

IN THE SUPREME COURT
STATE OF FLORIDA

TERRY SUE TURNER,
Defendant/Appellant,

CASE NO. SC00-2296

vs.

Circuit Court Case No. 00-4060-CI-021

CITY OF CLEARWATER,
a municipal and public body corporate
and politic of the State of Florida,
Plaintiff/Appellee.

**ON APPEAL FROM THE SIXTH JUDICIAL CIRCUIT
PINELLAS COUNTY, STATE OF FLORIDA**

Hon. James R. Case

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
TABLE OF CITATIONS	3,4
PRELIMINARY STATEMENT	5
STATEMENT OF THE CASE	6
STATEMENT OF THE FACTS	7
ISSUE ON APPEAL	10
SUMMARY OF THE ARGUMENT	10
ARGUMENT I	11
ARGUMENT II	13
ARGUMENT III	18
ARGUMENT IV	20
ARGUMENT V	22
CONCLUSION	23
CERTIFICATE OF SERVICE	24

TABLE OF CITATIONS

<u>CASE</u>	<u>PAGE</u>
<u>Biddle v. State Beverage Department</u> 187 So.2d 65 (Fla. 4 th DCA 1966)	20
<u>Dobbs v. CRL Hotel</u> 56 So. 2d 341 (Fla. 1952)	20
<u>Easterlin v. City of New Port Richey</u> 105 So.2d 361 (Fla. 1958)	14
<u>City of Jacksonville v. Savannah Machine & Foundry Company</u> 47 So.2d 634 (Fla. 1950)	15,18
<u>Leon County v. State</u> 165 So. 666 (1936)	16
<u>Merrill v. St. Petersburg</u> 13,22 109 So. 315 (1926)	
<u>Nuveen v. Quincy</u> 13,22 156 So. 153 (Fla 1934)	
<u>Posey v. Wakulla County</u> 3 So.2d 799 (Fla. 1941)	16
<u>Williams v. American Surety Company of New York</u> 99 So.2d 877 (Fla. 2 nd DCA 1958)	20
<u>State v. Boca Raton</u> 13,16,22 172 So.2d 230 (Fla. 1965)	

State v. Broward County
16,17
 54 So.2d 512 (Fla. 1951)

TABLE OF CITATIONS CONTINUED

<u>CASE</u>	<u>PAGE</u>
<u>State Road Department v. Levato</u> 192 So.2d 35 (4 th DCA 1966)	20
<u>State v. Manatee</u> 93 So.2d 381 (Fla. 1957)	14
<u>State v. Nourse</u> 340 So.2d 966 (3 rd DCA 1976)	21
<u>State v. City of St. Petersburg</u> 198 So. 837 (Fla. 1940)	15,18
<u>State v. Florida State Improvement Commission</u> 60 So.2d 747 (Fla. 1952)	14
<u>State v. Sarasota County</u> 549 So.2d 659 (Fla. 1989)	18
 <u>Statutes:</u>	
Section 166.101 et seq. - Florida Statutes.	22

PRELIMINARY STATEMENT

This is an appeal taken pursuant to Rule 9.030(a)(1)(B)(i), Rules of Appellate Procedure. This initial brief of Appellant is served with Appendix in accordance with Rule 9.110(i), Rules of Appellate Procedure. Reference to the Appendix shall be in the following form (A-). Reference to the Transcript shall be in the following form (P__, L.____).

STATEMENT OF THE CASE

1. Appellee, City of Clearwater, filed its Complaint for Validation with the Clerk of the Circuit Court for Pinellas County, Florida, on June 8, 2000. (A-1)

2. The Complaint for Validation by the City of Clearwater joined the State of Florida and the Taxpayers, Property Owners and Citizens of the City of Clearwater, Florida, including non-residents owning property or subject to taxation therein, and Appellant, Terry Turner. (A-1)

3. On July 18, 2000, the Trial Court issued its Order to Show Cause. (A-2)

4. On July 19, 2000, Appellant served her Answer and Affirmative Defenses. (A-3)

5. On August 23, 2000, a Final Hearing was held. (A-2)

6. On September 18, 2000, Appellant filed her Objections to Appellee's Proposed Final Judgment. (A-4)

7. On September 26, 2000, the Honorable James R. Case entered the Final Judgment proposed by Appellee. (A-5)

8. On October 24, 2000, the Appellant filed her Notice of Appeal in this

cause.

