discussed the option of the City to acquire the golf course property for $8,000,000, the fact that a bond referendum would be held in early summer, and the **possible** benefits or detriments to the residents of the City should the referendum ballot either be approved or disapproved. (Appendix, Tab C1, pp. 1, 2)

17. The March 3, 1996, edition of the Sentinel contained an article which stated:

> Voters will decide in June if they want to increase their taxes to finance up to $5 million in bonds for the land purchase. City Commissioners agreed last week *to* put $3.1 million of city funds toward the purchase price of $8 million. (emphasis supplied)

(Appendix, Tab B, p. B-7)

18. The March 10, 1996, edition of the Sentinel included an article which stated that Kessler was campaigning for Seat *2* on the Commission, based largely on his opposition to the proposed bond

referendum because he believed the $8,000,000 purchase price was too high. The article also stated:

> The referendum would allow for the purchase of 24 acres that is part of the Winter Park Golf Course, (emphasis supplied)

(Appendix, Tab B, pp. B-8, 9)

19. During the Regular Meeting of the Commission on March 12, 1996, duly noticed, open to the public, and held in the Commission Meeting Room, the Referendum Ordinance was read by title the second time, after which Kessler addressed the Commission and expressed his belief that a full legal description of the golf course property to be purchased should be included in the referendum ballot. The Mayor responded that the full legal description was included in the Option Contract which was available in the City Clerk's office. In discussion regarding the ballot, the City Attorney explained "that on a referendum, the title is limited to 15 words and the summary is limited to 75 words and must include the size of the bond issue, the method of repayment, an interest rate and a maturity date." Thereafter the Referendum Ordinance was finally enacted by the City. (Appendix, Tab A10, pp. 8, 9)

20. The March 14, 1996, edition of the Observer contained an article entitled "Winter Park City Election Slated for March 26" and stated:

> Kessler believes the $8 million price tag for the golf course is too high and that voters should turn down the referendum. He says he has mailed over 5,000 flyers to Winter Park voters and believe[s] that many agree with his stand. (emphasis supplied)

(Appendix, Tab B, p. B-10, 11)

21. The March **21**, 1996, edition of the Observer contained an article entitled "Heated Race in Winter Park" which mentioned a heated public debate between Kessler and incumbent Commissioner Murrah held the prior week, in which Kessler reiterated his objection to the $8,000,000 purchase price for the golf course property, Approximately 100 people attended this debate. (Appendix, Tab B, pp. B-12, 13)

22. The March 24, 1996, edition of the Sentinel contained an article which mentioned that Kessler based his campaign "on the single issue of the 'excessive' purchase price for the 24 acres of the Winter Park Golf Course * * *." (Appendix, Tab B, p. B-14)

23. The March 27, 1996, edition of the Sentinel contained an article reflecting Kessler's sound defeat in his race for Seat 2 of the Commission. Kessler **was** quoted as saying he would "redouble [his] efforts to convince the voters that buying the golf course at the [$8 million] price would be deleterious to the city's welfare." (Appendix, Tab B, p. B-15)

24. During the Work Session and Regular Meeting of the Commission held on April 22 and April 23, 1996, respectively, duly noticed, open to the public, and held in the Commission Meeting Room, there **was** discussion of the bond issue and approval of the June 4, 1996, referendum date. (Appendix, Tab All, p.8; Tab A12, p. 2)

25. The April 1996 edition of the Update contained (a) a cover story by the Mayor mentioning the value of the golf course property as green space and (b) an article showing how the bond issue millage would be calculated if the bonds were approved at the referendum. Page 6 of this edition of the Update was a full-page,

color-coded chart showing clearly the golf course property and the portion already owned by the City. (Appendix, Tab C2, pp. 1, 2, 5, 6)

26. The May 2, 1996, edition of the Observer contained an editorial showing justification for the $8,000,000 purchase price and discussed the quality of life issues surrounding the golf course property acquisition. (Appendix, Tab B, p. B-16)

27. The May 2, 1996, edition of the Sentinel contained an article which stated:

> Voters will decide whether the city should raise property taxes to finance $5.1 million of the $8 million purchase price. (emphasis supplied)

