IN THE SUPREME COURT OF FLORIDA
CASE NO. 94,135

STATE OF FLORIDA,

Appellant,

vs.

OSCEOLA COUNTY, FLORIDA, a
political subdivision of
the State of Florida,

Appellee,
_______________________________/

**ANSWER BRIEF OF APPELLEE**
**OSCEOLA COUNTY, FLORIDA**

**On Appeal from the Ninth Judicial Circuit,**
**in and for Osceola County, Florida**
**Case No. CI 98-CI 1137**


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## TABLE OF CONTENTS


| | Page |
|---|---|
| TABLE OF AUTHORITIES | ii |
| CERTIFICATE OF FONT SIZE | iv |
| STATEMENT OF THE CASE AND FACTS | 1 |
| SUMMARY OF THE ARGUMENT | 6 |
| ARGUMENT | 7 |
| I. THE CIRCUIT COURT DECISION TO VALIDATE THE BONDS SHOULD BE AFFIRMED | 7 |
| A. The Bonds Meet The Florida Case Law Requirements For A Valid Public Purpose | 9 |
| B. The County's Project Serves A Paramount Public Purpose | 13 |
| C. The County's Bond Resolution And Complaint For Validation Meets All The Applicable Procedural Requirements | 20 |
| 1. The County's Proposed Use Of The Tourist Development Tax Does Not Violate Section 125.0104(3)(l), Florida Statutes | 20 |
| 2. The Complaint For Validation Is Sufficient On Its face | 21 |
| CONCLUSION | 25 |
| CERTIFICATE OF SERVICE | 26 |

## TABLE OF AUTHORITIES

**_Page_**

CASES


Bannon v. Port of Palm Beach District,
246 So. 2d 737 (Fla. 1971) . . . . . . . . . . . . . . . . . 18

Broward County v. State,
515 So.2d 1273 (Fla. 1987) . . . . . . . . . . . . . . . . . 24

Broward County v. State,
531 So. 2d 969 (Fla. 1988) . . . . . . . . . . . . . . . . . 23

Daytona Beach Racing and Recreational Facilities
District v. Paul, 179 So. 2d 349 (Fla. 1965) . . . . . . . . 15

Dorman v. Highlands County Hospital District,
417 So. 2d 253 (Fla. 1982) . . . . . . . . . . . . . . . . . 22

GRW Corp. v. Department of Corrections,
642 So. 2d 718 (Fla. 1994) . . . . . . . . . . . . . . . . . . 7

Linscott v. Orange County Industrial
Development Authority, 443 So. 2d 97 (Fla. 1983) . . . . 11, 12

Nohrr v. Brevard County Educational Facility
Authority, 247 So. 2d 304 (Fla. 1971) . . . . . . . . . . 12, 18

Northern Palm Beach County Water Control
District v. State, 604 So. 2d 440 (Fla. 1992) . . . . . . . 8, 9

Poe v. Hillsborough County,
695 So. 2d 672 (Fla. 1997) . . . . . . . . . . . . . 7, 9, 14-16

Rowe v. St. Johns County,
668 So. 2d 196 (Fla. 1996) . . . . . . . . . . . . . . . . . . 7

State v. City of Miami,
103 So. 2d 185 (Fla. 1958) . . . . . . . . . . . . . . . . . 23

State v. City of Miami,
379 So. 2d 651 (Fla. 1980) . . . . . . . . . . . . . . . 17, 18

State v. City of Miami,
41 So. 2d 888 (Fla. 1949) . . . . . . . . . . . . . . . . . . . 7

State v. City of Orlando,
576 So. 2d 1315 (Fla. 1991) . . . . . . . . . . . . . . . . . 13

State v. Daytona Beach Racing & Recreational
Facilities District, 89 So. 2d 34 (Fla. 1956) . . . . . . 15, 16

State v. Housing Finance Authority of Polk County,
376 So. 2d 1158 (Fla. 1979) . . . . . . . . . . . . . . . 12, 18

Page

CASES (Cont'd)

State v. Jacksonville Port Authority, 204 So.2d 881 (Fla. 1967) . . . . 11

State v. Ocean Highway and Port Authority, 217 So. 2d 103 (Fla. 1968) . . . . 18

State v. Sunrise Lakes Phase II Special Recreation Dist., 383 So. 2d 631 (Fla. 1980) . . . . 16, 17