STATEMENT OF THE FACTS

1. Appellee, on May 6, 1999, adopted Resolution No. 99-28 (the project resolution) providing for the sale of not to exceed \$51,000,000.00 infrastructure sales tax revenue bonds, approving the Series 2000 project and authorizing the public sale of the bonds. (A-6)

2. The Charter of the City of Clearwater provides:

“ARTICLE IX. FISCAL MANAGEMENT PROCEDURE.

“The fiscal management procedure shall include provisions relating to the operating budget, capital budget and capital program, providing for hearings on the budget, capital budget and capital program and the amendment of the budget following adoption. Such ordinance shall in addition contain a provision requiring that revenue bonds for projects in excess of one million dollars shall be put to public referendum with the exception of revenue bonds for public health, safety or industrial development and revenue bonds for refunding.” (A-7)

3. Appellee failed to hold a public referendum for the issuance of the revenue bonds for the series 2000 Project.

4. Terry Turner is a voter and tax payer, resident of the City of Clearwater. (T-5, L-9-13).

5. Appellant concedes that there is no procedural error being challenged other than the failure of the Appellee to hold a referendum to approve the issuance of the bonds.

6. Appellee seeks validation of a \$51,000,000 bond issue to provide advanced funding for replacement of a State highway facility (new Memorial Causeway Bridge). (A-1; T-40, L-3-7; T-23, L-19-24)

7. Appellee's justification for the project and the issuance of the bonds is that:

- A. The current bridge is functionally obsolete;
- B. There is no barrier between the cars and pedestrians;
- C. It has narrow sidewalks;
- D. It opens for boats (T-14, L-5-18).

8. The cost of the project is estimated by the Department of Transportation to be \$50.1 Million Dollars (T-15, L-3-7).

9. The new bridge will raise the level of service from " F" to "E". (T-20-21, L-24-2).

10. The existing bridge is not structurally obsolete. (T-22, L-13-15).

11. The Memorial Causeway Bridge is not in the Department of Transportation's five or twenty year plans for replacement. (T-22, L-16-25; T-23, L-

1).

12. The proposed bridge being constructed is a State facility. (T-23, L-19-24) (A-0, pg.16)

13. Ultimately, after the public hearing process, the proposed new bridge alignment was approved by the City Commission; however, a “no build alternative” remained a viable option through the public hearing process. (T-27-36); (A-14).

14. The purpose of the bond issue is to provide advance funding to the Department of Transportation to replace a Department of Transportation bridge. (T-40, L-2-7); (A-9).

15. According to the Department of Transportation, the replacement of the Memorial Causeway Bridge was not a safety priority project and would not be scheduled for replacement for at least twenty (20) years. (A-14).

16. The true purpose of the bridge replacement is to provide a focal point for tourists and residents traveling between Clearwater Beach and downtown, and a signature piece as the entrance to Clearwater Beach and the downtown business district. (A-9; A-10)

ISSUE ON APPEAL

WHERE THE CITY CHARTER REQUIRES A PUBLIC REFERENDUM FOR ALL REVENUE BOND PROJECTS IN EXCESS OF \$1,000,000, EXCEPT FOR THOSE FOR PUBLIC HEALTH AND SAFETY, DID THE TRIAL COURT ERR IN FINDING THAT THE CITY HAS AUTHORITY TO ISSUE REVENUE BONDS WITHOUT PUBLIC REFERENDUM APPROVAL WHERE THE BONDS ARE INTENDED TO PROVIDE ADVANCE FUNDING FOR THE REPLACEMENT OF A STATE HIGHWAY FACILITY WHICH WOULD NOT OTHERWISE BE REPLACED FOR TWENTY YEARS?

