

IN THE SUPREME COURT OF FLORIDA

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AUG 27 1986

CLERK, SUPREME COURT

By

Deputy Clerk

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 DIVISION OF BOND FINANCE, APPELLEE

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STATEMENT OF THE CASE AND FACTS

Appellee agrees with the Statement of the Case and Facts as set forth in the Initial Brief of the Appellant State of Florida and adopts references to Appellant's Appendix in this Initial Brief of Appellee Division of Bond Finance.

SUMMARY OF THE ARGUMENT

The State Bond Act and the Housing Act both authorize the issuance of "bonds", which as defined is a broad, comprehensive term which encompasses both taxable as well as tax-exempt bonds. The State Bond Act provides that its provisions should be interpreted liberally and that view is supported by cases of this Court.

In addition, the issuance of taxable bonds does serve the public purpose of providing housing for persons of low, moderate and middle income. It is not the tax-exempt feature of the bonds which serves the public purpose, but rather it is the act of providing moneys so that low, moderate and middle income persons can obtain adequate housing that serves the public purpose.

ARGUMENT

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

Appellee Division of Bond Finance proposes to issue \$200,000,000 Florida Housing Finance Agency, Home Ownership Mortgage Revenue Bonds (Various Series) (hereinafter the "Bonds") on behalf of the Florida Housing Finance Agency (the "Agency"). In Paragraph 15 of the Final Judgment (Appendix No. 6) the Circuit Court expressly found that the Bonds were being issued for the public purpose of "alleviating the lack of a stable supply of adequate funds for housing financing and the shortage of affordable housing for persons of low, moderate and middle incomes by providing mortgage loans or other subsidies at reasonable prices through the use of Bond proceeds (i) to purchase mortgages made to eligible persons, (ii) to purchase federal government securities, the earnings on which are applied to finance housing for eligible persons, and (iii) to purchase existing mortgages from lending institutions within the State, thereby increasing the funds available to such institutions to make new mortgage loans. Additionally, revenues generated from the investment of bond proceeds in federal securities may be earmarked for low interest loans or other subsidies through the Affordable Housing Trust Fund created by the Legislature in Chapter 420, Part VI, Florida Statutes". The Division of Bond Finance will issue the Bonds either as taxable obligations or as

obligations the interest on which is exempt from federal income taxation.

Although Appellant State of Florida correctly contends that there is no specific authority for Appellee to issue taxable obligations, it is equally true that there is no specific authority for Appellee to issue tax-exempt bonds. Appellant, however, does not contend that Appellee is without the authority to issue tax-exempt bonds, only that Appellee is without authority to issue taxable bonds.

The Appellee is authorized to issue bonds pursuant to Sections 215.57-215.83, Florida Statutes (hereinafter the "State Bond Act"). Bonds are defined in Subsection 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."

The Bonds are additionally issued on behalf of the Agency under the provisions of Sections 420.501-420.516, Florida Statutes (hereinafter the "Housing Act"). Subsection 420.503(3), Florida Statutes, defines bonds as ". . .any bonds, debentures, notes, or other evidences of financial indebtedness issued on behalf of the agency under and pursuant to this act."

Both the State Bond Act and the Housing Act are silent as to the question whether the Appellee may issue taxable bonds. Both Acts simply provide for the issuance of "bonds", a generic term which encompasses both taxable as well as tax-exempt obligations of all types.

In State v. City of Jacksonville, 50 So.2d 532 (Fla. 1951), this Court was faced with the question whether the statutory grant of power to the City of Jacksonville to acquire, construct, own and operate radio broadcasting stations and all improvements as the City may deem necessary or desirable for use in connection therewith was broad enough to include and embrace installation and use of television equipment in the City's radio broadcasting station. This Court found that the statute was broad enough to include the City's television station, stating:

While the general rule is that the words of a statute should ordinarily be taken in the sense in which they were understood at the time the statute was enacted, the rule is subject to the well-accepted qualification that where the statute to be construed is couched in broad, general and comprehensive terms and is prospective in nature, it may be held to apply to new situations, cases, conditions, things, subjects, methods, persons or entities coming into existence since the enactment of the statute; provided they are in the same general class as those treated in the statute, can be reasonably said to come within the general purview, scope, purpose and policy of the statute, and there is nothing in the statute indicating an intention that they should not be brought within its terms.

Id. at 536. See also Englewood Water District v. Holstead, 432 So.2d 172 (Fla. App. 2 Dist. 1983).

In both the Jacksonville and Englewood cases, supra, the courts held that broad, comprehensive terms contained in statutes could be extended to cover new situations which did not exist at the time the statutes were enacted. In the instant case, the term "bond" is broad and comprehensive. On its face the term "bond" includes taxable as well as tax-exempt obligations. Neither the State Bond Act nor the Housing Act contain any

language which would tend to restrict the scope of the term "bond".

The plain meaning of the term "bonds" encompasses more than just tax-exempt obligations. In The American Heritage Dictionary of the English Language, New College Edition (1981), "bond" is defined as "A certificate of debt issued by a government or corporation, guaranteeing payment of the original investment plus interest by a specified future date." This Court has held on many occasions that one must look to the plain language of the statute in its ordinary sense. See Orange County Industrial Development Authority v. State, 427 So.2d 803 (Fla. 1982); Metropolitan Dade County v. Bridges, 402 So.2d 411 (Fla. 1981).

