

IN THE SUPREME COURT OF FLORIDA

Case No. 69,087

STATE OF FLORIDA, etc.,

Appellant,

v.

DIVISION OF BOND FINANCE, etc.,

Appellee.

IN RE \$200,000,000 FLORIDA HOUSING FINANCE AGENCY, HOME
OWNERSHIP MORTGAGE REVENUE BONDS (VARIOUS SERIES)

On Appeal from the Circuit Court of the Second Judicial Circuit
of Florida in and for Leon County, Florida

INITIAL BRIEF OF STATE OF FLORIDA, APPELLANT

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STATEMENT OF THE CASE AND FACTS

The Florida Housing Finance Agency, on February 20, 1986, adopted a resolution authorizing the issuance of not to exceed \$200,000,000 Florida Housing Finance Agency, Home Ownership Mortgage Revenue Bonds (Various Series) (hereinafter the "Bonds"), and requesting the Division of Bond Finance to take such action necessary to obtain a validation of the Bonds. (Appendix, No. 1). Section 6 of this resolution provides that the Bonds may be issued as obligations the interest on which is exempt from federal income tax, or as taxable obligations. On April 22, 1986, the Governor and Cabinet of the State of Florida, as the Governing Board of the Division of Bond Finance, adopted a resolution authorizing the issuance of the Bonds. (Appendix, No. 2). Section 3 of the Resolution of the Division of Bond Finance provides that the Bonds may be issued as tax-exempt or as taxable obligations.

The Division of Bond Finance filed its complaint pursuant to Chapter 75, Florida Statutes, seeking validation of the Bonds on May 7, 1986. (Appendix, No. 3). The State of Florida filed its Answer on June 24, 1986, in which the authority of the Division of Bond Finance to issue taxable bonds was raised as an Affirmative Defense. (Appendix, No. 4). A hearing was held on June 24, 1986, in the Circuit Court for the Second Judicial Circuit of Florida, in and for Leon County (Appendix, No. 5) and a Final Judgment validating the Bonds rendered that same day.

(Appendix, No. 6). Paragraph 15 of the Final Judgment specifically finds that taxable bonds serve a public purpose. On July 18, 1986, the State of Florida filed its Notice of Appeal. (Appendix, No. 7)

SUMMARY OF THE ARGUMENT

The Division of Bond Finance is not authorized by statutory or constitutional provision to issue bonds, the interest on which is subject to federal income taxation. Further, the issuance of taxable bonds fails to serve the public interest by increasing the cost of state borrowing, and inserting state government into the free market place in competition with private banks and savings and loan institutions to provide money for mortgages.

ARGUMENT

THE DIVISION OF BOND FINANCE OF THE STATE OF FLORIDA DEPARTMENT OF GENERAL SERVICES, ON BEHALF OF THE FLORIDA HOUSING FINANCE AGENCY, LACKS THE REQUISITE AUTHORITY TO ISSUE BONDS THE INTEREST ON WHICH IS SUBJECT TO FEDERAL INCOME TAXATION.

The purpose of a proceeding to validate a proposed bond issue under Chapter 75, Florida Statutes, is to determine whether the issuing body had the authority to act under the Constitution and laws, and to insure that the issuer exercised such authority in accordance with the spirit and intent of law. McCoy Restaurants, Inc. v. City of Orlando, 392 So.2d 252, 253; (Fla. 1980) State v. City of Sunrise, 354 So.2d 1206 (Fla. 1978).

Plaintiff-Appellee Division of Bond Finance of the Department of General Services (hereinafter the "Division of Bond Finance") proposes to issue bonds on behalf of, and in the name of the Florida Housing Finance Agency (hereinafter the "Agency"). The interest on said bonds may be subject to federal income taxation. There is no specific authorization for the issuance of taxable bonds by the Division of Bond Finance in the State Bond Act, Sections 215.57 to 215.83, Florida Statutes (1985), or Chapter 420, Part V, the Florida Housing Finance Agency Act, Sections 420.501 to 420.516, Florida Statutes (1985), or the Florida Constitution. The Division of Bond Finance is authorized to issue bonds, defined in Section 215.58(10), Florida Statutes, to be, ". . . state bonds, or any revenue bonds, certificates or other obligations heretofore or hereafter authorized to be issued by said division or by any state agency."

State bonds are defined as bonds which pledge the full faith and credit of the state. See Section 215.58(11), Florida Statutes.