State v. Town of North Miami, 59 So. 2d 779 (Fla. 1952) . . . . 11

Tamar 7600, Inc. v. Orange County, 686 So. 2d 790 (Fla. 5th DCA 1997) . . . . 7

Taylor v. Lee County, 498 So. 2d 424 (Fla. 1986) . . . . 7

FLORIDA CONSTITUTION

Article IX, section 10 (1885) . . . . 10, 11

Article VII, section 10 . . . . 8, 9, 12, 14, 15

Article VII, sections 10(a), (b), (c) . . . . 10

Article VIII, section 1(g) . . . . 1

FLORIDA STATUTES

Chapter 125 . . . . 1

Chapter 75 . . . . 1, 5, 8, 23, 24

Section 125.0104(3)(l) . . . . 1, 6, 12, 20

Section 125.0104(3)(l)(2) . . . . 1, 20

Section 75.04(1) . . . . 21-23

Section 75.05(1) . . . . 23

Section 75.06 . . . . 5

## CERTIFICATE OF FONT SIZE

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## STATEMENT OF THE CASE AND FACTS

This appeal is from a circuit court order, validating the issuance of bonds, under Chapter 75, Florida Statutes. Osceola County, Florida ("the County"), is a charter county and political subdivision of the State of Florida operating under Article VIII, section 1(g) of the Florida Constitution and Chapter 125 of the Florida Statutes. The County sought the validation of the "Not Exceeding $35,000,000 Osceola County, Florida Tourist Development Tax Revenue Bonds, Series 1998" ("the Bonds") in the Circuit Court in and for Osceola County, Florida ("the Circuit Court"). The County plans to issue the Bonds to finance at least the following: (1) the acquisition and construction costs of a publicly owned convention center ("the Project"), (2) a debt service reserve account, if necessary, and (3) the associated costs of the issuance of the Bonds. See Final Judgment at 3 (App. 1).

The County, through Ordinance No. 97-13, enacted on June 30, 1997, levied the fifth cent tourist development tax as authorized by section 125.0104(3)(l), Florida Statutes ("the Tourist Development Tax") (App. 2). This statutory section authorizes a county to levy "up to an additional 1-percent tax on" certain rentals to "[p]ay the debt service on bonds issued to finance the construction, reconstruction, or renovation of a convention center, and to pay the planning and design costs incurred prior to the issuance of such bonds." § 125.0104(3)(l)(2), Fla. Stat. Together with certain other funds constituting, with the Tourist Development

Tax, Pledged Revenues (as defined in the Bond Resolution adopted on July 27, 1998), the revenues received by the County from the levy of the Tourist Development Tax is expected to fully support the payment of debt service on the Bonds at issue in this case. See Final Judgment at 7 (App. 1).

The Project that will be financed with the Bonds is a convention center that is one component of a multi-phase complex that is expected to include in the initial phase the following: a World Expo Center, consisting of two million square feet of exhibition space and 400,000 square feet of meeting rooms and support space; a 2,000 room Hyatt Hotel; an entertainment and retail commercial venue; parking facilities; and a public safety facility. The convention center is the linchpin component of the entire complex. Only the convention center will be financed by the proceeds from the sale of the Bonds. The remaining components of the complex will be financed through private entities. Future phases of the complex may include additional hotel space, entertainment and retail offerings, a central energy plant, office space, and timeshare units.

The Project will be owned by the County, constructed in accordance with a Convention Center Purchase and Sale Agreement to be entered into between the County and Osceola Development Project L.P. ("the Development Agreement"), and operated according to the Osceola County Convention Center Operating Agreement to be entered into between the County and Osceola Development Project L.P. ("the Operating Agreement").

A private corporation will have the responsibility for actual day-to-day operations of the Project pursuant to the Operating Agreement. However, the County will, at all times, retain ownership of the Project. The County has determined that it is not only desirable, but in the best interest of the public, to have a private entity with proficiency and experience operating the Project so as to ensure its success. The County has thus concluded that because the success of the Project serves a paramount public purpose, any private benefit conferred by the operation of the Project is merely incidental.

The convention center and related parking and drainage facilities will be constructed pursuant to the terms of the Development Agreement. If the construction conforms with the County's standards and conditions, the County will then purchase the convention center. The Development Agreement provides that the County will escrow $1,500,000 for design costs which will be credited toward the purchase price or repaid to the County if the transaction fails to close. This escrowed amount will be secured by a mortgage on the subject property before its transfer to the County.

In addition, under the Development Agreement, several specific conditions must occur before the County is obligated to purchase the convention center. These conditions include: (1) the convention center building must be complete and ready for occupancy, meeting with standards specified in the Development Agreement; (2) the access, drainage and parking facilities to serve

the convention center must be complete; (3) the World Expo Center must be complete and ready for occupancy; (4) the development partnership must have provided sufficient funds to the County for construction of the public safety facilities; (5) the hotel must be 50 percent complete with funds available to complete construction; and (6) the commercial venue must be 25 percent complete with funds available to complete construction.

