IN THE FLORIDA SUPREME COURT

CITY OF OLDSMAR, Appellant	:	
V.	:	
STATE OF FLORIDA, and the taxpayers, property owners and citizens of City of Oldsmar including nonresidents owning property in, or subject to taxation by, City of Oldsmar and State of Florida, Department of Transportation, Appellees	: : : : :	Case No. SC00-2695 Pinellas Court No. 00-4479-CI-2I Bond Validation

SUPPLEMENTAL BRIEF OF APPELLEES
STATE OF FLORIDA
ON JURISDICTION

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Other Authority:

Art. V, Sec. 3(b)(2), Fla. Const. 1

Art. VII, Sec. 12, Fla. Const. 4

Art. IX, Sec. 6, Fla. Const. 3

Chapter 75, Fla. Stat 2, 4

Rule 9.030(a)(1)(B)(i), Fla.R.App.Proc. 1

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Sec. 673.1051, Fla. Stat. 2

Sec. 678.1021, Fla. Stat. 2

Sec. 678.1031, Fla. Stat. 2

Issue: COURT'S JURISDICTION

This Court's mandatory jurisdiction to entertain direct appellate review of final judgments from bond validation proceedings is required by Art. V, Sec. 3(b)(2), Fla. Const., as set forth in general law. "When provided by general law, shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness ...." This constitutional mandate is similarly reflected in Rule 9.030(a)(1)(B)(i), Fla.R.App.Proc. "If provided by general law, the Supreme Court shall review by appeal final orders entered in proceedings for the validation of bonds or certificates of indebtedness; ...." The general law that activates the rule and constitutional provision is Sec. 75.08, Fla. Stat. "Any party to the action whether plaintiff, defendant, intervenor or otherwise, dissatisfied with the final judgment, may appeal to the Supreme Court within the time and in the manner prescribed by the Florida Rules of Appellate Procedure." The "action" referred to appears in Sec. 75.02, entitled "Plaintiff," which provide that "[a]ny ... municipality ... may determine its authority to incur bonded debt or issue certificates of debt and the legality of all proceedings in connection therewith ...."

All three of these jurisdictional authorities, the constitution, legislation, and court rule, refer specifically to a

validation proceeding, rather than an invalidation proceeding as filed by the City.

The City has failed to invoke this Court's subject-matter jurisdiction in two respects. The order sought to be reviewed was not entered in a proceeding for validation but for invalidation, and no bonds or certificates of indebtedness are at issue, but only the Joint Project Agreement (JPA) contract with the Department.

The City's Complaint prayer was not to validate but to invalidate. Although the language of Sec. 75.02, "may determine its authority to incur bonded debt," could be construed as broad enough to include an invalidation Complaint, when read in para materia with Secs. 75.01, 75.03, and 75.08, and even with the last sentence of Sec. 75.02 specifying where to file "actions to validate bonds or certificates of debt issued by state agencies," it is obvious that only an action to validate is authorized.

The JPA contract with the Department (Appellant's ex. 3C, and 3D p.3) has no indicia of a bond instrument. It includes no financing or borrowing, no deferred payments or loan provisions. It pledges no security for the payment; no letter of credit. No bonds or notes "issued" within the meaning of Ch. 75 or Sec. 673.1051, Fla. Stat. The JPA contract is not a negotiable instrument pursuant to Sec. 673.1041 of the "Uniform Commercial Code-Negotiable

Instrument," nor a security pursuant to Sec. 678.1021, or 678.1031 of the "Uniform Commercial Code-Investment Securities." A bond is a negotiable instrument. See State v. Family Bank of Hallendale, 623 So. 2d 474, 476 (Fla. 1993).

Whether a certificate of indebtedness was included in the mortgage was addressed in Nelson v. Watson, 155 So. 101 (Fla. 1933), within the context of deciding whether documentary stamp tax was required (a question not at issue for a governmental agency). Of interest to the instant case is the analysis, that not every mortgage includes a certificate of indebtedness. Nor does every contract necessarily include a certificate of indebtedness. In Fla. Dept. of Rev. v. James B. Pirtle Const. Co., Inc., 690 So. 2d 709, 712 (Fla. 4th DCA 1997), the court held that accounts receivable on a government contract "are not of the same nature as notes and bonds." The court explained in Pirtle.

> "As the Department correctly argues, when the government issues notes or bonds, the government's full credit and faith is pledged for payment at some later date. No such pledge is made when the construction contract is executed or when the work is approved for payment. Also, unlike the case with notes and bonds, the government's commitment to pay a contractual debt is not absolute. Disputes arising between the school board and Pirtle's performance under the construction contract could vitiate the school board's payment obligation.

> Indeed, from the inception of the construction contract, Pirtle assumes a risk of nonpayment if – due to any number of contractual disputes that could arise – the contract is later found to be legally unenforceable. No such contingency is contemplated when notes and bonds are issued."

That the constitutional requirement for approval by the electorate of general obligation bonds did not impair a public agency's right to contract was affirmed in early case law. In Leon County v. State, 165 So. 666, 669 (Fla. 1936), this Court explained:

> "But the constitutional provision evidenced by section 6 of Article 9 [now Art. VII, sec. 12] was not to hamper the ordinary powers of public authorities to enter into binding service or construction contracts for current governmental needs and requirements, such as the erection or repair of essential public edifices and the like, when done in the course of their authorized budgetary administration of public affairs."

As noted in the State's initial brief, this Court has previously held that contracts involving other parties, such as operational or lease agreement contracts, are not the proper subject of a validation and only collateral to a bond validation proceeding. McCoy Restaurants, Inc. v. City of Orlando, 392 So. 2d 252 (Fla. 1980); State v. Sunrise Lakes Phase II Spec. Rec. Dist., 383 So. 2d 631, 633 (Fla. 1980).

CONCLUSION

Wherefore, the City has not invoked this Court's jurisdiction pursuant to Ch. 75, Fla. Stats., because the order sought to be reviewed was not entered in a validation proceeding and because the JPA contract at issue is not a bond or certificate of indebtedness within the meaning of Ch. 75 and other applicable law.

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true copy of the foregoing Supplemental Brief of Appellee on Jurisdiction has been furnished by U.S. mail to George E. Spofford, IV, Post Office Box 3333, Tampa, Florida 33601-3333; and to Marianne Trussell, Dep. Gen. Counsel, Dept. of Transportation MS 58, 605 Suwanee Street, Tallahassee, Florida 32399-6544, this _____ day of May, 2001.

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CERTIFICATION OF TYPE SIZE AND STYLE

I HEREBY CERTIFY that the size and style of type used in this brief is Courier, 12 point or larger, a font that is not proportionately spaced and does not exceed 10 characters per inch.

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By_____
C. Marie King

CMK/0516SP19

NOTE TO ASA/IPO: Per Memo from Judge Patterson, when filing any brief in the 2nd DCA, we are to include a copy on 3″ diskette in one of the following formatsMs Word for Windows 1.0, 1.1, 1.1a, 2.0, 6.0/7.0; Wordperfect 4.2, 5.0, 5.1/5.2, 6.0/6.1, 7, 8.
Memo rec'd from Marie King 3/13/01. This was effective as revised 8/28/00.

Effective 1/1/01, also **must** use Courier New 12 or Times New Roman 14 **ONLY, and must certify font size in a statement after Cert of Service. (We have been doing this already).**