SUMMARY OF THE ARGUMENT

The project for which the City of Clearwater seeks to issue revenue bonds does not fall within the public health and safety exception from the referendum requirements set forth in Article IX of the City of Clearwater's Charter. It is Appellant's position that providing advance funding for a State facility does not fall within the public health and safety exception of the City Charter. As a matter of law, the proposed project does not fall within the exception to the referendum requirements of the City of Clearwater's Charter, and the City Commission exceeded its authority in authorizing bonds without referendum approval. There was no competent evidence to support the Trial Court's finding that providing

advance funding for a State project constitutes a governmental function excepted from the referendum requirements of the City's Charter.

ARGUMENT I

THERE IS NO EVIDENCE IN THE RECORD TO ESTABLISH THE FINDINGS OF THE COURT IN PARAGRAPH EIGHTH OF THE FINAL JUDGMENT, AND THE TRIAL COURT ERRED IN MAKING FINDINGS UNSUPPORTED BY THE RECORD.

Paragraph Eighth of the Final Judgment reads as follows:

“EIGHTH. That the Series 2000 Project, consisting of the construction of a new Memorial Causeway Bridge to replace the existing draw bridge is necessary and in the interests of the public health and safety of the citizens of the City, that Section 2.01(d) of the City Charter does not require that the City obtain prior referendum approval before the City undertakes the Series 2000 Project in that such Series 2000 Project is not “development” within the meaning of Section 2.01(d)(6) of the Charter and that Sections 2.01(d)(5)(v) and 2.01 (d)(7) of the City's Charter, when read together, permit the City to grant the necessary rights of way for the Series 2000 Project. That this holding is consistent with this Court's determination in Spatuzzi, et al. v. City of Clearwater, Case No. 99-1080-CI-21. In reaching this conclusion, the Court specifically finds that Series 2000 Project is a part of the City's street system and thus constitutes a “city facility” within the meaning of the City's Charter, that the Series 2000 Project is necessary and in the interest of the public health, safety and welfare of the citizens of the City, that the existing bridge is one of the top ten accident locations in the City and is deficient under current design standards, and that the City has concluded that the Series 2000 Project will cure the deficiencies of the existing bridge.”

A finding set forth in a Final Judgment must be supported by the evidentiary record. There is no evidence in the record to support critical findings of the Eighth paragraph of the Final Judgment. There is nothing in the transcript or the evidence

adduced at Trial relevant to defining the term “development” or other sections of the City Charter. There was no request for judicial notice of the case of Spatuzzi, et al., vs. City of Clearwater, Case No. 99-1080-CI-021. The trial Court’s finding and discussion of the term “development” and “City facility” are simply not supported by the evidentiary record in the proceedings below.

Not only is there no evidence to establish that the proposed new Bridge is a “City facility”, the contrary appears in the record. The City’s Public Works Administrator, Mahshid Arasteh, testified that the new Bridge is a State facility. (T-23, L-19-24). Further, the Joint Project Agreement between the City and the Department of Transportation classified the new Bridge as a State facility. (A-10, pg. 16). Therefore, based upon the foregoing, the Final Judgment should be set aside for lack of supporting proof for the findings set forth in paragraph Eighth of the Final Judgment.

ARGUMENT II

AS A MATTER OF LAW, A PROJECT REPLACING A STATE FACILITY DOES NOT FALL WITHIN THE PUBLIC HEALTH AND SAFETY EXCEPTION OF ARTICLE IX OF THE CITY OF CLEARWATER'S CHARTER.

The Charter of the City of Clearwater contains the following provision:

“The fiscal management procedure shall include provisions relating to the operating budget, capital program, providing for hearings on the budget, capital budget and capital program and the amendment of the budget following adoption. Such ordinance shall, in addition, contain a provision requiring that revenue bonds for projects in excess of \$1,000,000.00 shall be put to public referendum with exception of revenue bonds for public health, safety or industrial development and revenue bonds for refunding.” Article IX, City of Clearwater, City Charter. (A-7)

Municipalities do not have inherent authority to incur bonded indebtedness.