Finally, the Development Agreement contemplates that the County will enter into a Public Improvement Partnership Agreement, which will provide, among other things, a potential funding source to pay for internal roads and drainage facilities to be constructed by the Osceola Trace Community Development District.

The County has concluded that the Project serves a paramount public purpose. The County reached this conclusion for at least the following reasons: (1) the Project directly promotes the economies of the County and the State, (2) the Project develops tourist-related business activities and other area industries, thereby providing a more balanced and stable area of economy and increased opportunities for gainful employment, (3) the Project provides a forum for educational, recreational and entertainment activities for the citizens of the County and the State, and (4) the Project meets an existing need for such a facility in the County and the State, thereby promoting the attractiveness of both the County and the State to outside business interests and visitors. See Tourist Development Tax Revenue Bond Resolution at 18 (App. 3).

On or about August 14, 1998, the County filed a Complaint for Validation in the Circuit Court of the Ninth Judicial Circuit, in and for Osceola County, Florida, seeking validation of the Bonds, pursuant to Chapter 75, Florida Statutes. On August 24, 1998, the circuit court issued an Amended Order to Show Cause. The County subsequently published the Notice of the Amended Order to Show Cause in accordance with the provisions of section 75.06, Florida Statutes. See Final Judgment at 2 (App. 1). Proof of publication was filed with the Court. On September 14, 1998, the State Attorney filed a Notice of Appearance. On September 15, 1998, he filed an Answer and subsequently filed an Amended Answer on September 17, 1998. At the conclusion of the Order to Show Cause Hearing, after receiving testimony and hearing legal argument, the Circuit Court entered Final Judgment, validating the Bonds (App. 1). The State Attorney then timely filed this appeal.

## SUMMARY OF THE ARGUMENT

The Osceola Convention Center ("the Project") sought to be constructed with the proceeds of the Not to Exceed $35,000,000 Osceola County, Florida Tourist Development Tax Revenue Bonds, Series 1998, serves a valid public purpose. To the extent that the Development Agreement and Operating Agreement provide a private benefit, it is incidental to the public purpose. The County has made various legislative declarations finding the existence of a paramount public purpose. These findings are supported by the evidence presented at the show cause hearing and have not otherwise been proven to be clearly erroneous.

Additionally, the various arguments concerning alleged procedural deficiencies contained in the Initial Brief of the Appellant are without merit. The proposed use of the Tourist Development Tax does not violate section 125.0104(3)(l), Florida Statutes which expressly authorizes that the proceeds may be used to "finance the construction" of a convention center. The construction of the convention center, pursuant to County design standards and ultimately conveyed to the County following completion, falls within the purview of this authorization.

Finally, the Complaint for Validation is sufficient on its face, both as to the nature and extent of the allegations made and the parties joined.

## ARGUMENT

### I. THE CIRCUIT COURT DECISION TO VALIDATE THE BONDS SHOULD BE AFFIRMED.

The scope of judicial inquiry in bond validation proceedings is limited to determining: (1) whether the public body has the authority to issue bonds; (2) whether the purpose of the obligation is legal; and (3) whether the bond issuance complies with the requirements of law. See Poe v. Hillsborough County, 695 So. 2d 672, 675 (Fla. 1997); Rowe v. St. Johns County, 668 So. 2d 196, 198 (Fla. 1996); and Taylor v. Lee County, 498 So. 2d 424, 425 (Fla. 1986).

Contrary to the State Attorney's assertions, the existence of unexecuted contracts and an expedited adjudication schedule does not alter these inquiries nor limit the judiciary's ability to rule on the validity of a particular bond transaction. See, e.g., Tamar 7600, Inc. v. Orange County, 686 So. 2d 790 (Fla. 5th DCA 1997) (finding draft documents and summaries of unexecuted contracts sufficient to determine validity of tourist tax financing scheme for a professional sports franchise facility); GRW Corp. v. Department of Corrections, 642 So. 2d 718 (Fla. 1994)(upholding validation of a lease purchase agreement, even though it failed to include certain required provisions and contained blanks in the document); State v. City of Miami, 41 So. 2d 888 (Fla. 1949)(recognizing that bonds are sometimes validated before being sold or before provisions for redemption are included and before dates and maturities are determined). In fact, one of the reasons

that the statutory bond validation procedure under Chapter 75 is expedited is because local governments often wait to execute contracts and solidify agreements until the financing mechanism at issue in a validation proceeding is approved. In this manner, when a financing scheme is not approved, a local government is not then in a position of attempting to "un-do" contracts related or connected to the financing scheme at issue. In most instances, when a bond validation proceeding invalidates the financing scheme at issue, the project plan is either postponed or abandoned altogether.

