

IN THE SUPREME COURT OF FLORIDA

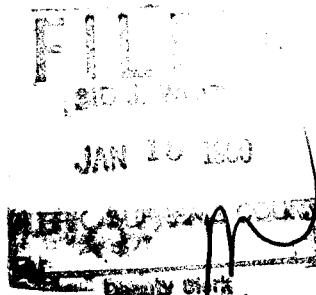
THE STATE OF FLORIDA, and the
Taxpayers, Property Owners and
Citizens of Collier County,
including non-residents owning
property or subject to taxation
therein, et. al.,

Appellant,

v.

SCHOOL BOARD OF COLLIER COUNTY,
FLORIDA, acting as the Governing
Body of the School District of
Collier County, Florida,

Appellee,



CASE NO. 75,009

ON APPEAL FROM THE
CIRCUIT COURT OF
COLLIER COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

JOSEPH P. D'ALESSANDRO
STATE ATTORNEY
TWENTIETH JUDICIAL CIRCUIT

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THE CIRCUIT COURT DID NOT HAVE JURISDICTION TO VALIDATE
THE CERTIFICATES OF PARTICIPATION OR LEASE AGREEMENT
UNDER CHAPTER 75, FLORIDA STATUTES.

Jurisdiction under Chapter 75 is invoked when the issuing authority wishes to determine its authority to incur bonded debt or issue certificates of debt. The School Board's claim that they are actually issuing the certificates (through the School Board Foundation) and are "indebted" is without merit, and apparently, without support of even the Amicus Curiae, Florida School Board's Association, Inc. As the amicus points out, the Court's discussion in Brevard that the certificates were obligations in and of themselves is incorrect. The only obligations of the School Board are those imposed under the terms of the lease (Amicus Brief p.19-21). Justice Shaw's dissent in Brevard is supported by the amicus and is applicable to this case. The School Board is merely asking the Court to stamp its approval on the lease agreement. Appellee points out there is indebtedness, but never explains what the indebtedness is. Appellee would invoke the jurisdiction of Court under Chapter 75 whenever some governmental authority incurs debt (Appellee's Brief p.12), but this is surely not the case. For if it were, any lease or contractual obligation entered into by the School Board would be subject to validation proceedings because the lease or contract would be evidence of a debt. This however, is not the type of debt contemplated by Chapter 75. As the Court has previously held, the validity of lease agreements are outside the scope of a validation proceeding. McCoy Restaurants, Inc. v. City of Orlando, 392 So.2d 252 (Fla. 1980). Nor is it the type of debt the Court referred to in Brevard when it cited to State v. City of Daytona Beach, 431 So.2d 981 (Fla. 1983). The evidence of indebtedness present in City of Daytona Beach was an agreement by the City of Daytona Beach to pay revenues to Volusia County. In this case, as will be seen, there is no obliga-

tion placed on the School Board other than the payment of rent pursuant to the lease. With this statement, even the amicus agrees. As the amicus points out the financial arrangement in this case does not create any debt whatsoever, the only obligation created is the Lease-Purchase Agreement itself (Amicus Brief at p. 24, 33-38). Thus, not only is there no indebtedness being issued, there is no debt to begin with.

This brings the Court back to its starting point. The Certificates of Participation stand for nothing other than the legal obligation of the School Board to pay its rent. The Circuit Court did not validate the certificates, it validated the lease.

As the amicus agrees with the State that the certificates have no relevancy on their own to this case, they merely signify the rent owed, and that there is no debt involved, there exists a cogent reason why Brevard should not be followed.

It should not have been decided in the first place. Justice Shaw was correct and the Court should have held that there was no jurisdiction. In fact, the amicus points out that this is an opinion held by other municipal finance attorneys (Amicus Brief p. 25). In addition, the amicus itself does not even argue that the Circuit Court had jurisdiction under Chapter 75. The most obvious reason it does not is because it cannot, and it spends a good part of its brief proving jurisdiction does not lie. The certificates are not separate obligations, there is no debt, and therefore, the preconditions which must be met under Chapter 75 do not exist and the Circuit Court had no jurisdiction to validate the certificates or the lease.

ART. VII §12 OF FLORIDA CONSTITUTION AND SECTIONS
230.23 (9)(b)(5) AND 235.056 REQUIRE AN APPROVING
REFERENDUM BY THE VOTERS.

The Brevard decision does not compel the Court to find that no voter approval is needed prior to the School Board entering into the lease agreement. In this case, unlike Brevard, the Court must not only evaluate the requirements of Article VII §12, **it** must also take into consideration Section 230.23(9)(b)(5) and 235.056, Florida Statutes. Contrary to Appellee's position, the fact that this case does involve the financing of schools rather than equipment distinguishes this case from Brevard. The continued use of the schools, or the loss of schools, is not just a policy decision which is beyond the scope of validation proceedings, **it** is the exact reason which this Court used in deciding the case of Nohrr v. Brevard County Educational Facilities Authority, 247 So.2d 304 (Fla. 1971). In Nohrr, the reason why the Court did not allow the right of foreclosure on public property was not over the issue of foreclosure itself, but the fact that the

COUNTY OR THE LEGISLATURE WOULD FEEL MORALLY COMPELLED TO LEVY TAXES OR TO APPROPRIATE FUNDS TO PREVENT THE LOSS OF THOSE PROPERTIES THROUGH THE PROCESS OF FORECLOSURE.

Nohrr at p. 311 (emphasis added).