Merrill vs. St. Petersburg, 109 So.315 (1926). They have only such authority as the legislature expressly or by necessary implication confers on them. Nuveen vs. Quincy, 156 So. 153 (1934). All doubts as to existence of such power being resolved against the municipality and in favor of the taxpayer and voter. State of Florida vs. Boca Raton, 172 So.2d 230 (Fla. 1965).

The limitation contained in Article IX of the City's Charter is a limitation on

the City's authority to issue these bonds. State of Florida vs. Boca Raton, supra, Easterlin vs. City of New Port Richey, 105 So.2d 361 (Fla. 1958). Article IX requires that revenue bonds for projects in excess of \$1,000,000 be approved by referendum of the voters. That language applies to all projects.

Article IX provides an exception to the referendum requirement for projects for "public health and safety". Since all bonds for projects in excess of \$1,000,000 need to be approved by referendum, the exception for health and safety contemplates a more limited and narrower scope of project. Otherwise, the requirement of a referendum would become nothing more than an obsolete password. State of Florida vs. Manatee, 93 So.2d 381 (Fla. 1957).

"Public health and safety" within the meaning of Article IX of the City of Clearwater's Charter must be interpreted as creating an exception only for such health and safety projects as are essential government purposes. (Emphasis supplied). State of Florida vs. Manatee, supra. State vs. Florida State Improvement Commission, 60 So.2d 747 (Fla. 1952).

The City is proposing to issue revenue bonds to fund construction of a State bridge. The primary purpose of the project is to (provide):

- A. Advance funding for a State project; (A-9; T-40, L-2-7)
- B. To provide a focal point for tourists and residents traveling between

Clearwater Beach and downtown; (A-9; A-10)

C. To provide a signature piece entrance to Clearwater Beach; A-9; A-10)

D. Cure some functional obsolescence. (T-14, L-5-18)

While these may be worthwhile municipal purposes, they are clearly not an essential government function within the contemplation of the exception to Article IX of the City's Charter.

Cases defining health and safety in the context of bond issuance, City of Jacksonville vs. Savannah Machine & Foundry Company, 47 So.2d 634 (Fla. 1950), and State vs. City of St. Petersburg, 198 So. 837 (Fla. 1940), establish that to justify the issuance of the bonds for health and safety, they must be for "essential governmental functions" (emphasis added). In those cases, the City provided fire protection services and provided water services to the citizens. Obviously, providing water, fire and police protection are of such a general essential nature of government that they are essential to the public health and safety.

However, mere municipal or governmental purposes which are not essential are not of such an essential or imperative nature as to bring them within the exception for public health and safety. The test is the essentiality of project, i.e.,

“...would City government cease to exist if the improvement is not provided.”

State vs. Manatee, supra. Doubt concerning the requirement of an election as a condition precedent to official action in issuing any bonds should be resolved in favor of allowing the people to decide it. Statutes imposing taxes should be construed most strongly against government and most liberally in favor of taxpayers. State vs. City of Boca Raton, supra.

There is an analogous exception to the Constitutional requirement of electoral approval for a political subdivision to issue a bond to finance essential governmental needs. Leon County vs. State, 165 So.666 (1936); Posey vs. Wakulla County, 3 So.2d 799 (Fla. 1941). The situation before this Court is analogous to the pre 1968 Constitutional requirement for electorate approval. The City Charter of the City of Clearwater is the constitution by which authority the City of Clearwater operates. There is a Charter limitation requiring referendum approval of bonds for projects in excess of \$1,000,000. There is an exception to that requirements for projects for “health and safety”. As in the Constitutional cases, the exception to the requirement for referendum is only for those projects which constitute “essential governmental necessities”. State vs. Broward County, 54 So. 2d 512 (Fla. 1951).

Essential governmental functions have been found to be the construction,

furnishing, and repair of Courthouses, governmental office buildings, jails, children's homes, and health centers and construction of incinerators, and the construction and safe operation of airports (Miami International Airport), and the need to meet current governmental expenses. Courts have refused to extend this doctrine to County Hospitals, since unlike a Courthouse, the need for such building may be supplied by private enterprise. Voting machines are not essential governmental necessities. State vs. Broward County, supra.