Furthermore, despite the State Attorney's unsupported and confusing contentions that several issues exist in this appeal, the only dispositive issue here is whether the Project, to be financed with the Bonds, serves a valid public purpose. The inquiry for determining whether a "public purpose" is served, originates from Article VII, section 10 of the Florida Constitution. This constitutional provision prohibits the State and its subdivisions from using their taxing power or pledging their public credit to aid a private entity. If a governmental entity uses its taxing power or pledges its public credit, then the debt-financed project must serve a "paramount public purpose." See Northern Palm Beach County Water Control District v. State, 604 So. 2d 440, 441-42 (Fla. 1992) ("If either [the taxing power or pledge of credit] is involved, then the improvements must serve a paramount public purpose."). The definition of "paramount public purpose" has been provided through recent case law. The paramount public purpose

test is met when the project at issue benefits the community in a tangible way. See Poe v. Hillsborough County, 695 So. 2d 672, 676-77 (Fla. 1997) (enumerating the public purposes from a sports stadium and related facilities as: economic growth, tourist development, business attraction, civic pride, camaraderie, enhanced community image, recreation, and entertainment). Furthermore, projects financed with government-issued bonds may incidentally benefit private interests and still maintain their public character. See Poe v. Hillsborough County, 695 So. 2d 672 (Fla. 1997) (finding a paramount public purpose from the construction of a stadium even when a stadium-related agreement allowed a private sports franchise to, among other things, receive the first $2 million in proceeds from non-franchise events at the stadium).

### A. The Bonds Meet The Florida Case Law Requirements For A Valid Public Purpose.

Article VII, section 10 of the Florida Constitution generally prohibits the State and its subdivisions from using their taxing powers or pledging their public credit to aid private persons or entities. See Northern Palm Beach County Water Control District v. State, 604 So. 2d 440, 441 (Fla. 1992). Article VII, section 10 provides in part:

> Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person; but this shall not prohibit:

> (a) the investment of public trust funds;
>
> (b) the investment of other public funds in obligations of, or insured by, the United States or any of its instrumentalities;
>
> (c) the issuance and sale by any county, municipality, special district or other local governmental body of (1) revenue bonds to finance or refinance the cost of capital projects for airports or port facilities, or (2) revenue bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants to the extent that the interest thereon is exempt from income taxes under the then existing laws of the United States, when, in either case, the revenue bonds are payable solely from the revenue derived from the sale, operation or leasing of the projects. If any project so financed, or any part thereof, is occupied or operated by any private corporation, association, partnership or person pursuant to contract or lease with the issuing body, the property interest created by such contract or lease shall be subject to taxation to the same extent as other privately owned property.

Art. VII, § 10(a), (b), (c), Fla. Const. (emphasis added). The underlined language in subsection (c) above was added to the Florida Constitution in 1968. The impact of this revision was dramatic because it diminished the precedential value of pre-1968 judicial decisions, construing the parallel "pledging of credit" provision in Article IX, section 10, Florida Constitution (1885). In comparison to the 1968 revision, Article IX, section 10 of the 1885 Constitution provided:

> Section 10. The credit of the State shall not be pledged or loaned to any individual, company, corporation, or association; nor shall the State become a joint owner or stock-holder in any company, association or corporation. The Legislature shall not authorize any county, city, borough, township or incorporated district to become a

> stock holder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual.

Under the 1885 constitutional prohibition in Article IX, section 10, all revenue bonds issued for private facilities were required to serve a "predominately" or "paramount" public purpose even though the bonds were payable solely from the revenues generated from the projects and were non-recourse to the issuing public entity. See State v. Town of North Miami, 59 So. 2d 779 (Fla. 1952)(holding that the construction of an aluminum manufacturing plant did not further a public purpose); and State v. Jacksonville Port Authority, 204 So. 2d 881 (Fla. 1967)(finding that proposed port support facilities did not serve a sufficient public purpose). This Court later explained the genesis of the new 1968 constitutional language in Linscott v. Orange County Industrial Development Authority, 443 So. 2d 97 (Fla. 1983). The Court recited the history as follows:

> Significantly, Jacksonville Port Authority was decided in July, 1967, when the Florida Legislature was considering revisions to the Constitution of 1885. The legislative interest in the economic impact of Jacksonville Port Authority was evidenced by the immediate passage of legislation attempting to nullify the court ruling. See 204 So. 2d at 892. Concurrently, in August, 1967, each house adopted joint resolutions proposing revisions to the constitutional provisions prohibiting the pledge of public credit to private entities. In pertinent part, the thrust of the Senate version was to overturn Jacksonville Port Authority; that of the House version to overturn Town of North Miami. These differing versions, subsections 10(c)(1) and (2) respectively, became House

> Joint Resolution No. 1-2X 559-60, Laws of Florida (1968), which was submitted to, and approved by, the voters of Florida in November, 1968.

