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1986
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IN THE SUPREME COURT
OF THE STATE OF FLORIDA

JOHN W. TAYLOR, PAULETTE M.)
BURTON, HANNAH DAVIS, NORMA)
LEAS, as Taxpayers,)
Property Owners, and Citizens)
of Lee County, Florida,)
Appellants,)
vs.)
LEE COUNTY, FLORIDA, a)
political subdivision of)
the State of Florida,)
Appellees.)

APPEAL NO. 69,174

APPELLANTS' REPLY BRIEF

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REPLY ARGUMENT

Substantially all of the County's argument in its Answer Brief is sufficiently rebutted in the Taxpayers' Initial Brief. However, one point raised by the County bears comment, i.e., whether the issue of the County's power to impose a toll on a toll-free bridge is a collateral issue not properly before this Court.

In this regard, the County cites various holdings purporting to support this proposition; but, in actuality, none of these authorities are decisive of the issue, and all are patently distinguishable on their facts. Instead, this Court's decision in McGovern v. Lee County, 346 So. 2d 58 (Fla. 1977) appears to be most applicable to the facts of this case, and controlling of this issue.

Although McGovern involved a Chapter 159, Part I bond issue, the underlying facts of that case dealt with the use of tolls generated by the Sanibel Bridge to pay for the construction or improvements of roads far removed from the location of the bridge¹. The central issue in that case was whether the imposition of such tolls for such purpose was lawful.

¹It should be noted that Section 159.02(7) expressly authorizes the construction of "approach roads" with the bond proceeds. As stated in the Initial Brief, there is no statutory authorization for the imposition of tolls on a free bridge.

Rather than skirting such issue as a collateral one, as the County urges the Court to do in this case, this Court in McGovern addressed the issue head-on, stating that "[T]olls as well as taxes must be fairly imposed." Id., at 60. This Court then proceeded to reverse the validation of the bonds at issue in McGovern, based upon its finding that the roads did not benefit the users of the bridge, stating:

Inherent in the legislative scheme for funding self-liquidating projects is the principle that those who directly benefit from the project should bear a substantial portion of the cost and that those who bear the substantial cost should benefit from the expenditure of money on the project.

Id., at 64. While the issue before the Court involves the power of the County to impose tolls on a free bridge to pay for the construction of a parallel bridge, as opposed to the use of tolls from an existing toll bridge to pay for the construction of unrelated roads, the point is that as to self-liquidating projects, whether conceived under Chapter 159 or Chapter 125, the legitimacy of the source of the toll imposed to construct a project or to liquidate the bonds falls squarely within the scope of judicial inquiry in a bond validation proceeding. See also, Lee County v. State, 370 So. 2d 7 (Fla. 1979).

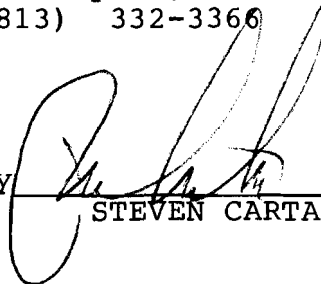
Such being the case, the County's contention that this Court is without power to consider this issue at this time is without merit.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Appellants' Reply Brief has been furnished by regular course of United States Mail to JAMES G. YAEGER, LEE COUNTY ATTORNEY, Post Office Box 398, Fort Myers, FL 33902, LARRY D. JUSTHAM, ASSISTANT STATE ATTORNEY, Post Office Box 399, Fort Myers, FL 33902, and to GREGORY T. STEWART, ESQUIRE, NABORS, GIBLIN, STEFFENS & NICKERSON, P.A., Post Office Box 11008, Tallahassee, Florida 32302, this 22nd day of SEPTEMBER, 1986.

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