While the City and citizens may benefit from the project because of an enhanced pedestrian environment or improved air quality, those objectives were not and are not the primary purpose of the project. The City having established that the primary purpose of the project is for creation of a signature entrance to Clearwater Beach, the mere fact that there is some ancillary pedestrian sidewalk improvement and air quality improvement does not cause the project to fall within the public "health and safety" exception.

While the City Commission may have found that the project is in "furtherance" of the public health and safety, that finding in and of itself is not sufficient. To be exempted from the referendum requirement of Article IX, it would be necessary for the City to find, by competent substantial evidence, that the project is essential to the public health and safety of the citizens of the City of Clearwater.

ARGUMENT III

APPELLEE FAILED TO ESTABLISH BY COMPETENT SUBSTANTIAL EVIDENCE THAT THE PROJECT FOR WHICH REVENUE BONDS ARE SOUGHT TO BE ISSUED CONSTITUTED AN ESSENTIAL GOVERNMENTAL FUNCTION.

Appellee failed to present any competent substantial evidence that the condition of the present Bridge warranted the issuance of revenue bonds without public referendum.

Appellee, in the Trial Court below, presented evidence describing the project and giving general justification for the project. However, the evidence below fails to establish that there was an essential governmental imperative for the project.

(See City of Jacksonville vs. Savannah Machine & Foundry Company, supra, and State vs. City of St. Petersburg, supra.) There was no competent substantial evidence presented before the Trial Court that the existing bridge was in such dire need of replacement so as to warrant the City avoiding the referendum requirement of Article IX of the City's Charter. On the contrary, the Department of Transportation believed that with maintenance and updates, the existing bridge would serve at least for another twenty (20) years.

In the Trial Court below, the Appellee has the burden of proof to establish it had authority to issue the bonds. State of Florida v. Sarasota County, 549 So.2d

659 (Fla. 1989). That burden of proof would necessarily require a showing by competent substantial evidence to bring Apprlee within the public health and safety exception of Article IX of the City of Clearwater's Charter. While the City's resolution may have stated that such a project is in furtherance of the public health and safety, there was no competent substantial evidence to support a finding that the proposed project for a new Bridge constituted an essential governmental function.

ARGUMENT IV

PROVIDING ADVANCE FUNDING FOR A STATE PROJECT DOES NOT FALL WITHIN THE EXPRESS HEALTH AND SAFETY EXCEPTION OF THE CITY'S CHARTER.

The rule of “Expressio Unius Est Exclusio Alterius” governs these proceedings. Because the City Charter excludes only health and safety projects from voter approval, there is a strong inference that no other exceptions are intended. Biddle vs. State Beverage Department, 187 So.2d 65 (FL 4th DCA, 1966). The Second District Court of Appeal made an even stronger statement in the case of Williams vs. American Surety Company of New York, 99 So.2d 877 (Fla. 2nd DCA 1958), wherein it stated: “Where a statute sets forth exceptions, no others may be implied to be intended.” Citing Dobbs vs. CRL Hotel, 56 So.2d 341 (Fla. 1952). In essence, the Trial Court’s rulings and findings amount to the creation of an implied exception to referendum approval requirement by ignoring the fact that the true purpose of the bonds is to provide advance funding to the State for a State project.

There is no ambiguity in the Charter language. The Rules of Statutory Construction establish that express exceptions made in a statute give rise to a strong inference that no other exceptions are intended and that exceptions will not be implied where the words of the statute are free from ambiguity. State Road

Department vs. Levato, 192 So.2d 35 (4th DCA 1966). And even if there were an ambiguity in the exception language of the Charter, it would be construed in a manner that restricts the use of the exception. State vs. Nourse,. 340 So.2d 966 (3rd DCA 1976).

The Trial Court's ruling below created an implied exception to the referendum requirements of the Appellee's Charter, by allowing revenue bonds to be issued for advance funding of a State project. Such a finding and ruling of the Trial Court violates the Rules of Statutory Construction and the Charter requirements of the City of Clearwater.