Linscott, 443 So. 2d at 100 (footnote omitted). Furthermore, in Linscott v. Orange County Industrial Development Authority, this Court analyzed its prior decisions in Nohrr v. Brevard County Educational Facility Authority, 247 So. 2d 304 (Fla. 1971), and State v. Housing Finance Authority of Polk County, 376 So. 2d 1158 (Fla. 1979), and fashioned a rule of construction for Article VII, section 10. The Court stated, "With the adoption of the Constitution of 1968, the 'paramount public purpose' test developed by case law under the Constitution of 1885 lost much of its viability. The test is still applicable when a pledge of public credit is involved, but where such pledge is not involved, as here, it is enough to show only that a public purpose is served." Linscott, 443 So. 2d at 101 (emphasis in original).

Because this case involves the pledge of public tax dollars -- the fifth cent of the tourist development tax under section 125.0104(3)(l), Florida Statutes -- the Circuit Court below applied the paramount public purpose test to the Bonds. The Circuit Court concluded that, despite the incidental private nature of a portion of the Project, the Project serves a paramount public purpose. The Circuit Court held as follows:

> The construction and operation of the Project serves a valid and paramount public purpose, in that (i) the Project will directly promote the economy of the Plaintiff and the State, thereby improving the competitive position of both entities; (ii) the Project will further the development of tourism related business

> activities and other area industries, thereby providing a more balanced and stable area of economy and increased opportunities for gainful employment; (iii) the Project will provide a forum for educational, recreational and entertainment activities for the citizens of Osceola County and the State; and (iv) the Project will meet an existing need for such facility in Osceola County and the State, thereby promoting the attractiveness of both Osceola County and the State to outside business interests and visitors[.]

Final Judgment at 8 (App. 1).

The State Attorney provides two assertions as to why this conclusion was made in error. First, the State Attorney contends that the Project does not serve an adequate public purpose; and second, that even if an adequate public purpose exists, the circuit court erred in so finding because several important agreements are not yet executed. Neither of these assertions has a basis in this case.[1]

### B. The County's Project Serves A Paramount Public Purpose.

Several opinions from this Court are closely analogous to the instant one. The scarcity of case citations in the State Attorney's Initial Brief does not reflect the reality that several cases directly support the circuit court's finding of paramount

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[1] The first argument is responded to in great detail in this Answer Brief. For the second argument, the State Attorney cites the case of State v. City of Orlando, 576 So. 2d 1315 (Fla. 1991), as support that the circuit court could not decide the validity of the Bonds with not every agreement being in an executed form. This case does not further the State Attorney's argument because it held only that the bond resolution there failed to identify at all what projects were to be funded with the bond proceeds. Clearly, this situation is not present here.

public purpose here. The most instructive case for this bond validation proceeding is the Court's recent opinion in Poe v. Hillsborough County, 695 So. 2d 672 (Fla. 1997). In Poe v. Hillsborough County, this Court determined that the financing of a new stadium and related facilities for the Tampa Bay Buccaneers served a "paramount public purpose," and, thus, did not violate Article VII, section 10 of the Florida Constitution. The Tampa Sports Authority ("TSA"), in Poe v. Hillsborough County, proposed to issue $33 million in bonds supported by state sales tax proceeds, $11.5 million in bonds supported by the local option four-cent tourist development tax, and $160 million in bonds supported by a countywide local option half-cent sales tax. Under various agreements, including the "Stadium Agreement," the "Stadium Parcel Development Agreement," and the "Practice Area Development and Lease Agreement," between the TSA and the Buccaneers, the TSA would construct a new community stadium and training facility.

The "Bucs" could use the stadium for 30 years, paying an annual fee to the TSA. In addition, the "Bucs" were contractually allowed to retain the first $2 million in proceeds from non-Buc events held at the stadium. In Poe v. Hillsborough, the circuit court declined to validate the bonds, finding that the new stadium project would be valid but for this $2 million clause. See Poe v. Hillsborough County, 695 So. 2d 672, 675. In light of this clause, the circuit court ruled that the stadium served a "predominately private purpose." Id. (emphasis added).

However, this Court reversed that conclusion and noted, "We have held that a bond issue does not violate article VII, section 10 so long as the project serves a 'paramount public purpose,' and any benefits to private parties from the project are incidental." Id. at 675 (citations omitted). This Court concluded that the private benefit from the project was incidental despite the fact that the Tampa Bay Buccaneers, a private, professional sports franchise, would receive the $2 million payment at issue.

