

IN THE SUPREME COURT OF FLORIDA

DR. GREGORY L. STRAND,

Appellant,

v.

CASE NO. SC06-1894
L.T. Case No. 2006-CA-881

ESCAMBIA COUNTY, FLORIDA,
a political subdivision of the State of
Florida,

Appellee.

**APPELLANT DR. GREGORY L. STRAND'S
RESPONSE TO THE ATTORNEY GENERAL'S
MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

Appellant DR. GREGORY L. STRAND (“Dr. Strand”), by and through his undersigned counsel, pursuant to Florida Rule of Appellate Procedure 9.300(a), hereby files this Response to the “Motion for Leave to File Amicus Curiae Brief in Support of Clarification” filed by the Attorney General on September 17, 2007, and, states as follows:

1. On September 15, 2006, Dr. Strand appealed a Final Judgment entered by the First Judicial Circuit Court validating bonds to be issued by Appellee Escambia County, Florida (“Escambia County”), in an amount not to exceed \$135,000,000.00, and funded through the utilization of tax increment financing.

2. On May 10, 2007, the Court heard Oral Argument in this case.
3. On September 6, 2007, the Court issued its Opinion in the instant case, thereby reversing the Circuit Court’s Final Judgment and invalidating the proposed bond issuance. In so doing, the Court receded from its prior decisions in *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980), and *State v. School Board of Sarasota County*, 561 So. 2d 549 (Fla. 1990).
4. On September 17, 2007, the Attorney General filed his “Motion for Leave to File Amicus Curiae Brief in Support of Clarification.” The Attorney General seeks to have the Court clarify the scope and potential retroactive application of its September 6 Opinion.¹
5. Florida Rule of Appellate Procedure 9.370, which governs the appearance of amicus curiae, was amended in 2006 to clarify the time frame in which amicus briefs are to be served. As amended, Rule 9.370 provides:

(a) When Permitted. An amicus curiae may file a ***brief*** only by leave of court. A motion for leave to file must state the movant’s interest, the particular issue to be addressed, how the movant can assist the court in the disposition of the case, and whether all parties consent to the filing of the ***brief***.

* * *

¹ The Attorney General does not seek to have the Court revisit its underlying decision to recede from *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980), and *State v. School Board of Sarasota County*, 561 So. 2d 549 (Fla. 1990), which the Attorney General acknowledges is “the Court’s prerogative to make.” (Amicus Brief at 9).

(c) **Time for Service.** *An amicus curiae must serve its brief no later than 5 days after the first brief, petition, or response* of the party being supported is served. An amicus curiae that does not support either party must serve its brief no later than 5 days after the initial brief or petition is served. A court may grant leave for later service, specifying the time within which an opposing party may respond. The service of an amicus curiae brief does not alter or extend the briefing deadlines for the parties. An amicus curiae may not file a reply brief.

(Emphasis supplied).

6. As reflected above, Rule 9.370 does not contemplate the *post-opinion* appearance of amicus curiae for the purpose of filing *motions* for rehearing and/or clarification. Indeed, by its plain language, Rule 9.370 states that “[a]n amicus curiae must serve its *brief* no later than 5 days after the *first brief, petition, or response.*” *Id.* (emphasis supplied). Nothing in the plain language of Rule 9.370 permits a non-party to appear *post-opinion* as amicus curiae for the purpose of seeking rehearing and/or clarification. Accordingly, the Court should deny the Attorney General’s *post-opinion* Motion for Leave to File Amicus Curiae Brief in Support of Clarification. *See, e.g., City of Temple Terrace v. Hillsborough Ass’n for Retarded Citizens, Inc.*, 322 So. 2d 571, 580 (Fla. 2d DCA 1975) (stating that post-opinion motions for leave to appear as amicus curiae filed by a state agency and the Florida Attorney General “come too late and are hereby denied”).

7. Although Dr. Strand submits that the Court should deny the Attorney General's *post-opinion* Motion for Leave to File Amicus Curiae Brief in Support of Clarification based upon Rule 9.370, Dr. Strand agrees with the Attorney General's position that the Court's September 6 Opinion applies prospectively and does not affect bonds that were validly "issued" to bona fide holders based upon the authority of *Miami Beach Redevelopment Agency and School Board of Sarasota County* prior to the Court's September 6 Opinion.

8. Indeed, the Court's September 6 Opinion, *on its face*, reflects that the Court's ruling applies prospectively:

[O]ur decision in this case does not affect bonds that were validated prior to this opinion becoming final. *See Miami Beach*, 392 So. 2d at 895; *County Comm'rs v. King*, 13 Fla. 451 (1869).

Strand v. Escambia County, No. SC06-1894, slip op. at 26 (Fla. Sept. 6, 2007).

9. While the Court used the term "validated," which has led some to speculate as to the scope of the Court's ruling, the Court's citation to *County Comm'rs v. King*, 13 Fla. 451 (1869), makes clear that its September 6 Opinion does not apply to bonds validly "issued" to bona fide holders based upon the authority of *Miami Beach Redevelopment Agency and School Board of Sarasota County* prior to the Court's September 6 Opinion.