Section 420.503(3), Florida Statutes, defines bonds to be,

". . . any bonds, debentures, notes or other evidences of financial indebtedness issued on behalf of the agency under and pursuant to this act."

While these definitions of bonds are silent as to the tax-exempt status of interest on this proposed issue of bonds, the State respectfully submits that the Division is limited to the issuance of bonds which are for a public purpose or serve the public interest. Inherent in the issuance of bonds for a public purpose are the assumptions that the state finance its debt requirements at the lowest interest rate available, and that the low interest rate be passed on to eligible persons in the form of mortgage rates which are lower than the mortgage rates available in the free market place. However, this assumption is faulty when the Division issues taxable bonds which will most always bear a higher interest rate to the bondowner, than will tax-exempt bonds. This higher interest rate on a taxable bond forces the government to finance its debt in direct competition with private enterprise, with no appreciable reduction in the mortgage rate when compared to the financing available through private lending institutions.

The public interests served through the issuance of bonds by the Division on behalf of the Agency, are the purchase of mortgages made to eligible persons; the purchase of federal government securities, the earnings on which are applied to finance housing for eligible persons; and the purchase of

existing mortgages from lending institutions within the State, thereby increasing the funds available to such institutions to make new mortgage loans. Absent the passing of a lower mortgage rate on to the home buyers through the issuance of tax-exempt bonds to finance the mortgages, the State of Florida has no business in entering the private sector to offer mortgages which may or may not be at a rate less than that offered by commercial banks and lending institutions.

Section 420.507(3), Florida Statutes, provides that

"The Agency shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part:

* * *

(3) To participate in federal housing assistance and federal community development, insurance, and guarantee programs and to agree and comply with any conditions attached to federal financial assistance, including without limitation, the waiver of exemption from federal income taxation on interest payable on its bonds, unless expressly prohibited by the act. (Emphasis supplied).

Assuming arguendo that Section 420.507(3), Florida Statutes, grants the Agency the authority to waive the tax-exemption for interest on bonds issued in a federal financial assistance program, it does not follow that the agency is granted that authority for the issuance of bonds which are not involved in a federal financial assistance program. Since neither the waiver of the tax-exemption on bond interest, nor the issuance of taxable bonds is mentioned elsewhere in the Florida Housing Finance Agency Act, it can be argued that the issuance of bonds without tax-exempt status can only be accomplished as part of a federal financial assistance program. The proposed bond issue

validation before the Court is not part of a federal financial assistance program, and is therefore not an issue which may be issued as taxable.

This Court in Haines City v. Certain Lands, etc., 130 Fla. 379, 178 So. 143 (1938) addressed the issue of whether a circuit court in a bond validation proceeding, was correct in deciding that the City, in the absence of any statutory or constitutional authority, was not empowered to provide in an ordinance for the receiving of matured interest coupons on its bonds in payment of taxes to the City. The Court stated that a review of the validation statute,

" . . . indisputably shows that it was no purpose of the Legislature to vest in the Court before whom the validation proceedings are held the power by judgment or decree to validate or confirm a power in the city in the manner of incurring indebtedness or the issuing of bonds which it is the sole province of the Legislature to confer."
178 So. at 146.

The Legislature, similarly, is solely vested with the ability to provide for the manner or authority of the Division to issue bonds on behalf of the Agency. The Legislature's silence as to the conferring of that authority cannot somehow confer that ability on either the Governor and Cabinet as the Governing Board of the Division of Bond Finance, or the circuit court to validate the authority of the Division of Bond Finance to issue taxable bonds.

The State respectfully submits that the Division of Bond Finance has no statutory or constitutional authority to issue

taxable bonds, and that the issuance of taxable bonds fails to serve a public purpose.

CONCLUSION

The Circuit Court erred in validating this proposed issue of bonds to be issued on behalf of the Florida Housing Finance Agency for the reasons that the Division of Bond Finance lacks the authority to issue taxable bonds, and taxable bonds fail to serve a public purpose. The state requests this Court overrule the Final Judgment of validation as to the issuance by the Division of Bond Finance of taxable bonds.

Respectfully submitted,



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Certificate of Service

I hereby certify that a copy of Appellant's Initial Brief has been furnished to Thomas A. Beenck, Esquire, for Appellee, Division of Bond Finance of the State of Florida Department of General Services, Room 453 Larson Building, 200 E. Gaines Street, Tallahassee, Florida 32301, by hand delivery, this 7th day of August, 1986.

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