Furthermore, in finding that a paramount public purpose was served by the stadium project, this Court relied on its previous paramount public purpose cases concerning the financing for the Daytona Speedway. See State v. Daytona Beach Racing & Recreational Facilities District, 89 So. 2d 34 (Fla. 1956), and Daytona Beach Racing and Recreational Facilities District v. Paul, 179 So. 2d 349 (Fla. 1965). In the 1956 Daytona case, this Court determined that the construction of a racetrack, which was used and operated by a private corporation served a paramount public purpose because the project was designed to "both increase trade by attracting tourists and to provide recreation for the citizens of the District." Id. at 37; see also Daytona Beach Racing & Recreational Facilities Dist. v. Paul, 179 So. 2d 349 (Fla. 1965) (reaffirming that the same racing facility served a predominantly public purpose). To emphasize its finding of public purpose, this Court in the 1956 Daytona case stated:

> Tourism, both between the areas of our State and as between the States of this Nation, is a competitive business. The sand and sun and the water are not sufficient to attract those

> seeking a vacation and recreation. Entertainment must be offered. Even ignoring its use by the District for periods aggregating one-half the year, or more, for other recreational and educational purposes for the public, the facility in question, considering the uses to which it will be adopted and their expected effect on the public welfare, is infinitely more valid a public purpose... The public purpose here seems to be predominant and the private benefit and gain to be incidental.

84 So. 2d at 37 (emphasis added).

In reliance on the 1956 Daytona case, this Court validated the proposed bonds in Poe v. Hillsborough County, finding that a paramount public purpose existed partially because of the economic impact the professional football team and the hosting of the Super Bowl would have on the Tampa community. See Poe v. Hillsborough County, 695 So. 2d at 678. Additionally, the NFL team would help attract tourists and new businesses to the community through national television exposure. Furthermore, this Court found that "the Buccaneers instill civic pride and camaraderie into the community and that Buccaneer games and other stadium events also serve a commendable public purpose by enhancing the community image on a nationwide basis and providing recreation, entertainment and cultural activities to its citizens." Id. at 678-79.

This Court has traditionally validated debt-financed projects that promote tourism and trade, despite the fact that some private benefit is derived. In addition to Poe v. Hillsborough County, several other recent cases likewise illustrate this trend, in the context of a private entity using, occupying, and/or operating the public project. For example, in State v. Sunrise Lakes Phase II

Special Recreation Dist., 383 So. 2d 631 (Fla. 1980), the Sunrise Lakes District sought the validation of bonds secured by ad valorem taxes and other revenues. Id. at 632. The proceeds of the bonds were to be used to purchase condominium recreation facilities, which would be available to the public and the condominium owners. The State claimed that there was an insufficient public purpose because the recreation facilities would primarily benefit the residents of a single condominium development and would be operated by the private condominium association. Id. The Court determined that a "valid" public purpose existed because the project was the best alternative for delivering recreational services to the area and the proposed project would be available to the public. Id. at 633. "The key is the availability of the facilities to the general public. Without that availability, there is no public purpose." Id.

Additionally, in State v. City of Miami, 379 So. 2d 651 (Fla. 1980), this Court determined that a convention center and accompanying garage served a paramount public purpose. The City of Miami sought to issue bonds for the construction of a convention center and a parking garage. The bonds were secured by a pledge of the "net revenues derived by the City from or in connection with the convention center-garage and other revenues of the City exclusive of ad valorem tax revenues." Id. at 652. This Court found that the facility would "provide a forum for educational, civic, and commercial activities and organizations." Id. at 653. The Court also noted that the center would increase tourism and

international trade, and that the parking facilities served a public purpose. Id. The incidental benefits accruing to the private developer and the University of Miami, which was to lease a portion of the center and the garage, were not "so substantial as to tarnish the public character of this convention center-garage." Id.

This Court is guided by the legislative declarations of paramount public purpose that were made by the County with respect to the Project at issue here. In fact, a "legislative declaration of public purpose is presumed to be valid, and should be deemed correct unless so clearly erroneous as to be beyond the power of the legislat[ive body]." See State v. Housing Finance Authority of Polk County, 376 So. 2d 1158, 1160 (Fla. 1979). The burden of showing a declaration of public purpose to be "clearly erroneous" is on the "party challenging such a legislative determination." See Nohrr v. Broward County Educational Facilities Authority, 247 So. 2d 304, 309 (Fla. 1971); and State v. Ocean Highway and Port Authority, 217 So. 2d 103, 105 (Fla. 1968)(approving the issuance of revenue bonds to construct a pulp and paper plant to be leased to a private corporation in light of a legislative determination that such project constituted a public purpose). See also Bannon v. Port of Palm Beach District, 246 So. 2d 737, 740 (Fla. 1971)("We do not find it necessary to determine whether the purposes to be served by the development of the leased property are primarily public or private in nature.").