(Appendix, Tab B, p. B-17)

28. The May 9, 1996, edition of the Observer contained an "open letter" from a resident of the City to Kessler that advocated purchase of the golf course property by the City. (Appendix, Tab B, p. B-18)

29. The May 12, 1996, edition of the Sentinel contained an article written by the Mayor which provided historical information about the golf course and its importance as green space in preserving the heritage of the City. (Appendix, Tab B, p. B-19)

30. The May 19, 1996, edition of the Sentinel contained an article by Kessler which stated:

> Both the city and the Elizabeth Morse Genius Foundation own the 39-acre golf course. The city owns 15 acres, and the foundation the remainins 24. (emphasis supplied)
>
> * * *
>
> The mayor wants to borrow $5.1 million, raise taxes to service the debt * * * take $3 million out of the city's reserve and forgo

about $4 million in interest it could have earned. (emphasis supplied)

(Appendix, Tab B, p. B-20)

31. During the Work Session and Regular Meeting of the Commission on May 24 and May 28, 1996, respectively, duly noticed, open to the public and held in the Commission Meeting Room, the City Attorney advised of a lawsuit commenced by Kessler (Kessler v. City of Winter Park, Case No. CI 96-3156 in the Circuit Court, Ninth Judicial Circuit, in and for Orange County, Florida (the "Injunction Litigation")), in which he attempted to enjoin the holding of the bond referendum, and denial by the trial court of Kessler's request for an injunction. (Appendix, Tab A13, p. 1; Tab 14, p. 2)

32. The bond referendum (hereinafter the "Referendum") was duly noticed (Appendix, Tab E3) and held by the City on June 4, 1996, and on June 5, 1996, the Canvassing Board held a public meeting in Commission Chambers for the purpose of canvassing the results of the Referendum. The total amount of votes cast in the Referendum were 4,573, of which 3,497 were in favor of issuance of the bonds and 1,076 were against the issuance of the bonds, thereby indicating approval of the bond issue by 76% of the voters participating in the Referendum. (Appendix, Tab A15, pp. 1-3)

33. On June 11, 1996, the Commission duly adopted Resolution No. 1635 during its Regular Meeting, duly noticed, open to the public, and held in Commission Chambers, further canvassing the results of the Referendum, thereby authorizing the City to proceed with the bond issue. (Appendix, Tab E4)

34. On June 25, 1996, the Commission duly adopted Resolution NO. 1636 (the "Bond Resolution") during its Regular Meeting, duly noticed, open to the public, and held in Commission Chambers, which supplemented the Referendum Ordinance and provided the bond covenants, bond form and basic legal framework for the bond issue. (Appendix, Tab E5)

35. On June 26, 1996, the City filed a Complaint for General Obligation Bond Validation in the Circuit Court, Ninth Judicial Circuit, in and for Orange County, Florida, Case No. CI 96-4803, in accordance with the provisions of Chapter 75, Florida Statutes. (Appendix, Tab El)

36. On August 9, 1996, the State Attorney, through his Assistant State Attorney, filed an Amended Answer. (Appendix, Tab E6)

37. In August 1996 Kessler intervened and on August 9, 1996, served Defendant's Answer to Plaintiff's Complaint for General Obligation Bond Validation ("Kessler's Answer") alleging, among other things, that the Referendum ballot was defective and misleading for failure to include certain information. (Appendix, Tab E7)

38. After the recusal of several judges assigned to the case, an Amended Order to Show Cause was entered on September 12, 1996, and was duly published as required by law on October 10 and 17, 1996. (Appendix, Tab E8)

39. On November 6, 1996, the matter was heard by the trial court, and after stipulations by Kessler and the Assistant State Attorney on the issues of the City's legal authority to issue the bonds and the legality of the purpose for which the bonds would be

issued, the trial court narrowed the scope of the trial to the single issue of whether the Referendum proceedings were proper. (Appendix, Tab E9, pp. 9, 10) After consideration of the pleadings, the evidence and argument by Kessler and counsel, the trial court entered its Final Judgment Validating General Obligation Bonds (the "Final Judgment"), overruling and dismissing the objections to the bond validation contained in the State Attorney's Amended Answer and Kessler's Answer. Paragraphs 10, 11 and 13 of the Final Judgment contain specific findings and case law disposing of the issues raised by the pleadings. (Appendix, Tab E10, pp. 4, 5)