ARGUMENT V

THERE IS NO LEGISLATIVE AUTHORIZATION FOR APPELLEE
TO PROVIDE ADVANCE FUNDING FOR A STATE PROJECT
BY WAY OF BOND ISSUANCE.

Municipalities do not have inherent authority to incur bonded indebtedness.

Merrill v. St. Petersburg, *supra*. They have only such authority as the legislature expressly or by necessary implication confers on them. Nuveen v. Quincy, *supra*.

All doubts as to the existence of such power being resolved against the municipality and in favor of the tax payer and voter. State of Florida v. Boca Raton, *supra*.

Neither the Charter of the City of Clearwater, nor Section 166.101, Florida Statutes, et seq., authorizes the City of Clearwater to incur bonded indebtedness for a capital improvement of the State. Under Section 166.101, Florida Statutes, et seq., a municipality is limited to bond financing for municipal capital improvement projects only. Therefore, the City of Clearwater is without authority to incur bonded indebtedness for the construction of a State capital improvement project.

CONCLUSION

In the absence of a showing that advanced funding by the City of a State Capital Improvement Project constitutes an essential governmental function, or that the findings of the Final Judgment are supported by the record, or because there was no referendum approval, the requested bond validation should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to C. Marie King, Esq., Asst. State Attorney, P. O. Box 5028, Clearwater, FL 33758; to Robert C. Reid, Esq., 201 S. Monroe Street, Suite 500, Tallahassee, FL 32301; to Pamela K. Akin, Esq., City Attorney, P. O. Box 4748, Clearwater, FL 33758; and to Michael Davis, Esq., 101 E. Kennedy Blvd., Suite 2100, Tampa, FL 33602, by U.S. Mail, this ____ day of _____, 2000.

Patrick T. Maguire, Esq.

APPENDIX

The Appendix below is comprised of the relevant pleadings, evidence and transcript of the proceedings below.

APPENDIX INDEX

Appellee’s Complaint for Validation (without attachments) . . .	A-1
Trial Court’s Order to Show Cause	A-2
Appellant Terry Sue Turner’s Answer and Affirmative Defenses	A-3
Appellant Terry Turner’s Response to Proposed Final Judgment of the City of Clearwater	A-4
Final Judgment Entered in this Cause	A-5
Appellee’s Composite Exhibit No. 1-C	A-6
Appellee’s Exhibit No. 4, Interlocal Agreement between Pinellas County and Appellee	A-8
Appellee’s Exhibit No. 3, Certified Copy of Home Rule Charter of the City of Clearwater	A-7
Appellee’s Exhibit No. 7, Certified Copy of Resolution No. 97-41	A-9
Appellee’s Exhibit No. 11, Interlocal Agreement between Pinellas County and the City of Clearwater	A-10
Appellee’s Exhibit No. 9, Certified copy of Resolution No. 96-38	A-11
Appellee’s Exhibit No. 6, Certified copy of Resolution No .00-19	A-12
Appellant’s Composite Exhibit A	A-13
Appellant’s Composite Exhibit B	A-14
Transcript of Proceedings below	A-15

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Appendix and the Transcript has been furnished by regular U.S. Mail, to C. Marie King, Esq., Asst. State Attorney, P. O. Box 5028, Clearwater, FL 33718-5028; to Robert C. Reid, Esq., 201 S. Monroe Street, Suite 500, Tallahassee, FL 32301; to Pamela K. Akin, Esq., City Attorney, P. O. Box 4748, Clearwater, FL 33758; and to Michael Davis, Esq., 101 E. Kennedy Blvd., Suite 2100, Tampa, FL 33602, this ____ day of November, 2000.

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CERTIFICATION

The undersigned does hereby certify that this Initial Brief of Appellant used 14 point Times New Roman type and does hereby comply with Rule 9.21(a)(2), Florida Rules of Appellate Procedure and the Administrative Order of this Court dated July 13, 1998.

Patrick T. Maguire, Esq.