Accordingly, in the present case, the County declared, in pertinent part as follows:

> (A) That the Issuer deems it desirable and in the best interests of the Issuer and the public that the Initial Project be (i) acquired and constructed in accordance with the terms hereof and of the Development Agreement and (ii) operated in accordance with the provisions of the Operating Agreement. Further, the Issuer finds and determines that the operation of the Initial Project by a private entity with sufficiency profiency and experience is necessary to ensure the success of the Initial Project; however, because the Initial Project's paramount purpose is a public one, any private benefit is merely incidental and does not destroy the Initial Project's public character.
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>
> (C) That the construction and operation of the Initial Project serves a valid and paramount public purpose in that: (i) the Initial Project will directly promote the economy of the Issuer and the State, thereby improving the competitive position of both entities; (ii) the Initial Project will further the development of tourism-related business activities and other area industries, thereby providing a more balanced and stable area economy and increased opportunities for gainful employment; (iii) the Initial Project will provide a forum for educational, recreational and entertainment activities for the citizens of Osceola County and the State; and (iv) the Initial Project will meet an existing need for such facility in Osceola County and the State, thereby promoting the attractiveness of both Osceola County and the State to outside business interests and visitors.

Bond Resol., § 1.04 (A) and (C) (App. 3).

These legislative findings are entitled to judicial deference. Consistent with case law, the Development and Operating Agreements do not undermine the paramount public purpose of the Project

because the primary focus of the public purpose inquiry is on the use and benefit to the public from the Project as a whole, not merely which entity operates the Convention Center on a day-to-day basis. The evidence presented at the hearing supported these findings and the State Attorney failed to present any evidence that they were erroneous. In fact, after receiving testimony and other evidence at the Show Cause Hearing, the Circuit Court in this case determined that the findings were reasonable and should be upheld.

### C. The County's Bond Resolution And Complaint For Validation Meets All The Applicable Procedural Requirements.

#### 1. The County's Proposed Use Of The Tourist Development Tax Does Not Violate Section 125.0104(3)(1), Florida Statutes.

Section 125.0104(3)(1), Florida Statutes (1998), states that the fifth cent Tourist Development Tax may be used to "[p]ay the debt service on bonds issued to finance the construction, reconstruction, or renovation of a convention center, and to pay the planning and design costs incurred prior to the issuance of such bonds." § 125.0104(3)(1)(2), Fla. Stat. (emphasis added). The State Attorney asserts that the County's proposed use of this tax for the financing of the acquisition of the convention center, after it has been designed and built to meet the County's standards, specifications and conditions, violates this statutory provision. The State Attorney provides no citation of authority of any kind for this assertion. Furthermore, the statute, by its

plain language expressly authorizes the use of the tax revenue to "finance the construction" of a convention center. This use is precisely the one contemplated by the County here. The statute places no obligation on a county to physically construct the convention center itself nor does the statute prohibit a county from entering into agreements to accomplish the construction of the convention center.

In this case, as set forth in the Development Agreement, the convention center will be constructed by a private entity pursuant to standards, specifications and conditions established by the County. A private entity will perform the actual construction of the convention center. Once the County's conditions are fulfilled, then the property, including the convention center, will be conveyed to the County. The County will then directly own the convention center. Such an arrangement is logically and plainly contemplated in the phrase "finance the construction."[2]

**2. The Complaint For Validation Is Sufficient On Its face.**

The State Attorney contends that the County's Complaint for Validation violates section 75.04(1), Florida Statutes, and fails

[2]The State Attorney also makes reference to the lack of evidence establishing that the County has previously levied the initial four cents of the Tourist Development Tax. However, County Ordinance 97-13 (App. 2), which levied the fifth cent of the Tourist Development Tax and was admitted in evidence, sets forth as part of its findings that the County has previously complied with this provision and levied the initial four cents. Ordinance 97-13, section 1(B). No contrary evidence was presented.

to name the Osceola Trace Community Development district as an indispensable party. Both arguments are incorrect.

Section 75.04(1), Florida Statutes, requires a complaint for validation to

> set out the plaintiff's authority for incurring the bonded debt or issuing certificates of debt, the holding of an election and the result when an election is required, the ordinance, resolution or other proceeding authorizing the use and its adoption, all other essential proceedings therewith, the amount of the bonds or certificates to be issued and the interest they are to bear; . . . .