40. On December 3, 1996, Kessler filed his Notice of Appeal of the Final Judgment. (Appendix, Tab E11)

ARGUMENT SUMMARY

THE TRIAL JUDGE WAS CORRECT IN HOLDING THAT THE BOND REFERENDUM BALLOT WAS NOT MISLEADING; AND WAS CORRECT IN VALIDATING THE BONDS AND THE PROCEEDINGS INCIDENT THERETO, INCLUDING THE REFERENDUM.

ARGUMENT

A, Argument Supporting Final Judgment of Trial Court

In December 1995 the City began its public discussion of the proposed purchase by it of holes 2 through 8 of the 9-hole Winter Park golf course (hereinafter, collectively, the "Golf Course Property") then owned by the Foundation. During the December 12, 1995, Joint Work Session of the Commission, the Mayor provided

background and historical information regarding the transaction, the proposed price of $8,000,000, and the amount of $1,200,000 the City had saved over a period of 10 years in its Golf Course Acquisition Fund for that purpose.

The pros and cons of purchasing the Golf Course Property for $8,000,000 (to be financed with a combination of available funds of the City and the proceeds of general obligation bonds) were discussed and debated during additional, duly noticed public meetings of the City held on January 1, 8, 9 and February 12, 13, 25 and 27, 1996; and in articles contained in the Sentinel and the Observer, newspapers of general circulation in the area of the City.

On February 28, 1996, the Foundation executed the Option Contract, which gave the City the option to purchase the Golf Course Property for $8,000,000. Thereafter, on March 4, 1996, the Mayor executed the Option Contract on behalf of the City. The Option Contract gave the City time to secure financing for the purchase price. Furthermore, the Option Contract stated that the obligation of the City to close the transaction, after the option had been exercised, was contingent upon referendum approval of the bond issue, the size of which would be determined in the City's discretion.

Subsequent to execution of the Option Contract, the focus of the City shifted to determining the size of the bond issue, after consideration of other sources of funds available to the City.

The Referendum Ordinance was read by title a second time and enacted on March 12, 1996, during a Regular Meeting of the

Commission. The ballot question in the Referendum Ordinance (the "Proposition") read as follows:

> Shall the City of Winter Park issue not exceeding $5,125,000 general obligation bonds, bearing interest at not exceeding the maximum legal rate, maturing within 20 years from date of issuance, payable from ad valorem taxes levied on all taxable property in the City area, without limitation as to rate or amount, for financing the acquisition of the Green Space known as the Winter Park Golf Course, as provided in Ordinance No. 2137?

Section 100.341, Florida Statutes (1995), contains the legal requirements for bond referenda ballots, such as the Proposition, and requires that each proposition specify the amount of the bonds and interest rate thereon, together with other details necessary to inform the electors.

The amount of the bonds is clearly stated in the Proposition. This court has routinely approved use of the words "not exceeding" before the dollar amount of bonds in a bond referendum proposition. State v. Southeast Volusia Hosp. Dist., Volusia Co., 238 So.2d 102 (Fla. 1970).

Expressing the interest rate for the bonds in the Proposition through the words "not exceeding the maximum legal rate" was also approved in substance by this court in the same case. *See id.* at 104.

The only other facts deemed necessary by the City to inform the electors, which are typically found in most general obligation bond propositions, were the length of the financing, the source of payment of the bonds, and a general description of the project. The Proposition contained a maturity limitation of 20 years from the date of issuance of the bonds, stated that ad valorem taxes

would be used for payment of the bonds, and described the project in a general manner familiar to residents of the City.