10. In *King*, this Court held that the bonds in question, “having been *issued* [to bona fide holders] under the sanction of the highest judicial authority of the state,” were valid and not affected by a subsequent decision declaring a law unconstitutional, and that such decision “would operate only upon the future.” (Emphasis supplied); *see also State ex rel. Nuveen v. Greer*, 102 So. 739, 743 (Fla. 1924) (reiterating that “[b]onds sold to bona fide holders while the statute authorizing the bonds is duly adjudged to be constitutional, are valid, and the purchaser is protected from a subsequent decision of invalidity by the property rights clauses of the organic law, because the bonds being valid when issued are lawful obligations . . .”).

11. Thus, a thorough reading of the Court’s September 6 Opinion and the legal precedent cited therein makes clear that the Court’s ruling does not apply to bonds that were judicially “validated” or otherwise validly “issued” to bona fide holders based upon the authority of *Miami Beach Redevelopment Agency* and *School Board of Sarasota County* prior to the Court’s September 6 Opinion.

12. In sum, for the reasons previously discussed, the Court should deny the Attorney General's *post-opinion* Motion for Leave to File Amicus Curiae Brief in Support of Clarification.

RESPECTFULLY SUBMITTED this ____ day of September 2007.

DAVID A. THERIAQUE, ESQUIRE
Florida Bar No. 832332
S. BRENT SPAIN, ESQUIRE
Florida Bar No. 320810
TIMOTHY E. DENNIS, ESQUIRE
Florida Bar No. 575410
THERIAQUE VORBECK & SPAIN
433 North Magnolia Drive
Tallahassee, Florida 32308
Telephone: 850/224-7332
Facsimile: 850/224-7662

KERRY ANNE SCHULTZ, ESQUIRE
Florida Bar No. 563188
BORDELON & SCHULTZ
LAW FIRM, P.L.
2721 Gulf Breeze Parkway
Gulf Breeze, Florida 32563
Telephone: 850/934-1000
Facsimile: 850/934-1050

CO-COUNSEL FOR APPELLANT
DR. GREGORY L. STRAND

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via United States Mail to:

Patricia D. Lott, Esquire
Miller, Canfield, Paddock & Stone, P.L.C.
25 West Cedar Street, Suite 500
Pensacola, Florida 32502
Counsel for ESCAMBIA COUNTY, FLORIDA

Richard I. Lott, Esquire
Lott & Associates, P.L.
362 Gulf Breeze Parkway, Suite 288
Gulf Breeze, Florida 32561
Counsel for ESCAMBIA COUNTY, FLORIDA

Elaine Johnson-James, Esquire
Richard J. Miller, Esquire
Mark-David Adams, Esquire
Christine Senne, Esquire
Edwards Angell Palmer & Dodge, LLP
One North Clematis Street, Suite 400
West Palm Beach, Florida 33401
Counsel for ESCAMBIA COUNTY, FLORIDA

Leslie M. Norwood, Esquire
Managing Director and Associate General Counsel
Securities Industry and Financial Markets Association
360 Madison Avenue
New York, New York 10017
Counsel for ESCAMBIA COUNTY, FLORIDA

Kevin M. Carroll, Esquire
Managing Director and Associate General Counsel
Securities Industry and Financial Markets Association
1399 New York Avenue, NW
Washington, DC 20005
Counsel for ESCAMBIA COUNTY, FLORIDA

John Molchan, Esquire
Assistant State Attorney
Post Office Box 12726
Pensacola, Florida 32591
Counsel for STATE OF FLORIDA

Gregory T. Stewart, Esquire
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
Counsel for FLORIDA ASSOCIATION OF COUNTIES, INC.

Virginia Saunders Delegal, Esquire
General Counsel
Florida Association of Counties, Inc.
100 South Monroe Street
Tallahassee, Florida 32301
Counsel for FLORIDA ASSOCIATION OF COUNTIES, INC.

Robert L. Nabors, Esquire
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
Counsel for FLORIDA SCHOOL BOARDS ASSOCIATION, INC.,
FLORIDA ASSOCIATION OF DISTRICT SCHOOL
SUPERINTENDENTS, and SCHOOL DISTRICTS OF DUVAL,
HILLSBOROUGH, AND ORANGE COUNTIES

Major B. Harding, Esquire
Ausley & McMullen, P.A.
227 Calhoun Street
Tallahassee, Florida 32301
Counsel for FLORIDA SCHOOL BOARDS ASSOCIATION, INC.,
FLORIDA ASSOCIATION OF DISTRICT SCHOOL
SUPERINTENDENTS, and SCHOOL DISTRICTS OF DUVAL,
HILLSBOROUGH, AND ORANGE COUNTIES

Frank Kruppenbacher, Esquire
General Counsel
Orange County Public Schools
445 West Amelia Street
Orlando, Florida 32801
Counsel for FLORIDA SCHOOL BOARDS ASSOCIATION, INC.,
FLORIDA ASSOCIATION OF DISTRICT SCHOOL
SUPERINTENDENTS, and SCHOOL DISTRICTS OF DUVAL,
HILLSBOROUGH, AND ORANGE COUNTIES