§ 75.04(1), Fla. Stat. The County's Complaint for Validation complies with the statutory requirements of concern to the State Attorney: the amount of the Bonds and the interest rate thereof. First, the Complaint establishes, on its face, the maximum amount of the bond issue. "Plaintiff, brings this Complaint . . . by the issuance by the Plaintiff of not Exceeding $35,000,000 Osceola County, Florida Tourist Development Tax Revenue Bonds, Series 1998." See Complaint at 1-2. Second, the Complaint satisfies the traditional judicial interpretation that the interest rate requirement was met by pleading that the rate would not exceed that established by law. See Dorman v. Highlands County Hospital District, 417 So. 2d 253 (Fla. 1982). See also Complaint at para. 16.[3] Clearly, then, the Circuit Court was correct in ruling that

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[3]The State Attorney even acknowledges that section 75.04(1) is satisfied by this allegation and that the County's Complaint contains such language. See Initial Brief at 48, n. 69.

the County's Complaint satisfied the requirements of section 75.04(1), Florida Statutes.[4]

Finally, the State Attorney erroneously asserts that the Osceola Trace Community Development District should have been named as a party to the Complaint. Chapter 75, Florida Statutes, required the County to name and serve process on the State Attorney on behalf of

> the State and the several property owners, taxpayers, citizens and others having or claiming any right, title or interest in property to be affected by the issuance of bonds . . . .

§ 75.05(1), Fla. Stat. This is precisely what the County did in this case. Any other "interested" person or entity has the absolute right to become a party to the validation. Section 75.07, Florida Statutes, states, "Any property owner; taxpayer, citizen or person interested may become a party . . . by moving against or pleading to the complaint . . . ." Id.

Further, the purpose of the State Attorney in these proceedings is to represent the property owners, taxpayers,

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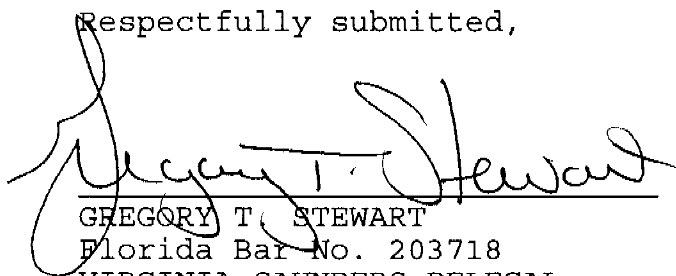
[4]Additionally, the State Attorney references the sufficiency of the Complaint as to Securities and Exchange Commission Rule 15C2-12. This section requires participating underwriters to comply with certain requirements before making a bid, purchase or offer of municipal securities. Initially, this provision applies to participating underwriters and not issuers such the County here. Further, the conditions cannot be satisfied by the underwriters prior to validation since validation of the Bonds is a condition precedent to the marketing and sale of the Bonds. Finally, the County is not clear whether the State Attorney believes this SEC rule must be addressed within the Complaint; however, such a requirement would clearly constitute a collateral issue to the bond validation proceeding. See State v. City of Miami, 103 So. 2d 185 (Fla. 1958); Broward County v. State, 531 So. 2d 969 (Fla. 1988).

citizens and others having an interest in the proposed bonds. Although the Osceola Trace Community Development District could have intervened, as could others, their interests were being represented by the State Attorney. The State Attorney was the only necessary named party to this action. See Broward County v. State, 515 So.2d 1273, 1274 (Fla. 1987)("Under chapter 75 it appears that the only parties absolutely necessary to a bond validation are the issuing entity and, if the conditions necessitating a defense are met, the state.").

## CONCLUSION

The Final Judgment of the trial court validating the not Exceeding $35,000,000 Osceola County, Florida Tourist Development Revenue Bonds, Series 1998, should be affirmed.

Respectfully submitted,

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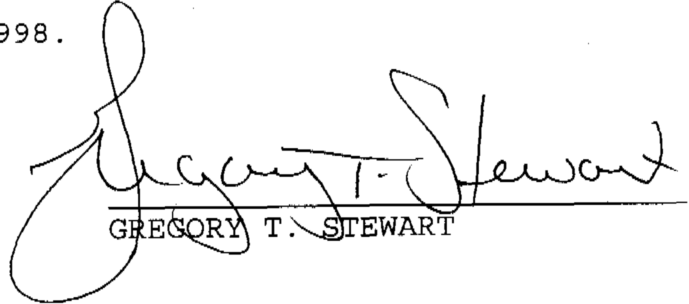
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to CLOYCE L. MANGAS, JR., ESQUIRE, Assistant State Attorney, Ninth Judicial Circuit of Florida, Post Office Box 1673, 415 North Orange Avenue, Orlando, Florida 32802, this 17 day of November, 1998.



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