The Proposition was submitted for approval of a general obligation bond issue by the City to finance part of the cost of acquiring the Golf Course Property; it was not submitted for approval of the purchase by the City of the Golf Course Property for $8,000,000, as suggested by Kessler, since the City had already approved and obtained from the Foundation, an option to purchase the Golf Course Property for that price before the Referendum was held on June 4, 1996. Referendum approval was merely a part of the total financing package for such purchase, as was well understood by the community through (a) 14 public meetings of the Commission; (b) 17 local newspaper articles; (c) 2 Update editions; (d) a political debate between Kessler and an incumbent Commissioner of the City, attended by 100 people; and (e) the dissemination of 5,000 flyers by Kessler to residents of the City, advocating rejection of the Proposition; all over a period of approximately 6 months prior to the Referendum (see paragraphs 1-31 of the City's Statement of the Case and the Facts). The trial judge correctly and succinctly stated this important distinction on p. 80 of the trial transcript:

> The description of the question to be on the ballot was in the judgment of the Court not misleading. The question put to the voters was whether bonds should be issued in the amount of $5,125,000. It was not a question put to the voters whether the land should be purchased for eight million dollars. So the question put to the voters was not misleading, it was straightforward and to the point. The question of whether the land should be purchased for eight million dollars was a question that was presented to the Winter Park

City Commission and debated and decided at that level. (emphasis supplied)

Inclusion in the Proposition of information regarding the $8,000,000 total purchase price of the Golf Course Property was not legally required by §100.341, Fla. Stat. (1995), and, additionally, was unnecessary due to the lengthy public discussion and debate of that matter through previous Commission meetings and local newspaper and periodical articles, followed by the execution of the Option Contract by the City prior to enactment of the Referendum Ordinance. Winterfield v. Town of Palm Beach, 455 So.2d 359, 363 (Fla. 1984) ; Grapeland Heights Civic Ass'n. v. City of Miami, 267 So.2d 321, 324 (Fla. 1972).

The scope of judicial inquiry in a bond validation proceeding under Chapter 75, Florida Statutes, is very narrow and focuses on whether (a) a public body has the authority to incur the obligation, (b) the purpose of the obligation is legal, and (c) the proceedings authorizing the obligation were proper. Noble v. Martin County Health Facilities, 682 So.2d 1089 (Fla. 1996); GRW Corp. v. Department of Corrections, 642 So.2d 718 (Fla. 1994); Risher v. Town of Ingliss, 522 So.2d 355 (Fla. 1988); Lodwick v. School District of Palm Beach County, 506 So.2d 407 (Fla. 1987); State v. City of Daytona Beach, 431 So.2d 981 (Fla. 1983). Matters dealing with the political or business wisdom of the project are beyond the scope of bond validation proceedings. Lozier v. Collier County, 682 So.2d 551, 553 (Fla. 1996); Penn v. Pensacola-Escambia Government Ctr. Auth., 311 So.2d 97 (Fla. 1975); State v. Dade Co., 142 So.2d 79 (Fla. 1962) ; State v. Florida State Turnpike

Authority, 134 So.2d 12 (Fla. 1961); State v. City of Miami, 103 So.2d 185 (Fla. 1958).

Since Kessler and the Assistant State Attorney stipulated at the trial that the City had the authority to issue the bonds, and the purpose for which the bonds would be issued was legal, there were no other issues properly remaining for consideration by the trial court; consequently, the trial judge was correct in validating the bonds and the proceedings incidental thereto, including the Referendum.

B. Argument Rebutting Kessler's Contentions

After boiling down all Kessler's pleadings, exhibits, appendices, documents in the nature of pleadings and his Initial Brief, and reviewing the evidence, it is very apparent that the gravamen of Kessler's complaint is that the City agreed to pay too high a price for purchase of the Golf Course Property, Kessler has consistently attempted to argue the wisdom of the Golf Course Property transaction in both the trial and this appeal, even though the law is very clear that matters dealing with the political wisdom of a project and the purchase price therefor are beyond the scope of judicial review in a bond validation proceeding under Chapter 75, Florida Statutes (1995).

In Dade County, 142 So.2d at 79, an appeal was taken from a final decree validating revenue bonds of Dade County to be issued for the purpose of developing a unified mass transit system through the acquisition of 4 private transit systems. One issue raised by the appellants related to the "propriety of purchasing and the feasibility of successfully operating" the transportation system. The trial evidence dealt with feasibility of the project and

whether the purchase price was just and reasonable. On pages 89 and 90 of the opinion, Justice Drew stated:

> These questions, on their face, are primarily political and lie within an area which courts should enter only with great caution,
>
> * * *
>
> Whether the acquisition of this system is wise from a political or business standpoint is a question upon which this court has no authority to substitute its judgment for that. of the Board.

