

IN THE SUPREME COURT OF THE STATE OF FLORIDA

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CLERK, SUPREME COURT

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CASE NO. 69,565

STATE OF FLORIDA, Appellant,
by and through CRAIG R. WILSON,
a citizen of the STATE OF FLORIDA,
as Intervenor,

Appellant,

v.

PALM BEACH COUNTY HOUSING AUTHORITY,

Appellee.

APPELLANT'S REPLY BRIEF

CRAIG R. WILSON
Flagler Court Building
215 Fifth Street
Suite 302
West Palm Beach, FL 33401
305-832-3626 / Florida Bar #106466

and

CHARLES W. MUSGROVE
Congress Park, Suite 1-D
2328 South Congress Avenue
West Palm Beach, FL 33406
305-968-8799 / Florida Bar #095137

Attorneys for Appellant

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STATEMENT OF THE CASE AND FACTS

The statement of the case and facts are adequately set out in prior briefs.

POINT INVOLVED

THE COURT ERRED IN VALIDATING A BOND ISSUE
SECURED BY MORTGAGES WITH THE ACCOMPANYING
RIGHT OF FORECLOSURE.

ARGUMENT

Appellee argues that this Court was wrong in Nohrr v. Brevard County Educational Facilities Authority (Fla 1971) 247 So.2d 304, to forbid mortgages for an agency with no taxing authority. Its argument that Article VII, Section 10 of the current Constitution has no bearing on this case reflects the same historical misconception.

Decisions such as Boykin v. Town of River Junction 121 Fla 902, 164 So. 558 (1935) are not based on the power to tax, but rather condemn the pledge of future revenues. Such a pledge is implicit in every mortgage because the pressure to redeem the mortgaged property exists whether the revenue source is taxation or something else. Thus, in State v. Florida State Improvement Commission 47 So.2d 627 at 631 (Fla 1950) this Court noted it was the pledge of future revenues which requires an election.

The point of Article VII, Section 10(c) is that bonds are authorized only when fully payable from the revenues derived therefrom. As Nohrr recognizes, the instant bonds do not violate the section, but the mortgage provision does.

Appellee claims on page 11 of its brief that the Intervenor has misdescribed the mortgage aspect of these bonds, even though the description matches that from its own memorandum (R 282). In any event, the purpose of the bond issue is to construct low cost housing and the resulting housing is to be the subject of mortgages to assure the credit enhancement provider that it will be paid back if revenues are inadequate. Will not the Appellee feel the pressure to keep the low cost housing available for those who need it by resorting to other revenues rather than allowing foreclosure. Appellee would hope the answer is yes, but it highlights the fact that Nohrr is correct and applies here.

At least Appellee has conceded that Article VII, Section 16 of our Constitution has no application. However, Appellee devoted half of its memorandum argument below to trying to

convince Judge Poulton that this section does apply, authorizes this bond issue (R 282-283) and repeals the basis of Nohrr (R 284-285). Since the trial Judge gave no explanation for his rejection of Nohrr, it may well have been based on the misconception of law regarding that new constitutional provision and its effect. In other circumstances, it might be appropriate to reverse and remand for reconsideration without the erroneous view of the law. However, in this case it is unnecessary. This Court can and should determine that Nohrr lives and requires disapproval of this bond issue or deletion of the mortgage provision.

CONCLUSION

Based on the foregoing, and the reasons and authorities set out in Appellant's initial brief, Appellant submits that the Final Judgment herein must be reversed or modified to strike the mortgage provision.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to E. Cole FitzGerald, III, Esquire, Moyle, Flanigan, Katz, FitzGerald & Sheehan, P.O. Box 3888, West Palm Beach, FL 33402, and Frank R. Stockton, Esquire, Assistant State Attorney, 315 Third Street, West Palm Beach, FL 33401, this 19 day of December, 1986.

Charles W. Musgrove

CHARLES W. MUSGROVE
Congress Pari, Suite 1-D
2328 South Congress Avenue
West Palm Beach, FL 33406
305-968-8799 / Florida Bar #095137

and

CRAIG R. WILSON
Flagler Court Building
215 Fifth Street, Suite 302
West Palm Beach, FL 33401
305-832-3626 / Florida Bar #106466

Attorneys for Appellant