It was not the loss, but the moral compulsion to avoid the loss by use of public monies without voter approval which shaped the decision in Nohrr.

This is what distinguishes this case from Brevard and the case involving offices of DPR cited by the amicus (Amicus Brief at p. 31). Those offices of DPR, which were readily substituted for new offices in an abandoned mall, and the office equipment in Brevard, do not present the kind of moral compulsion as evidenced in educational facilities as this case and Nohrr.

It is the nature of the beast which makes **it** highly unlikely that the School Board will decide they simply don't need them, and admit to a 47 million dollar mistake, and **it** staggers the imagination that once the School Board does not appropriate, they decide to retake the facilities by eminent domain proceedings. Granted that a public purpose would exist, the real issue which would arise is in fixing the just compensation which is due. The remaining balance of the certificates would be a good place to start. On top of that would be the attorney's fees and, in the end, the answer to the unasked question as to who pays the judgment lies at the feet of the taxpayer, the very individual **who's** input into the whole process was circumvented in the first place.

The hard reality is that a school facility is different than offices and equipment. They are designed for a single purpose and are not interchangeable.

There also exists the effects of Sections 230.23(9)(b)(5) and 235.056 in this case which the Court did not have in Brevard.

What Appellee points out, but then ignores, is that Article VII, Section 12 speaks in terms of obligations that mature in excess of 12 months. Section 230.23(9)(b)(5) does not. **It** requires that agreements for a period greater than 12 months be approved by a referendum, When read with Section 235.056, **it** is clear that once the School Board re-appropriates, this agreement has a period of more than 12 months, regardless of when the obligations mature. This does not change the express intent of the parties, **it** merely incorporates the existing Florida law into the contract as is done in **al** contracts.

The explanation given by Appellee and the Amicus Curiae why Section 235.056 was amended is quite interesting. Section 235.056 was amended to stop some School Boards from leasing facilities on a year to year basis without obtaining approval of the Office of Educational Facilities, thereby circumventing the intent of the law,

(Appellee Brief at p. 6. Emphasis added). Thus the statute was amended to close a loophole (Amicus Brief at p. 40. Emphasis added). This amendment when read with Section 230.23(9)(b)(5), requires the School Boards to not only report the leases, but to have an approving referendum. **It** makes no difference what the substance of the agreement is, what matters is that **it** is for a period greater than 12 months by **virtue** of the fact that Section 235.056 defines **it** as a multi-year lease. The Legislature is presumed to know the existing law at the time **it** passes or amends a law. Any other interpretation would have the Legislature closing a loophole on reporting, but not on a constitutional requirement. This would lead to the absurd interpretation that the Legislature deems **it** permissible to circumvent the Florida Constitution but not a reporting requirement of the Department of Education. This is especially true when the Court looks at the express intent of the School Board (Appellants App. 9-10) and the realities of the agreement. The only advantage to this transaction is not to retain "full budgeting flexibility," **it** is to circumvent voter approval.

In addition to the fact that an absurd construction should not lead to an absurd result, this Court has always held that the purpose of a validation proceeding is to determine whether the issuing body has exercised its authority in "accordance with the spirit and intent of the law." McCoy Restaurant, Inc. v. City of Orlando, 392 So.2d 252, 253 (Fla. 1980), (Emphasis added). This determination has led to opinions such as Nohr, which was based not on any legal impediment to foreclosure, but on the moral compulsion to avoid foreclosure, and County of Volusia v. State, 417 So.2d 968 (Fla. 1982), where even though no ad valorem taxes were pledged, the Court looked at what the incidental effects would be on ad valorem taxes due to certain covenants made by Volusia County.

The Court's decision in Brevard is not controlling in this case on the issues raised by the Court's decision in County of Volusia. In this case, unlike Brevard, ad valorem taxes are pledged. In fact, the School Board has pledged all legally appropriated funds, including ad valorem revenue. In addition, once there has been an appropriation, the certificate holders, through the trustee, can compel the payment of the rent. This compulsion then brings into question the holding of County of Volusia where the Court held that the pledge of all legally appropriated funds (Section 2.5(a) of the Lease-Purchase Agreement) together with the covenants to maintain them (Appellee's Brief p. 9, option 2), has an impermissible effect on ad valorem taxation. So **it** matters not whether the School Board pays by the use of ad valorem or non-ad valorem revenues, the principal enumerated in County of Volusia still comes into play. Under the facts of this case, County of Volusia makes the holding of Tucker v. Underdown inapplicable because **it** matters not whether the appropriation is voluntary. What matters is that payment can be compelled and, due to the covenants of the School Board, will have more than an incidental effect on ad valorem taxation. This compulsion will exist each year the School Board decides to appropriate. Simply making this a year to year lease ignores the realities of the situation and allows form to triumph over substance.

CONCLUSION

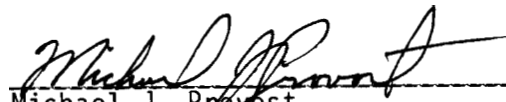
The final judgement of the Circuit Court should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

■ HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to James H. Siesky, 791 Tenth Street South, **Naples**, Florida; Daniel U. Livermore, Jr., 1750 Gulf Life Tower, Jacksonville, Florida 32207; Joseph L. Shields, 203 South Monroe Street, Tallahassee, Florida 32301, **Sid J. White**, Clerk of Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; and Dale S. Recinella, Monroe Park Tower, Suite 1010, Tallahassee, Florida, 32301 by United States Mail this 16th day of January, 1990.



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