In a similar fashion Kessler has attempted to show that the Proposition was defective for failure to include the $8,000,000 purchase price for the Golf Course Property, and the sources of other funds which, along with the bond proceeds, would be used to pay the $8,000,000 purchase price. In arguing that omission of these facts in the Proposition somehow misled the voters, Kessler has been less than candid about the factual evidence and completely misinterprets the statutory and case law applicable to the case at hand.

On page 23 of his Initial Brief Kessler states: "At no time did any official of the city government - The Mayor, the Commissioners or any city employee - inform the electorate by official documentation produced by the city of the facts herein said to be material by the Kessler." But the evidence contains minutes from 14 public meetings of the Commission, held prior to the Referendum on June 4, 1996, during which thorough discussion and debate took place regarding (a) the background and history leading to the proposed purchase of the Golf Course Property, (b) the $8,000,000 purchase price, (c) the Option Contract, (d) the approximate balance of $1,200,000 contained in a Golf Course

Acquisition Fund established by the City 10 years ago, (e) the use of $2,000,000 from the contingency funds of the City, and (f) the bond referendum schedule. Kessler personally attended 3 of those public meetings and voiced his opposition to purchase of the Golf Course Property and the wording in the Proposition. Furthermore, the City disseminated informational articles concerning the Golf Course Property acquisition in the February and April 1996 editions of the Update, a bi-monthly periodical prepared by employees of the City and circulated to 10,000 residences within the City.

From January 9, 1996, to the date of the Referendum, Kessler became the champion of his cause, which was to prevent acquisition of the Golf Course Property by the City for $8,000,000. He even ran against an incumbent City Commissioner for her Commission seat, on the sole issue of the Golf Course Property purchase. The February 4, 1996, edition of the Sentinel contained an article quoting Kessler as saying that he wanted to "educate voters" about the Referendum, and that "based on his research, the property is worth less than $1 million."

The March 10, 1996, edition of the Sentinel contained an article which stated "Kessler believes the $8 million price tag for the golf course is too high and that voters should turn down the referendum. *** Kessler said it is his duty to let the public know that city officials have 'betrayed' their constituents on the golf course."

The March 14, 1996, edition of the Observer contained an article dealing with the Commission seat campaign of Kessler, and said that Kessler "has mailed over 5,000 flyers to Winter Park voters and believe[s] that many agree with his stand."

The March 27, 1996, edition of the Sentinel contained an article that showed Kessler's overwhelming defeat in his race for the Commission seat by receiving only 25% of the votes cast.

Indeed, after consideration of the active role Kessler played in attempting to educate residents of the City about his cause, his resounding defeat at the polls, and approval of the Proposition by 76% of the votes cast, one could reasonably infer that most City residents disagreed with Kessler.

In Grapeland Heights Civic Ass'n v, City of Miami, 267 So.2d 321 (Fla. 1972), this court dealt with the consolidated appeal of a decision validating a bond issue for public park and recreational facilities in Miami. The bond issue had been approved by Miami voters at a referendum. The pertinent part of the ballot stated that the purpose for the bond issue was "to pay the cost of acquiring *** and improving public park and recreational facilities in the City ***." Part of the appellants' arguments in that case dealt with the ballot language and their insistence that (a) each of the 39 park designations should have been included in the referendum resolution and the ballot, and (b) the electors were not given adequate information on the projects. On page 324 of the opinion this court stated:

> We find no requirement, as urged by appellants, that the City must expressly include each capital project in its resolution. The City's resolution articulating the purposes for the bonds as distinguished from the specific projects, buttressed by the record before the City Commission which sets forth the actual projects, is valid. Lengthy, adversary public consideration given to the 39 park designations as the "projects" upon which the bond moneys will be expended, supplements and supports the resolution ***.