Cindy A. Laquidara, Esquire
Chief Deputy General Counsel
Duval County
117 West Duval Street, Suite 480
Jacksonville, Florida 32202
Counsel for FLORIDA SCHOOL BOARDS ASSOCIATION, INC.,
FLORIDA ASSOCIATION OF DISTRICT SCHOOL
SUPERINTENDENTS, and SCHOOL DISTRICTS OF DUVAL,
HILLSBOROUGH, AND ORANGE COUNTIES

Thomas F. Gonzalez, Esquire
Hillsborough County School Board Attorney
Thompson, Sizemore & Gonzalez
201 North Franklin Street, Suite 1600
Tampa, Florida 33601
Counsel for FLORIDA SCHOOL BOARDS ASSOCIATION, INC.,
FLORIDA ASSOCIATION OF DISTRICT SCHOOL
SUPERINTENDENTS, and SCHOOL DISTRICTS OF DUVAL,
HILLSBOROUGH, AND ORANGE COUNTIES

Joy Causseaux Frank, Esquire
Florida Association of District School Superintendents
208 South Monroe Street
Tallahassee, Florida 32301
Counsel for FLORIDA SCHOOL BOARDS ASSOCIATION, INC.,
FLORIDA ASSOCIATION OF DISTRICT SCHOOL
SUPERINTENDENTS, and SCHOOL DISTRICTS OF DUVAL,
HILLSBOROUGH, AND ORANGE COUNTIES

Scott D. Makar, Solicitor General
Craig D. Feiser, Deputy Solicitor General
Charles B. Upton, II, Deputy Solicitor General
Office of Attorney General
The Capitol – PL 01
Tallahassee, Florida 32399-1050
Counsel for BILL MCCOLLUM, ATTORNEY GENERAL

Randall W. Hanna, Esquire
Bryant Miller Oliver, P.A.
101 North Monroe Street, Suite 900
Tallahassee, Florida 32301
Counsel for FLORIDA LEAGUE OF CITIES, INC.

Harry Morrison, Jr., Esquire
Post Office Box 1757
Tallahassee, Florida 32302-1757
Counsel for FLORIDA LEAGUE OF CITIES, INC.

David E. Cardwell, Esquire
The Cardwell Law Firm
7380 Sand Lake Road, Suite 500
Orlando, Florida 32819
Counsel for FLORIDA REDEVELOPMENT ASSOCIATION, INC.

Bruce Giles-Klein, Esquire
Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Counsel for CITY OF HOLLYWOOD AND THE CITY OF HOLLYWOOD,
FLORIDA COMMUNITY REDEVELOPMENT AGENCY

Eugene M. Steinfeld, Esquire
5790 Margate Boulevard
Margate, Florida 33063-3699
Counsel for CITY OF MARGATE AND THE CITY OF MARGATE
REDEVELOPMENT AGENCY

Jose Smith, Esquire
1700 Convention Center Drive
Fourth Floor
Miami Beach, Florida 33139
Counsel for CITY OF MIAMI BEACH AND THE CITY OF MIAMI
BEACH REDEVELOPMENT AGENCY

Michele S. Hall, Esquire
Michele S. Hall, P.L.
505 25th Street W.
Bradenton, Florida 34205
Counsel for COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF PALMETTO

Douglas J. Sale, Esquire
Kevin D. Obos, Esquire
Harrison, Sale, McCloy, Thompson, Duncan & Jackson, Chtd.
Post Office Drawer 1579
Panama City, Florida 32402
Counsel for CITY OF PANAMA CITY BEACH

John C. Wolfe, Esquire
Post Office Box 2842
St. Petersburg, Florida 33731
Counsel for CITY OF ST. PETERSBURG

Frank S. Bartolone, Esquire
3301 Gun Club Road, MSC 1410
West Palm Beach, Florida 33406
Counsel for SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Claudia M. McKenna, Esquire
City Attorney
200 2nd Street
West Palm Beach, Florida 33401
Counsel for CITY OF WEST PALM BEACH AND THE WEST PALM
BEACH COMMUNITY REDEVELOPMENT ASSOCIATION

Judson Freeman, Jr., Esquire
Livermore, Freeman & McWilliams, P.A.
320 North First Street, Suite 603
Jacksonville Beach, Florida 32250
Counsel for SCHOOL DISTRICTS OF THE COUNTIES OF ALACHUA,
BREVARD, INDIAN RIVER, MARION, AND ST. JOHNS

Arthur England, Esquire
Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Counsel for SCHOOL DISTRICTS OF THE COUNTIES OF BROWARD,
LAKE, LEE, OSCEOLA, PALM BEACH, POLK, AND ST. LUCIE

George N. Meros, Jr., Esquire
Gray Robinson, P.A.
Post Office Box 11189
Tallahassee, Florida 32302-3189
Counsel for CITY OF NORTH MIAMI COMMUNITY REDEVELOPMENT
AGENCY

on this _____ day of September 2007.

DAVID A. THERIAQUE, ESQUIRE