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IN THE SUPREME COURT
STATE OF FLORIDA

DENNIS ROPER,
Appellant,

vs.

CASE NO. SC01-796

Circuit Court Case No. 01-460-CI-015

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

_____ /

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

Hon. Crockett Farnell

REPLY BRIEF OF APPELLANT

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STATEMENT OF THE ISSUE

WHETHER THE REVENUE BONDS SOUGHT TO BE ISSUED BY APPELLEE QUALIFY UNDER CHAPTER 159, PART II, FLORIDA STATUTES, AND ARE THEREFORE EXEMPT FROM THE CHARTER LIMITATION OF ARTICLE IX REQUIRING VOTER APPROVAL OF THE BOND ISSUE.

ARGUMENT

THE AUTHORITY TO ISSUE INDUSTRIAL DEVELOPMENT BONDS IS GOVERNED BY CHAPTER 159, PART II, FLORIDA STATUTES, AND IN THE ABSENCE OF THE BOND ISSUE QUALIFYING UNDER CHAPTER 159, PART II, APPELLEE IS WITHOUT AUTHORITY TO ISSUE THE BONDS WITHOUT VOTER APPROVAL AT REFERENDUM.

At the risk of redundancy, Appellant would simply point out that the City of Clearwater has no inherent power to incur bonded indebtedness. Merrill vs. St. Petersburg, 109 So.3 15 (Fla. 1926). Chapter 159, Part II, Florida Statutes governs the authority of a municipality to issue bonds for Industrial Development.

It is clear from the initial brief, appendix and transcript that the bonded indebtedness for which the City seeks to issue revenue bonds does not qualify under Chapter 159, Part II, Florida Statutes. Therefore, if the revenue bonds do not qualify under Chapter 159, Part II, Florida Statutes as Industrial Development revenue bonds, then the City is without authority to issue the bonds in the absence of referendum approval by the voters and citizens of the City of Clearwater.

Article IX, Charter of the City of Clearwater.

Some of the points raised by Appellee's Answer Brief would be correct if there were no Article IX limitation in the City Charter.

This Court has for all intents and purposes eviscerated the “health and safety” exception to the City of Clearwater’s Charter by its rulings in Boschen vs. City of Clearwater, 777 So.2d 958 (Fla. 2001) and Turner vs. City of Clearwater, Case No. 00-2296 (April 12, 2001). If this Court wishes to finally and completely repeal Article IX, Charter of the City of Clearwater [an action rejected by the voters in March of 1998 (see Boschen vs. City of Clearwater, 777 So.2d 958 (Fla. 2001))] then all the Court need do in this case is **find** in favor of Appellee.

To rule in Appellee’s favor in this case would for all intents and purposes repeal Article IX, Charter of the City of Clearwater.

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 Denartment vs. Levato, 192 So.2d 35 (4th DCA 1966). Even if there were an ambiguity in the language of the Charter, it should be construed in a manner that restricts the use of the exception. State vs. Nourse, 347 So.2nd 966 (3rd DCA 1976).

There is clearly nothing illegal, unconstitutional or unreasonable embodied in the Article IX limitation of the City of Clearwater’s Charter. t h i s

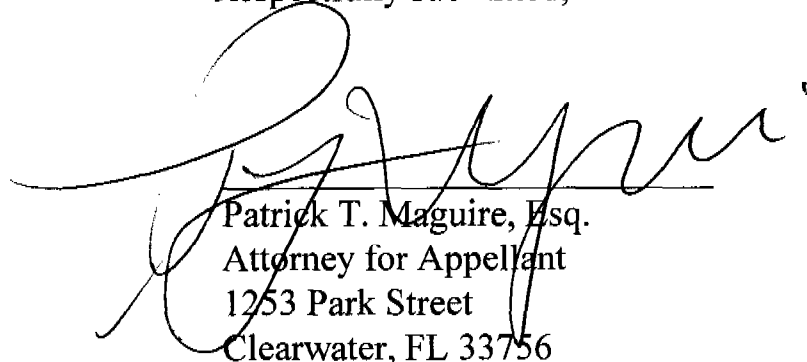
Court to substitute its judgment for that of the citizens of the City of Clearwater who adopted Article IX. Rather, it is this Court's obligation and duty to uphold the rights of the citizens and voters of the City of Clearwater, since all doubts as to the existence and the power to issue the bonds should be resolved against the municipality and in favor of the taxpayers and voters. State of Florida vs. Boca Raton, 172 So.2d 230 (Fla. 1965).

CONCLUSION

The citizens of Clearwater clearly and unequivocally rejected an attempt by the City to repeal the limitations set forth in Article IX of the City Charter.

For this Court to rule in Appellee's favor would not simply frustrate but clearly violate the express intent and will of the citizens of Clearwater as embodied in Article IX of the City Charter, and assist the City Commission in circumventing the will of the voters as expressed by the Charter.

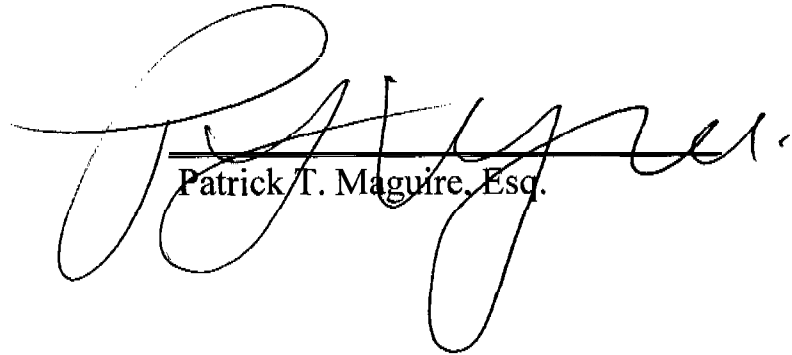
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Robert C. Reid, Esq., 201 S. Monroe Street, Suite 500, Tallahassee, FL 32301; and to Pamela K. Akin, Esq., City Attorney, P. O. Box 4748, Clearwater, FL 33758, by U.S. Mail, this 21st day of MAy, 2001.


Patrick T. Maguire, Esq.

CERTIFICATION

The undersigned does hereby certify that this Reply 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.