* * *

> The public media, utilizins various means of communication and fulfilling its public trust to inform ***, fully advised voters on all different aspects of the bond issue, including the specific projects in an illustrated color map diagram and description of the location of the exact and only projects encompassed in the bond issue. (emphasis supplied)

Winterfield v. Town of Palm Beach, 455 So.2d 359 (Fla. 1984), also dealt with an appeal of a bond validation judgment. As in Grapeland Heights, the bonds had been approved by referendum. The ballot referred to "acquisition of land for and construction of a police facility," when, in fact, the land had already been acquired by the Town before the referendum, and the bond proceeds would be used to reimburse the Town for land acquisition expenditures. The appellant based his second challenge to the validation on that discrepancy in the ballot. In dismissing his challenge, this court noted that "[t]he prior purchase of the land was a matter of public record, and information leaflets prepared by the town explaining the referendum outlined the situation."

In the instant case the City had on 14 occasions prior to the Referendum, through various Commission meetings, supplied a forum for public discussion and debate of (a) the proposed purchase of the Golf Course Property and all the details regarding the number of holes of the golf course to be purchased, (b) the $8,000,000 purchase price and justification therefor, and (c) the use of approximately $3,000,000 of other funds of the City which, when combined with proceeds of the sale of $5,125,000 of general obligations of the City, would be sufficient to finance the purchase of the Golf Course Property.

The Option Contract was publicly discussed and executed prior to the Referendum. It was a public record, available for inspection by any interested party.

Local newspapers and periodicals ran 19 articles prior to the Referendum, discussing purchase of the Golf Course Property. One edition of the Update contained a full page, color-coded diagram of the golf course, clearly showing which holes were already owned by the City.

Kessler himself had mailed over 5,000 flyers to residents of the City in an attempt to persuade voters to vote "no" on the Proposition.

Consequently, since all aspects of the proposed purchase of the Golf Course Property by the City had been thoroughly discussed and debated at public meetings and in the local media over a period of approximately 6 months before the Referendum, it was not necessary that the City mention the $8,000,000 purchase price for the Golf Course Property, and the use of other funds to assist in financing the purchase price, in the Proposition. The residents of the City were already well informed on those matters. Grapeland Heights, 267 So.2d at 324; Winterfield, 455 So.2d at 363.

In his Initial Brief Kessler also argues that failure to include the $8,000,000 purchase price for the Golf Course Property in the Proposition constituted misrepresentation and fraud by the City, although there is no evidence in the record to support his allegations. The only attempted proof by Kessler on that point, and erroneously received into evidence by the trial court over the objections of counsel to the City, was a letter to Kessler signed by Carlton F. Weber and Margaret J. Weber, dated 71 days after the

Referendum, which contained numerous hearsay statements and unsupported allegations that are irrelevant to the question of the legal sufficiency of the Proposition, and are collateral to the bond validation proceeding. Dade County, 142 So.2d at 89.

In Lodwick, 506 So.2d at 407, an intervenor filed "affirmative defenses" in a general obligation bond validation proceeding, which were stricken by the trial court, that alleged the bond referendum would have been unsuccessful had the electors been informed of all the facts. On appeal this court held that the intervenor had failed to present a claim of fraud sufficient to bypass the general rule that collateral issues will not be addressed in bond validation proceedings.

The authorities cited by Kessler which discuss election ballot defects (Advisory Opinion to the Atty. Gen., 592 So. 2d 225 (Fla. 1991) ; Askew v. Firestone, 421 So.2d 151 (Fla. 1982); Metropolitan Dade County v. Lehtinen, 528 So.2d 394 (Fla. 3rd DCA 1988)) contain the standards for ballot content in elections to amend the state constitution and a county home rule charter, not the standards for bond referenda ballots. In Askew, 421 So.2d at 155, this court stated that "lawmakers who are asked to consider constitutional changes, and the people who are asked to approve them, must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself ***." (emphasis supplied). But even in Advisory Opinion, 592 So.2d at 228, this court recognized that the ballot need not explain every detail or ramification of the proposed constitutional amendment.