It is clear, then, that the plain and ordinary usage of the term "bonds" would favor a construction which would permit the issuance of taxable bonds under the provisions of the State Bond Act and the Housing Act. In fact, the provisions of the State Bond Act, in Section 215.83, Florida Statutes, state "The provisions of this act shall be liberally construed to effect its purposes." We are given a mandate in the State Bond Act itself not to construe its provisions in a manner which would constrict the purposes of the State Bond Act, and such purposes can be equally well served by the issuance of either taxable or tax-exempt obligations.

Section 215.84, Florida Statutes, relates to the maximum rate of interest which government bonds may bear. All bonds issued by the State of Florida or any of its agencies are subject to the provisions of Section 215.84, Florida Statutes. In the

1986 Legislative Session the Florida Legislature amended Section 215.84, Florida Statutes, to provide that it ". . .shall be applicable to debt instruments whose interest is either taxable or tax exempt from income taxation under federal law existing on the date the bonds are issued." This amendment makes it clear that the Legislature of the State of Florida recognized the authority of the Division of Bond Finance to issue taxable bonds on behalf of the State or any of its agencies. The State Bond Act and the Housing Act, which are in pari materia, must be read in conjunction with the provisions of Section 215.84, Florida Statutes, so that the legislative intent of the provisions can be properly implemented.

Appellant argues in essence that there is no public purpose to be served by the issuance of taxable bonds and that unless the mortgages being made available by the program being implemented here have an interest rate which is less than those offered by commercial banks and lending institutions, the State should not be in the business of making them. Appellant appears to say that the public purpose can only be met by the issuance of tax-exempt bonds. The trial court, however, correctly determined otherwise. The public purpose to be served by the issuance of the Bonds is to alleviate the lack of a stable supply of adequate funds for housing financing and the shortage of affordable housing for persons of low, moderate and middle incomes, not to provide the lowest interest rates.

Throughout the years the predominate method of financing for states was the tax-exempt bond, because taxable obligations

carried a higher interest rate than tax-exempt bonds. Increasing restrictions by the federal government on the issuance of tax-exempt obligations have forced many bond issuers to turn to the taxable bond market to accommodate the increasing need for moneys to finance public projects. With decreased access to tax-exempt money, taxable obligations may be the only method available to raise needed moneys for bond issues. In addition, as tax-exempt opportunities diminish, the increased pressure to finance in the tax-exempt market will drive tax-exempt interest rates higher and make taxable interest rates more attractive for potential bond issuers.

Appellant contends that the interest rate on taxable bonds will almost always be higher than the interest rate on tax-exempt bonds. Appellant, however, fails to recognize that the comparison should be made not only between taxable rates and tax-exempt rates, but rather between mortgage rates and financing terms available from programs funded with proceeds of the Bonds and mortgage rates and financing terms obtainable from commercial banks and lending institutions. One of the primary purposes to be served by the issuance of the Bonds is the assistance of low, moderate and middle income persons in obtaining financing for residents at rates and upon terms which they can afford and which are often not available from commercial banks and lending institutions. In programs where Bond proceeds are applied to originate mortgage loan the lowest possible interest rate will of course be sought. However, bond financing permits the issuer to offer other benefits not always commercially available, such as

95% financing and thus a significantly lower down payment, a preference for lower income applicants to be served before the more commercially "acceptable" higher income applicant and, in some structures, lower up front points and less restrictive (and expensive) mortgage insurance premiums.

Other programs proposed to be financed with proceeds of the Bonds would not involve origination of mortgages at all, but rather would apply bond proceeds to the purchase of existing mortgage pools, providing lenders with liquidity to make new loans and the issuer with earnings from the mortgage pool which could be applied to "buy down" or decrease the interest rate low, moderate and middle income home purchasers must pay on commercial mortgage loans.

The public purpose of providing housing for low, moderate and middle income persons will thus clearly be served by the issuance of taxable bonds for several reasons. First, even if taxable rates result in higher interest rates being charged to borrowers, most of the borrowers will still be obtaining needed mortgage moneys at an interest rate and on terms more favorable than that which can be obtained by them from commercial banks and lending institutions if available at all to persons of their income level. Second, many conventional lenders experience periods when they have insufficient money to loan out, and the proceeds of the Bonds would benefit those borrowers who have no where else to go for a mortgage loan. Third, if interest rates stay where they are at now or continue to go lower, the issuance of taxable bonds may provide mortgages at rates lower than those

financed by the issuance of tax-exempt bonds issued when interest rates were much higher.

The important thing to remember is that the financing of homes for low, moderate and middle income persons is the public purpose to be served through the issuance of the Bonds and the cost of the money to such persons is only one factor among many to be considered in achieving that purpose. The issuance of taxable bonds clearly serves this public purpose.

CONCLUSION

The Circuit Court was correct in validating the proposed issue of bonds by the Division of Bond Finance, on behalf of the Florida Housing Finance Agency, since the Division of Bond Finance has adequate authority under the State Bond Act to issue taxable bonds. The issuance of taxable bonds serves the public purpose of providing housing to persons of low, moderate and middle income. The Division of Bond Finance requests this Court affirm the Final Judgment of validation as to the issuance by the Division of Bond Finance of taxable bonds.

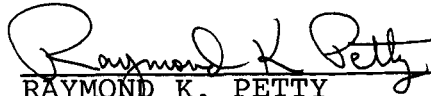
Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of Appellee's Initial Brief has been furnished to William N. Meggs, Esquire, State Attorney for the Second Judicial Circuit, 500 First Florida Bank Building, Tallahassee, Florida 32301, by hand delivery, this 27th day of August, 1986.



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