On the other hand, the bond referendum ballot statute applicable to the case at hand, §100.341, Fla. Stat. (1995), only

requires that the ballot contain the **amount** of the **bonds,** the interest rate and other details necessary to inform the electors. Voters in a bond referendum are charged with the knowledge of matters of public record and information supplied by the public media that are too lengthy for inclusion in the limited space available for a ballot question. Winterfield, 455 So.2d at 363; Grapeland Heights, 267 So.2d at 324. All presumptions are in favor of validity of a bond referendum. Inconsistences or errors in matters not required by §100.341, Fla. Stat. (1995), to be included in the ballot question are immaterial and will not vitiate the referendum. Even the failure of a ballot to state the purpose of the expenditure is not fatal where there is no possibility that any voter was misled by the mistake. State v. City of West Palm Beach, 174 So. 334, 338 (Fla. 1937).

In his Initial Brief, Kessler stated that the City **was** not neutral in its dissemination of information regarding the purchase of the Golf Course Property, and implied that advocacy by the Mayor and other City officials of approval of the Proposition somehow misled the voters and improperly influenced the outcome of the Referendum.

This court recently discussed the duties and responsibilities of public officials in a referendum campaign. In People Against Tax Rev. v. County of Leon, 583 So.2d 1373 (Fla. 1991), Leon County held a successful referendum for passage of a local option sales tax to secure $60,000,000 of revenue bonds of the County to finance the construction of a new jail and other capital projects in the County. The bonds were validated by the lower court, and an appeal was taken from the bond validation. The appellants raised

questions concerning the bond referendum ballot language, use by the County of public funds and resources to mount an informational campaign, and the advocacy by the County of referendum passage. County office equipment was used in the campaign and many County employees assisted the campaign effort. On page 1375 of the opinion Justice Kogan stated:

> One duty of a democratic government is to lead the people to make informed choices through fair persuasion. *** (L)ocal governments are not bound to keep silent in the face of a controversial vote that will have profound consequences for the community. Leaders have both a duty and a right to say which course of action they think best, and to make fair use of their offices for this purpose. The people elect governmental leaders precisely for this purpose. (emphasis supplied)

Not finding any gross wrongdoing or any substantial violations of the law, or any fraud on the electorate, this court found the objections of appellants without merit.

In the instant case the City undertook every means at its disposal to adequately inform the voters of the issues surrounding the proposed purchase of the Golf Course Property. Numerous public meetings were held by the Commission to discuss the matter, and 2 editions of the Update contained articles designed to inform the electorate prior to the Referendum. The Mayor discharged his responsibility as the leader of the community in informing the voters and advocating approval of the Proposition. In the February 1996 edition of the Update the Mayor stated in his cover page article regarding the Golf Course Property acquisition:

> As one of the most valuable and last-remaining greenspaces in our community, this historic landmark is part of the very fabric that is Winter Park. I feel that it is essential that we preserve the cultural and historical

> integrity of Winter Park by acquiring this land. (emphasis supplied)
>
> For over 80 years, the residents of Winter Park have enjoyed and benefited from this green, open space. It has enabled the City to preserve the residential areas north of the golf course and to provide a beautiful, passive surrounding that all residents have grown to love and appreciate.

Kessler fails to understand that in our system of democracy, it is the ultimate responsibility of each voter to inform himself of the issues in an election so that he can make an intelligent choice when casting his vote at the polling place. He is charged with the knowledge of information in the public domain, even if he chooses to ignore it. Therefore, one should not be heard to complain about the results of an election in which he has participated, if he has failed to take advantage of information easily available through normal means of communication.

Particularly troublesome in this case is Kessler's argument of matters not received into evidence by the trial court, in both the trial and in this appeal. The City filed motions to strike each brief submitted by Kessler, primarily on the ground that he included in such briefs, argument based on facts not admitted into evidence by the trial court. This court granted the City's motions to strike the first and second (first amended) versions of Kessler's Initial Brief, but denied the City's motion to strike the third (second amended) version. However, in denying the City's third motion to strike Kessler's Initial Brief, this court permitted the City to note herein that certain of Kessler's arguments in his Initial Brief are not supported by the record.

Accordingly, the City again calls the following to the attention of this court:

1. In paragraphs 2, 4 and 5 of "C.2 AS TO THE SECOND OMITTED MATERIAL FACT" in his Initial Brief, pages 25, 26 and 27, Kessler argues matters not received into evidence at the trial court level. Furthermore, in his Reply to Appellee's Motion to Strike Appellant's Initial Brief, Amended (the "Second Reply"), Kessler ***admitted*** he did not understand that his oral argument at the trial court level, without evidence supporting his factual allegations, is not in and of itself, evidence. (See paragraph 6(b), page 6, of the Second Reply which states: "Paragraph 3, 4 and 5 can be documented but Appellant acknowledges no documentary evidence was submitted into the trial record for he only lately learned hearings at a trial level are divided into two segments, first, evidentiary and then followed thereafter by argument. Appellant was not knowledgeable of this dichotomy and therefore did not submit documentation for evidence. Appellant agrees, accordingly, Appellee's claim is valid.") For example:

(a) Kessler's reference on page 25 in paragraph 2 of "C.2 AS TO THE SECOND OMITTED MATERIAL FACT" in his Initial Brief to the trial court transcript, page 73, line 3 to line 22, is solely to his final argument unsupported by any factual evidence; consequently, the allegations in paragraph 2 are not properly referenced in the record and are not supported by factual evidence.

(b) There is no factual evidence in the record, and, consequently, no attempt by Kessler to provide references in the record, to support his allegations on page 26 in paragraph 4 of "C.2 AS TO THE SECOND OMITTED MATERIAL FACT" in his Initial Brief.

Furthermore, Kessler *admitted* in paragraph 6(b) of the Second Reply that no evidence **was** submitted to the trial court on those points.

(c) There is no factual evidence in the record, and, consequently, no attempt by Kessler to provide references in the record, to support his allegations on pages 26 and 27 in paragraph 5 of "C.2 AS TO THE SECOND OMITTED MATERIAL FACT" in his Initial Brief. Again, Kessler in paragraph 6(b) of his Second Reply *admitted* no evidence was submitted to the trial court on those points.

2. In the second sentence of paragraph 1 of "C.3 AS TO THE THIRD OMITTED MATERIAL FACT" on page 27 in his Initial Brief, Kessler states " *** which became the *electioneering slogan* of the city officials and a Political Action Committee created by the mayor," although Kessler in paragraph 7A. of his Second Reply *admitted* that no evidence **was** submitted to the trial court on those points.

The fact that Kessler is a pro se litigant does not excuse his noncompliance with the Florida Rules of Appellate Procedure. Compo v. State, 617 So.2d 362 (Fla. 2nd DCA 1993). Consequently, the City respectfully requests this court to disregard those matters argued by Kessler which were not based on evidence received by the trial court.

CONCLUSION

Approximately 6 months before the Referendum, the City held 14 public meetings and disseminated 2 editions of the Update which thoroughly discussed the proposed purchase by the City of the Golf Course Property through the combination of not exceeding $5,125,000 general obligation bonds, approximately $1,200,000 of funds already saved by the City for that purpose, and $2,000,000 of City contingency funds. Kessler personally attended at least 3 of those meetings and voiced opposition to the $8,000,000 purchase price. He also campaigned against the Golf Course Property purchase and argued vigorously for support to defeat the Proposition. The entire matter was covered extensively by the media through 17 articles in the local newspapers. The Commission enacted the Referendum Ordinance and the Referendum was properly noticed and held. After approval of the Proposition by 76% of the votes cast, the Commission adopted the Bond Resolution. Thereafter, the City obtained a circuit court validation of the bonds and the Referendum under Chapter 75, Florida Statutes (1995), in which the lower court found that the Proposition was not misleading and that the Referendum was held in accordance with the Constitution and laws of the State of Florida. Kessler failed in the lower court and in this appeal to show that the Proposition was misleading and defective. Therefore, the Final Judgment should be affirmed.

CERTIFICATE OF SERVICE

We hereby certify that a true and correct copy of the foregoing, along with the attached appendix, was furnished by mail this 3rd day of April, 1997, to Martin Kessler, 1555 Wilbar Circle, Winter Park, Florida 32789..

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